

## CASE DIGEST

# Recent Remedies Decisions from the European Court of Human Rights

JUNE 2015

This digest sets out summaries of decisions of the ECHR with regard to awards of individual and general measures under Article 46 from January 2013 to December 2014.

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## Torreggiani and Others v. Italy

8 January 2013, App. No. 43517/09 (Pilot Judgment)

### Article 3

Applicants, prisoners serving between fourteen and fifty-four months in the Arisizio and Piacenza prisons, were subject to inadequate conditions of detention (e.g. 3 sq. m. of personal space each, lack of hot water for lengthy periods, and inadequate lighting and ventilation). Applicants alleged that the conditions subjected them to hardship of an intensity exceeding the unavoidable level of suffering inherent in detention.

*Article 41 Just Satisfaction: Non-pecuniary: €10,600 - €23,500 (per applicant)*

*Article 46 General Measures:* Respondent State required to provide effective remedies in respect of prison overcrowding with preventative and compensatory effects, within one year.

*Rationale for Article 46 Remedy:* The violation of the applicants' right to adequate conditions of detention did not stem from isolated incidents but from a systemic problem arising from a dysfunctional Italian prison system which began during the declaration of a national state of emergency in 2010. Several hundred similar applications were currently pending before the Court due to overcrowding in certain Italian prisons. The Government pointed out that the applicants could submit an application to the judge responsible for the execution of sentences, but, the Court found that this was neither an effective practice nor did it afford the possibility of putting a rapid end to the violation.

## Oleksandr Volkov v. Ukraine

9 January 2013, App. No. 21722/11

### Articles 6(1), 8

Applicant was dismissed from his post as a judge in Ukraine for "breach of oath." Applicant claimed that Parliament's voting process was neither independent nor impartial, as a majority of the parliament was absent during the vote and those present used the voting cards of their absent colleagues.

*Article 41 Just Satisfaction: Pecuniary: Reserved, Non-pecuniary: €6,000*

*Article 46 Individual Measures:* Respondent State required to reinstate petitioner as judge of the Supreme Court at the earliest possible date.

*Article 46 General Measures:* Respondent State required to reform the system of judicial discipline, which should include legislative reform involving restructuring of the institutional basis of the system. Measures should also include the development of appropriate forms and principles of coherent application of domestic law in the field.

*Rationale for Article 46 Remedy:* The case uncovered serious systemic problems with the functionality of the Ukrainian judiciary. In particular, the system of judicial discipline did not ensure sufficient separation of between the judiciary and other branches of government or provide for sufficient guarantees against abuse. The Court found the judicial process to be lacking, and thus lacked faith that retrying the case would result in an appropriate remedy. Also, at the time of his domestic case, there were no guidelines or practice establishing a consistent interpretation of the notion of "breach of oath" and no adequate procedural safeguards to prevent arbitrary application of that provision. As to individual measures, there were no grounds to believe that the

applicant would be retried in accordance with the principles of the Convention, and therefore there was no point in indicating such a measure.

## Gülay Çetin v. Turkey

5 March 2013, App. No. 44084/10

*Articles 3, 14 in conjunction with Article 3*

While in pre-trial detention, the applicant complained of gastric and digestive problems. In September 2008, she was sentenced to fifteen years imprisonment and remained in pre-trial detention during her appeal. In April 2009 she was diagnosed with advanced stomach cancer, but her application for provisional release were rejected and her conviction became final. The court's rationale for not implementing procedures for her release were that such procedures were reserved for those who had been convicted with final effect. While the petition for a suspension of release was being considered due to the incurable nature of her illness and the threat to her health by attempting to treat her in prison, the applicant died of her illness.

*Article 41 Just Satisfaction: Non-pecuniary: €20,000 (jointly to applicant's heirs)*

*Article 46 General Measures:* Respondent State required to adopt an explicit rule requiring judges to have due regard, when taking decisions concerning pre-trial detainees, to their state of health and the compatibility of their clinical picture with life in prison, bearing in mind humanitarian considerations and especially as they are to be presumed innocent. With regard to detainees with terminal conditions, the Court determined that the Court of Cassation should be empowered to release them at any stage of the proceedings before it. Pre-trial detainees suffering from serious illnesses should have the opportunity to apply for similar measures to those available to convicted prisoners. The Court further stated that existing procedure to determine whether a prisoner's illness is compatible with prison life should be simplified in order to avoid an excessively formal approach.

*Rationale for Article 46 Remedy:* Applicant's requests for release were continually rejected, despite medical reports supporting release and the endangerment to her health by being treated in the prison. There was a lack of clear rules and procedures in the legal provisions for release of prisoners facing serious illness. Further, there were inexplicable delays in determining her release. The Court found that the issues raised in the present case were likely to reoccur, though it did not say that there were pending similar applicants.

## Zorica Jovanović v. Serbia

26 March 2013, App. No. 21794/08

*Article 8*

In October 1983, the applicant's newborn baby unexpectedly died in a State-run hospital. The hospital did not relinquish the baby's body to the applicant, provide an autopsy report or cause of death, or inform her of when or where her son was allegedly buried. A criminal complaint against the hospital staff was rejected as unsubstantiated. Between 2003 and 2010 Serbian authorities took steps to improve hospital procedures in the event of the death of a newborn child and to investigate allegations made by hundreds of parents whose babies had gone missing following their supposed deaths in hospital wards.

Applicant requested that the Respondent State be ordered to amend domestic legislation to increase penalties for the relevant criminal offences, extend the applicable limitation period, and to reopen the criminal proceeding.

*Article 41 Just Satisfaction: Non-pecuniary: €10,000*

*Article 46 General Measures:* Respondent State required, within one year, preferably by means of *lex specialis*, to establish a mechanism to provide individual redress to all parents in similar situations. The mechanism should be supervised by an independent body with adequate powers and capable of providing credible answers regarding the fate of each missing child and affording adequate compensation.

*Rationale for Article 46 Remedy:* At the time of the death, media reported other similar cases. Though the government had taken steps to improve the situation, reports by the Ombudsman, the Parliament's investigation committee, and a working group set up by the Parliament found serious shortcomings remained in both the legislation and the procedures involved. Despite these reports, no changes were made to the existing legislation. In particular, the legislation provided nothing to parents who had already suffered from this violation. The Court considered it particularly relevant that there was the potential for a significant number of similar applicants, including several already pending before the Court.

## Vyerentsov v. Ukraine

11 April 2013, App. No. 20372/11

*Articles 6(1), Article 6(3), Article 7, Article 11*

On 12 October 2010, the applicant held a peaceful demonstration to raise awareness about corruption in the prosecution service. The Lviv City Mayor had been notified that applicant planned to hold a series of demonstrations over the next several months. After the demonstration, an administrative court prohibited further pre-announced demonstrations from 19 October 2010. The applicant was convicted for breaching the procedure and sentenced to several days' detention.

*Article 41 Just Satisfaction: Non-pecuniary: €6,000*

*Article 46 General Measures:* Respondent State required to implement reforms in its legislation and administrative practice regarding procedures for holding peaceful demonstrations.

*Rationale for Article 46 Remedy:* Since the end of the Soviet Union, there had been no clear and foreseeable procedure for holding peaceful demonstrations in Ukraine. The Ukrainian Constitutions required further elaboration on possible restrictions to freedom of expression. As only a few hours had elapsed between the administrative-offence report and the examination of the case by the court of first instance, the applicant was not provided sufficient time to assess the charge against him and prepare his defense. The domestic court had also refused to provide him with the requested legal representation, as provided by domestic law, because of the applicant's legal background as a human rights defender.

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## Savriddin Dzhurayev v. Russia

25 April 2013, App. No. 71386/10

*Articles 3, 5(4), 34*

The applicant fled Tajikistan and was granted temporary asylum by Russia. Russia authorities acceded to the Tajik authority's request to extradite him but the extradition was postponed in accordance with an interim measure issued by the European Court. The applicant was later kidnapped and detained before being forcibly taken back to Tajikistan. The Court found that the State was aware of the threat of ill-treatment and torture and should have taken timely preventive measures to avert this risk.

*Article 41 Just Satisfaction: Non-pecuniary: €30,000*

*Article 46 Individual Measures:* Respondent State required to take tangible and timely remedial measures to protect the applicant against the existing risks to his life and health in a foreign jurisdiction as well as to carry out an effective investigation.

*Article 46 General Measures:* Respondent State required without delay to ensure the lawfulness of State action in extradition and expulsion cases and the effective protection of potential victims to prevent additional similar violations. Applicants and their legal representatives should also be allowed easy access to the State offices concerned to inform them of any emergency and seek urgent protection. Respondent State should implement appropriate procedures and institutional arrangements to ensure effective investigation into every case of a breach of such measures, with appropriate scrutiny of the investigation. The Committee of Ministers was tasked with formulating specific orders to comply with the judgment.

*Rationale for Article 46 Individual Measures:* The need for individual measures was particularly strong here since Russia itself granted the petitioner asylum and there had been a violation of one of the core rights of the Convention – freedom from torture. It was clear in this case that the forcible transfer to Tajikistan could not have occurred without the knowledge and/or passive or active involvement of the Russian authorities. The fact that the applicant was outside of Russia and that it would be difficult to reach him and take remedial measures was not a deterrent in awarding individual measures.

*Rationale for Article 46 General Measures:* Russia showed complete disregard for the interim measure requested by the Court. The operation was “conducted outside the normal legal system and by its deliberate circumvention of due process, was anathema to the rule of law and the values protected by the Convention.” The Court saw Russia's repeated abductions of individuals and their ensuing transfers to other countries as a flagrant disregard for the rule of law.

## Abdullah Yaşa and Others v. Turkey

16 July 2013, App. No. 44827/08

*Article 3 (substantive)*

Applicant alleged that when he was thirteen his nose was seriously injured when he was struck in the face by a tear gas canister, which he claimed had been fired directly into a crowd of demonstrators by a law-enforcement official during a March 2006 demonstration. The public prosecutor took no actions to investigate whether the force had been appropriate or proportionate.

*Article 41 Just Satisfaction: Pecuniary and Non-pecuniary: €15,000*

*Article 46 General Measures:* Respondent State required to take measures to minimise risk of injury or death, preferably through detailed legislation and/or regulations, on the use of tear gas canisters by law-enforcement during demonstrations.

*Rationale for Article 46 Remedy:* While the demonstration was not peaceful, and therefore the use of tear gas to disperse was not an issue, the fact that a tear gas canister had been fired directly at demonstrators was an issue due to the risk of causing serious injury or death. Though the public prosecutor took note that applicant was injured during a demonstration and that police had fired tear gas canisters, it failed to examine the manner in which the tear gas was fired into the crowds, despite the fact that the applicant had been struck directly by a canister. Additionally, two people had been killed by tear gas canisters during the demonstration in question. Moreover, Turkish law did not contain any specific provisions regulating the use of tear gas canisters during demonstrations or guidelines concerning their use. Although a circular setting out the conditions for using tear gas had been sent to security forces in February 2008, the Court found that the safeguards needed to be strengthened by means of more detailed legislation and/or regulation.

## McCaughey and Others v. the United Kingdom

16 July 2013, App. No. 43098/09

*Article 2 (procedural)*

The applicants were close relatives of two men killed by security forces in October 1990 in Northern Ireland. They alleged a lack of effective domestic remedies after decades-long delays in receiving disclosures from the coroner and the Police Service Northern Ireland on the circumstances surrounding the deaths of the two men.

*Article 41 Just Satisfaction:* None (no claim made)

*Article 46 General Measures:* Respondent State required to take all necessary and appropriate measures to ensure expeditious compliance with procedural requirements of Article 2 in cases concerning killings by the security forces in Northern Ireland.

*Rationale for Article 46 Remedy:* Although the inquest hearing proceeded quickly once initiated, it had not begun until more than twenty-one years after the deaths. The fact that it was necessary to postpone the applicants' inquest so often and for extended periods showed that the inquest process did not have the institutional capacity to provide applicants with access to an effective investigation. The High Court's raising of the threshold for leave to apply for judicial review to "exceptional circumstances" made it exceedingly difficult to clarify applicants' procedural rights. Further, the extreme delay in carrying out investigations and holding inquests into killings by security forces in Northern Ireland was a widespread problem. The Committee of Ministers had expressed concerns about investigative delay in four similar cases before the Court. The Court also took into account the findings of a non-governmental organization that delays in inquests into deaths in Northern Ireland were an endemic problem.

## İzci v. Turkey

23 July 2013, App. No.42606/05

*Articles 3 (substantive and procedural), 11*

The applicant claimed that police beat demonstrators with excessive and undue force during demonstrations in Istanbul in March 2006. Police had not issued any warning for demonstrators to disperse prior to the attacks. The applicant lodged a complaint against 54 police officers for causing her injuries through use of excessive force; however, 48 were acquitted for lack of evidence. The remaining officers were sentenced to terms of imprisonment ranging from five to twenty-one months, but the proceedings against them were discontinued after the statute of limitations ran out.

*Article 41 Just Satisfaction: Non-pecuniary: €20,000*

*Article 46 General Measures:* Respondent State required to take measures to ensure respect by law-enforcement officials of the right to peaceful assembly, and in particular to ensure that police act in accordance with Articles 3 and 11, and that judicial authorities conduct effective investigations into allegations of ill-treatment in conformity with the obligation under Article 3 and in such a way as to ensure accountability of senior officers as well. Respondent State should also adopt a clearer set of rules as to the use of violence and weapons such as tear gas during demonstrations, especially against those who do not put up violent resistance.

*Rationale for Article 46 Remedy:* The excessive and undue use of force by police in response to demonstrations was a systemic problem in Turkey. The Court had already held against Turkey in 40 other cases that the excessive use of force by law-enforcement officials during demonstrations amounted to similar violations of the Convention. In over 20 of those cases, the Court also observed a failure by Turkish authorities to carry out effective investigations into the ill-treatment. 130 cases concerning similar violations by Turkey of the right to freedom of assembly and/or undue use of force by law-enforcement officials during demonstrations were also currently pending before the Court. The Court took note of the petitioner's desire that her application lead to the taking of necessary steps at the national level to prevent similar breaches.

## M.C. and Others v. Italy

3 September 2013, App. No. 5376/11 (Pilot Judgment)

*Article 6(1), Article 1 of Protocol No.1, Article 14 in conjunction with Article 1 of Protocol No. 1*

The applicants were Italian nationals who contracted HIV, Hepatitis B, or Hepatitis C as a result of contaminated blood transfusions. They were awarded government-funded compensation in two parts, including a fixed sum to be re-assessed annually. In spite of a judicial decision striking down an emergency decree preventing re-assessment of the fixed sum, the applicants were unable to have their compensation re-assessed as required by law.

*Article 41 Just Satisfaction: Reserved.*

*Article 46 General Measures:* Respondent State required to set a specific time-limit in which to secure effective entitlements to applicants within six months of the judgment. Respondent State must pay the reassessed sum to every person eligible for the allowance.

*Rationale for Article 46 Remedy:* The materials of the case indicated that the State's legislative decree was only aimed at preserving its own financial interests and did not have any other legitimate objective. The legislative decree in effect interfered with the ruling on the merits of an issue in a final manner and the execution of decisions, violating the applicants' right to peaceful enjoyment of their possessions and breaching the rule of law. The fixed sums represented 90% of the amounts paid to the applicants and were intended to cover the health care costs of living with

incurable diseases, and the prognosis of their chances of survival was directly linked to the receipt of the allowances. During the course of the proceedings, six of the applicants died. The Court also noted that this was a systemic problem in the Respondent State resulting from the authorities' unwillingness to adjust the sums, even after the domestic court's judgment.

## Benzer and Others v. Turkey

12 November 2013, App. No. 23502/06

*Articles 2 (substantive and procedural), 3, 38*

Turkish military allegedly bombed the applicant's villages in 1994, resulting in 34 deaths, numerous injuries, and damage to property and livestock. After the attack, applicants had to move to other parts of the country. The Turkish government maintained that a rebel group was responsible for the bombing despite evidence brought by the applicant, including a flight log drawn by the Civil Aviation Directorate which referred to two flying missions carried out by the national Air Force on the same day the village was bombed.

*Article 41 Just Satisfaction: Non-pecuniary: €15,000 - €250,000 (per applicant)*

*Article 46 Individual Measures:* Respondent Government required to conduct an investigation to identify those responsible for bombing of civilian villages in 1994. Such steps should include carrying out an effective criminal investigation, with the help of the flight log.

*Rationale for Article 46 Remedy:* The investigation into the bombing was wholly inadequate: prosecutors had not carried out a sufficient inquiry in the immediate aftermath of the bombing; when investigations were carried out, they were not independent; the flight log was not investigated; the conclusions of the investigations were baseless; and prosecutors withheld information on the investigation from the applicants. The Government also failed to submit a complete copy of the investigation filed to the Court, as requested. These factors led the Court to conclude that the national investigating authorities were unwilling to officially establish the truth and punish those responsible. Additionally, the investigation file was still open at the national level and the Government was still in possession of the relevant documents

## Vlad and Others v. Romania

26 November 2013, App. Nos. 40756/06, 41508/07 and 50806/07

*Article 6(1), Article 13 in conjunction with Article 6(1) (as to the second and third applicants)*

The applicants complained of the length of civil and criminal proceedings and the lack of effective domestic remedies to address those delays. Since the applications were lodged in 2006 and 2007, the Government had introduced amendments to both the civil and criminal codes, which provided for a complaints procedure for delays. However, the amendments only applied to proceedings instituted after 15 February 2013.

*Article 41 Just Satisfaction: Non-pecuniary: €2,340 - €7,800 (to each applicant)*

*Article 46 General Measures:* To prevent future infringements on the right to a trial within a reasonable time, Respondent State was required to take further measures to provide genuine effective relief for violations of the right to a fair trial within a reasonable time, by either amending the existing range of legal remedies or adding new remedies, such as a specific and clearly regulated compensatory framework.



*Rationale for Article 46 Remedy:* The Court had already held against Romania in roughly 200 similar cases and 500 other similar cases were currently pending before the Court, indicating a systemic problem. The Council of Europe also noted in 2011 that this was a widespread problem in Romania and had made it a priority area. Though the Government had amended its domestic procedures to allow for effective remedies in the case of delays, this could not remedy the problem of delays accrued before the amendments were passed. Furthermore, the Government had not produced examples of domestic cases in which litigants had been successful in obtaining an effective remedy in length-of-proceeding cases.

## Barta and Drajkó v. Hungary

17 December 2013, App. No. 35729/12

*Article 6(1)*

The applicants alleged that the criminal proceedings against them regarding tax fraud were excessively long, in violation of Article 6§1 as they were first interrogated in 2006 and 2008 respectively, but the first hearings were not held until 2011.

*Article 41 Just Satisfaction: Non-pecuniary:* €3,000 (first applicant); €2,000 (second applicant)

*Article 46 General Measures:* In order to prevent future violations of the right to a trial within a reasonable time, Respondent State was required to take all appropriate steps, preferably by amending the current range of legal remedies available or creating new ones, to provide for genuine effective relief for violations of the right to trial within a reasonable time.

*Rationale for Article 46 Remedy:* Violation of the right to trial within a reasonable time was a systemic problem in Hungary due to inadequate legislation and inefficiency in the administration of justice. Approximately one hundred similar cases were pending before the Court and the Court had found that Hungary had violated Article 6(1) in approximately sixty cases concerning the length of criminal proceedings. General measures were considered necessary to address the large number of affected persons.

## Foundation Hostel for Students of the Reformed Church and Stanomirescu v. Romania

7 January 2014, App. Nos. 2699/03 and 43597/07

*Article 6(1)1, Article 1 of Protocol No.1*

Applicants had both obtained final judicial decisions in domestic courts requiring the State to demolish buildings, value and mark trees, or pay compensation to the applicants. However, these orders were either not complied with, or only complied with after long delays.

*Article 41 Just Satisfaction: Non-pecuniary:* €8,000 (No.2699/03); *Pecuniary and non-pecuniary:* €300 (No. 43597/07)

*Article 46 General Measures:* Respondent State should take general measures to prevent delays and to ensure its automatic and prompt compliance with domestic court decisions.

*Rationale for Article 46 Remedy:* The Court noted that the violations found in the present case reflected a persistent structural dysfunction. Therefore, the Court had a duty to suggest, purely as an indication, the type of measure the State could take to end the systemic situation identified.

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Additionally, authorities frequently refused to comply with orders, especially with regards to specific performance, without giving a valid reason.

## Cusan and Fazzo v. Italy

7 January 2014, App. No. 77/07

*Article 14 in conjunction with Article 8*

Domestic law made it impossible for a heterosexual couple to give their new-born child the mother's last name alone, in spite of an agreement between the spouses. The fact that it was impossible to derogate from the law made it excessively rigid and discriminatory towards women, in violation of Article 14 in conjunction with Article 8.

*Article 41 Just Satisfaction:* None (no claim made)

*Article 46 General Measures:* Respondent State required to reform domestic legislation and/or practice to enable the legitimate child of a married couple to be given its mother's surname.

*Rationale for Article 46 Remedy:* This impossibility arose from a flaw in the Italian legal system, whereby every "legitimate child" could only be entered into the register of births, marriages, and deaths under the father's surname, with no option of derogation, even where the spouses agreed to use the mother's surname. Thus, reforms to Italian legislation and/or practice were required to ensure compatibility with the conclusions of the present judgment and compliance with Articles 8 and 14 of the Convention.

## Bittó and Others v. Slovakia

28 January 2014, App. No. 30255/09

*Article 1 of Protocol No.1*

Applicants, owners of residential buildings, complained that the rent to which they were entitled under a domestic rent-control scheme did not cover the costs of their maintenance and was disproportionately low compared with similar flats to which the rent-control scheme did not apply.

*Article 41 Just Satisfaction:* Reserved.

*Article 46 General Measures:* Respondent State required to introduce, as soon as possible, a specific and clearly regulated compensatory remedy to provide genuine effective relief for breach of property rights of rent-controlled flat owners whose rights were violated prior to the adoption of the new measures.

*Rationale for Article 46 Remedy:* Although the Respondent State had taken measures with a view to gradually improving the situation of landlords, the measures provided for a complete elimination of the effects on rent-controlled flat owners only from 2017 onwards and did not address the situation existing prior to the adoption of the measures. Thirteen applications concerning the same issue and affecting 170 people were pending before the Court.

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## Kuric and Others v. Slovenia

12 March 2014, App. No. 26828/06 [Grand Chamber] (Pilot Judgment)

*Articles 8, 13*

In a principal judgment issued on 26 June 2012, the Grand Chamber found that the Slovenian authorities had violated Article 8 and Article 13 when it unlawfully erased applicants from the Register of Permanent Residents and then repeatedly failed to regularise their residence status. The Court had ordered the respondent State to set up as a general measure an ad hoc domestic compensation scheme within one year.

*Article 41 Just Satisfaction: Pecuniary:* To compensate for loss of past income, it made awards in respect of social allowances (to each applicant) and child benefits (to two applicants).

*Article 46 General Measures:* Respondent State required to introduce and implement an ad hoc domestic compensation scheme.

*Rationale for Article 46 Remedy:* The Court noted that Slovenia had failed to set up the required ad hoc domestic compensation scheme. However, Slovenia had created a solution to become applicable as of 18 June 2014, and the Court found it to be appropriate. The Act will introduce compensation on the basis of a lump sum for each month of the “erasure” and the possibility of claiming additional compensation. The Court noted that swift implementation of the solution is of the utmost importance because there were currently some 65 cases involving more than 1,000 applicants pending before the Court.

## Luli and Others v. Albania

1 April 2014, App. Nos. 64480/09, 64482/09, 12874/10, 56935/10, 3129/12, 31355/09

*Article 6(1)*

In their applications to the European Court, the applicants complained under Article 6(1) of the Convention of the length of civil proceedings they had brought to determine their property rights. The court found a violation, and it also found that there existed no domestic remedy in respect of length-of-proceedings complaints.

*Article 41 Just Satisfaction: Non-pecuniary:* €1,500 (per applicant who requested non-pecuniary damages)

*Article 46 General Measures:* Respondent State required to introduce effective remedy in respect of excessive length of civil proceedings.

*Rationale for Article 46 Remedy:* The facts that there was no domestic remedy and that there were dozens of similar applications before the Court demonstrated a serious deficiency in domestic legal proceedings. The growing number of applications was not only an aggravating factor as to the State’s liability, but it also represented a threat to the effectiveness of the system put in place by the Convention. General measures were “undoubtedly called for” including, in particular, a domestic remedy as regards undue length of proceedings.

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## A.C. and Others v. Spain

22 April 2014, App. No. 6528/11

*Article 13, taken together with Articles 2 and 3*

30 applicants of Sahrawi origins lodged applications for international protection in Spain. Their applications were rejected. They then applied for judicial review at the same time seeking a stay of execution for the order for their deportation issued by the administrative authorities. The Audencia Nacional rejected their application, which removed all barriers to their deportation. Moreover despite, provisional measures issued by the ECHR against the removal of the applicants due to the risk of inhuman and degrading treatment if they were removed to Morocco, the deportation proceedings in Spain continued. The applicants appealed to the Supreme Court but to this day no decision has been rendered.

*Article 41 Just Satisfaction:* None.

*Article 46 Individual Measures:* The Court required the Respondent State to ensure that applicants could remain within its territory, pending final decision on their applications for international protection.

*Rationale for Article 46 Remedy:* The violation of Article 13 was due to the non-suspending effect of the judicial review proceedings. Therefore, the Court held that Respondent State should guarantee that the applicants remain on its territory given that said judicial-review proceedings were still pending.

## László Magyar v. Hungary

20 May 2014, App. No. 73593/10

*Articles 3 (substantive), 6(1)*

The applicant was convicted of murder, robbery, and other offenses and was sentenced to life imprisonment without eligibility for parole. Although Hungarian Fundamental Law provides the possibility of a presidential pardon, the institution of presidential clemency in Hungary, taken alone, and its regulation are incompatible with Article 3. A strict scrutiny of the institution and its regulation revealed that they do not allow prisoners to know what they had to do to be considered for release and under what conditions. The regulations did not guarantee proper consideration of the changes and progress towards rehabilitation made by the prisoner.

*Article 41 Just Satisfaction: Non-Pecuniary:* €2,000 in respect of damage concerning complaint under Article 6(1). Finding a violation constituted sufficient just satisfaction in respect of any non-pecuniary damage concerning applicant's complaint under Article 3.

*Article 46 General Measures:* Respondent State required to put in place a reform, preferably by means of legislation, of the system of review of whole life sentences. The mechanism of review must guarantee the examination in every particular case of whether continued detention was justified on legitimate penological grounds and should enable whole life prisoners to foresee, with some degree of precision, what they must do to be considered for release and under what conditions.

*Rationale for Article 46 Remedy:* Respondent State must reform its law to make it consistent with this judgment. The nature of the violation suggests that such reforms were necessary; otherwise the systemic problem would give rise to similar applications.

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## Gerasimov and Others v. Russia

1 July 2014, App. Nos. 29920/05 et al (Pilot Judgment)

*Articles 6, 13, Article 1 of Protocol No. 1 (as to six applicants)*

The applicants are Russian nationals who had obtained binding judicial decisions ordering authorities to provide them with housing or similar services. Enforcement of these judgments was considerably delayed; some remain unenforced. For all but two cases, the Government acknowledged the delays and offered them monetary compensation. ECHR rejected this declaration because it did not address the systematic problems.

*Article 41 Just Satisfaction: Non-Pecuniary: €900-9,000 (per applicant)*

*Article 46 General Measures:* Respondent State required to set up, within one year, an effective domestic remedy or combination of such remedies accessible to all persons in the applicants' position.

*Rationale for Article 46 Remedy:* Non-enforcement or delayed enforcement of domestic judicial decisions was a recurring problem in the Respondent State, leading to the most frequent violations of the Convention since its inception. There was little chance for many cases of this nature to be resolved at the domestic level. The Court had already decided more than 150 similar cases and had around 600 pending before it. The Court did not give a specific recommendation because of the complex legal, political, and budgetary process required to remedy the violation. Furthermore, there were numerous ways a remedy could be implemented. Rather, it noted that the Committee of Ministers was better placed to monitor the State authorities to ensure no further violations occur.

## Zornić v. Bosnia and Herzegovina

15 July 2014, App. No. 3681/06

*Article 14 in conjunction with Article 3 of Protocol No. 1, Article 1 of Protocol No. 12*

The applicant was not allowed to stand for election without declaring affiliation with a "constituent people" as required by the Constitution. Applicant did not wish to declare such affiliation.

*Article 41 Just Satisfaction:* None (no claim made)

*Article 46 General Measures:* The Court recommended that there be a speedy and effective resolution of its recommendation to change the state's law. Specifically the Court called for providing every citizen of Bosnia and Herzegovina with the right to stand for elections to the Presidency and the House of Peoples without discrimination based on ethnic affiliation and without granted special rights for constituent people to the exclusion of minorities of citizens.

*Rationale for Article 46 Remedy:* ECHR recommends changing the law. The recommendation was made in light of the lengthy delay and the fact that the Court had previously found similar violations in *Sejdic* and *Finci*. Finding of a violation in this case was the direct result of the State's failure to introduce measures in compliance with that previous judgment. The Court felt that the State's failure to introduce any constitutional or legislative changes to end the incompatibility with the Convention was "not only an aggravating factor as regards to the State's responsibility under the Convention for an existing or past state of affairs, but also represents a threat to the future effectiveness of the Convention." The Committee of Ministers had issued three interim resolutions

during its supervision of *Sejdac* and *Finci*, urging Bosnia and Herzegovina to take all necessary measure to eliminate discrimination against those not affiliated with a constituent people. The third resolution called upon the Respondent State to “ensure that the constitutional and legislative framework is immediately brought in line with the Convention requirements so that the elections in October 2014 are held without any discrimination against citizens who are not affiliated with any of the ‘constituent peoples.’”

## Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the former Yugoslav Republic of Macedonia

16 July 2014, App. No. 60642/08 [Grand Chamber] (Pilot Judgment)

*Article 13, Protocol No. 1 Article 1 (only as to applications against Slovenia and Serbia)*

The applicants are citizens of Bosnia and Herzegovina. Until 1989 – 90, the former Socialist Federal Republic of Yugoslavia (SFRY) took various measures to make it very attractive for its citizens to deposit foreign currency with its banks. In 1989-90, due to favourable exchange rates, there was a run on the banks, prompting SFRY to restrict withdrawals. After the breakup of SFRY, the successor States made an as-of-yet unfulfilled promise to repay these deposits. The ECHR found Slovenia and Serbia responsible for these debts.

*Article 41 Just Satisfaction: Non-Pecuniary: €4,000 (to each applicant against Serbia and Slovenia)*

*Article 46 General Measures:* Slovenia and Serbia must make necessary arrangements, including legislative amendments, within one year in order to allow the applicants and all other persons in their position to recover their “old” foreign-currency savings under the same conditions as those, including citizens, who had such savings in the domestic branches of the Slovenian banks and under the same conditions.

*Rationale for Article 46 Remedy:* The Court highlighted that the pilot judgments allowed the Court to clearly identify structural problems underlying violations and to indicate measures to be undertaken by the Respondent State in order to fix the problems. General measures were further required as there were over 1,850 similar applications introduced on behalf of over 8,000 applicants pending before the Court, plus many thousands of potential applicants should the State not adopt new measures.

## Kim v. Russia

17 July 2014, App. No. 44260/13

*Articles 3, 5(1)(f), 5(4)*

The applicant, a stateless person born in the Uzbek Soviet Socialist Republic, was arrested and found guilty of not being in possession of an identity document, and was placed in detention pending expulsion. The Russian authorities were unable to remove him to Uzbekistan. The Court ruled Russia did not make sufficient attempts to communicate with Uzbekistan and that the detention was invalid.

*Article 41 Just Satisfaction: Non-Pecuniary: €30,000*

*Article 46 Individual Measures:* The Government was required to take steps to prevent him from being re-arrested and put in detention for offences resulting from his status as a stateless person.

*Article 46 General Measures:* The Respondent State was required to take general measures (a) to enable individuals to institute proceedings for the examination of the lawfulness of their detention pending removal in the light of the developments in the removal proceedings (Article 5(4)) and (b) to limit detention periods so that they remained connected to the ground of detention applicable in an immigration context (Article 5(1)(f)).

*Rationale for Article 46 Individual Measures:* The Court was concerned that following his release, the applicant's situation would remain irregular from the standpoint of Russian immigration law, leading to a high risk of additional prosecution. Given the variety of means available to achieve this aim, and the nature of the issues involved, the Court left it to the Committee of Ministers to assess specific individual measures to be undertaken.

*Rationale for Article 46 General Measures:* The general measures were required to provide guarantees appropriate to the type of deprivation of liberty in question. Moreover, this case involved violations of some of the core rights protected by the Convention, prohibition of ill-treatment and the right to liberty, which were not prevented by domestic legal remedies. The Court had previously concluded in *Azimov* and other cases that a person's detention pending expulsion, without judicial review of the lawfulness of the detention amounts to a violation of Article 5(4). The Court found that it was necessary to indicate general measures to prevent similar violations.

## Centre for Legal Resources v. Romania

17 July 2014, App. No. 47848/08 [Grand Chamber]

*Article 2 (substantive and procedural), Article 13 in conjunction with Article 2*

The application was lodged by the Centre on behalf of a young, HIV-positive Roma man who died at the age of 18. When he was 18 he left an orphanage and was rejected by several institutions, before finally being accepted at a medical care centre that was not set up for patients with HIV. Hospital staff refused to help him for fear of contracting the disease. The State not only failed to provide adequate care, but it failed to carry out an effective investigation after his death. The failure of authorities to appoint a legal guardian or other representative was the reason no form of representation was or had been made available for the Roma man's protection or to make representations on his behalf to the hospital authorities. This was a violation of Article 2 as well as Article 13 in conjunction with Article 2.

*Article 41 Just Satisfaction:* None. (no claim made)

*Article 46 General Measures:* Respondent State required to ensure that mentally disabled persons in comparable situations are afforded independent representation, enabling them to have Convention complaints related to their health and treatment examined before a court or other independent body.

*Rationale for Article 46 Remedy:* The Court further noted that the facts and circumstances of this case revealed the existence of a wider problem in addressing the needs of mentally disabled people in the country, calling for the Court to indicate general measures to execute its judgment.

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## Ataykaya v. Turkey

22 July 2014, App. No. 50275/08

*Article 2 (substantive and procedural)*

When the applicant's son unwittingly found himself in the middle of a demonstration, he was struck in the head by one of several tear-gas canisters fired by security forces and died soon after. Administrative and criminal investigations failed to identify the person who fired the shot. The Court found the investigation improper.

*Article 41 Just Satisfaction: Non-Pecuniary: €65,000*

*Article 46 Individual Measures:* New investigative measures ought to be taken under the supervision of the Committee of Ministers. These measures had to include an effective criminal investigation aimed at the identification and, if appropriate, punishment of those responsible for the death of the applicant's son.

*Article 46 General Measures:* The Court stressed the need to strengthen the safeguards in place with regards to the use of tear-gas canisters.

*Rationale for Article 46 Individual Measures:* Individual measures were proper in light of the fact that the investigation file was still open at the domestic level and that no meaningful investigation had been carried out to identify the person who had fired the fatal shot, which was especially of concern since there was no evidence to indicate that the use of fatal force had been absolutely necessary and proportionate.

*Rationale for Article 46 General Measures:* Reiterating its findings in previous judgments, the Court insisted on the need to reinforce, without further delay, the safeguards surrounding the proper use of tear-gas grenades, so as to minimise the present and future risks of death and injury stemming from their use. It emphasised that, so long as the Government did not comply with the requirements of the European Convention, the inappropriate use of potentially fatal weapons during demonstrations was likely to give rise to violations similar to that in the present case.

## Al Nashiri v. Poland

24 July 2014, App. No. 28761/11

*Articles 3 (substantive and procedural), 5, 6(1), 8, 38, 2 and 3 in conjunction with Article 1 of Protocol No. 6*

Both applicants claim they were victims of "extraordinary rendition" by the U.S. CIA, where they were apprehended and extrajudicially transferred to a secret detention site in Poland with the knowledge of Polish authorities. There they were subjected to enhanced interrogation techniques. A criminal investigation was opened in March 2008, but after being extended a number of times, is still pending.

*Article 41 Just Satisfaction: Non-Pecuniary: €100,000*

*Article 46 Individual Measures:* Respondent State required to seek assurances that U.S. authorities would not impose death penalty in respect of applicant following extraordinary rendition.

*Rationale for Article 46 Remedy:* The Court emphasized that while its judgments are essentially declaratory in nature and that it is for the Respondent State to choose, subject to the supervisions by the Committee of Ministers, the means to be used to discharge its obligations, in particular



circumstances, the Court “may find it useful or, indeed, even necessary to indicate to the respondent Government the type of measures that might or should be taken by the State in order to put an end to the situation that gave rise to the finding of a violation.” Further, there are times when “the nature of the violation found may be such as to leave no real choice as to the individual measures required.” This applied in particular to cases where a removal of an applicant from the territory of the respondent State exposes him to a serious risk of being subjected to ill-treatment contrary to Article 3.

## Chanyev v. Ukraine

9 October 2014, App. No. 46193/13

*Article 5(1)*

Ukraine detained the applicant, a criminal suspect, in pre-trial detention for 2 months after the court order authorizing such detention had expired. A gap in Ukraine’s applicable Code of Criminal Procedure allowed criminal suspects to remain in pre-trial detention after the expiration of the order under circumstances faced by the applicant.

*Article 41 Just Satisfaction: Non-Pecuniary: €4,500*

*Article 46 General Measures:* The Government is required to amend the relevant legislation in order to ensure compliance of domestic criminal procedure with the requirements of Article 5.

*Rationale for Article 46 Remedy:* The Court noted that in a previous case the Court had also noted that legislative shortcomings had caused Ukraine to repeatedly detain persons in pre-trial detentions without a court order. There, the ECHR invited Ukraine to correct these shortcomings. In response, Ukraine enacted new legislation, but the applicant’s case demonstrated that Ukraine’s new legislation continues to contain similar shortcomings leading to like violations of Article 5. Since Ukraine failed to bring its legislation and administrative practice into line with Article 5, the most appropriate way to address this situation was requiring Ukraine to amend legislation governing pre-trial detention to ensure compliance with Article 5.

## Mamazhonov v. Russia

23 October 2014, App. No. 17239/13

*Article 3 (substantive)*

Russia exposed the applicant to risk of ill-treatment by ordering his exportation when they should have known he risked ill-treatment there. Also, after the Court issued an interim measure preventing exportation, Russia failed to take preventive measures against the applicant’s risk of “disappearance” and forcible exportation to Uzbekistan. Specifically, after the interim measure was issued, Russia released him from custody outside of normal working hours and he disappeared later the same day. Russia had been well aware both before and after the applicant’s release that he faced a real and immediate risk of forcible transfer to Uzbekistan. Also, Russia’s investigation into his disappearance was ineffective.

*Article 41 Just Satisfaction: Non-Pecuniary: €7,500*

*Article 46 Individual Measures:* Respondent State required to vigilantly pursue criminal investigation into the applicant’s disappearance, to put an end to the violations found, and make reparations.

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*Article 46 General Measures:* Respondent state required without delay to ensure lawfulness of state action in extradition and expulsion cases and the effective protection of potential victims.

*Rationale for Article 46 Individual Measures:* While it was for the Committee of Ministers to supervise the adoption of feasible, timely, adequate and sufficient individual measures, the Court found that the individual measures ordered were indispensable.

*Rationale for Article 46 General Measures:* Although a recent ruling by the Russian Supreme Court could in principle allow the judiciary to provide better protection against recurrent irregularities in extradition cases, the Supreme Court itself had fallen short of applying it in applicant's case. The Court reiterated that a genuine and rigorous application of the Supreme Court's ruling by all Russian courts was capable of improving domestic remedies in extradition and expulsion cases.

## Vasilescu v. Belgium

25 November 2014, App. No. 64682/12

*Article 3*

The applicant, a former detainee in several Belgian prisons, complained about prison conditions that amounted to an Article 3 violation. Specifically, the prisoner complained of being detained in overcrowded prisons, living in very small cells without toilet facilities or access to running water, sleeping on mattresses on the floor, and being exposed to passive smoking.

*Article 41 Just Satisfaction: Non-Pecuniary: €10,000*

*Article 46 General Measures:* Respondent state is required to adopt general measures to guarantee prisoners conditions of detention compatible with Article 3 of the Convention. Additionally, the state is required to provide prisoners with appropriate remedies.

*Rationale for Article 46 Remedy:* The prison conditions complained of were structural in nature, and although national and international observers had criticized the conditions for years, Belgium had failed to make improvements. In fact, the CPT observed in 2012 that Belgian prison conditions had worsened during recent years. The Court viewed Belgium's own remedies as ineffective and therefore remedies which the applicant need not exhaust.

## Amirov v. Russia

27 November 2014, App. No. 51857/13

*Articles 3, 34*

The applicant, a seriously medically ill and paraplegic prisoner, complained of receiving inadequate medical treatment for his illnesses while imprisoned. The ECHR issued an interim measure that required the immediate examination of the applicant by independent medical experts to determine whether he was receiving adequate medical treatment and whether his condition was compatible with detention or required admission to hospital. The Government failed to comply with the interim measure. Additionally, the Government exposed him to prolonged mental and physical suffering that amounted to inhuman and degrading treatment. The Government failed to organize an expert medical examination or allow the applicant to organize one, and thus it failed to demonstrate that the applicant had been receiving effective medical treatment while in detention.

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*Article 41 Just Satisfaction: Non-Pecuniary: €15,000*

*Article 46 Individual Measure:* The authorities are required to admit the applicant to a specialized medical facility where he would remain under constant medical supervision and be provided with adequate medical services. Additionally, the authorities are required to regularly re-examine the applicant's situation, including with the assistance of medical experts.

*Rationale for Article 46 Remedy:* The Court considered it necessary to indicate individual measures for the execution of this judgement in order to redress the effects of the breach of the applicant's rights.

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