ISTITUTO DI DIRITTO, POLITICA E SVILUPPO

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"Family life and rights of migrant children in the European Union"

Jean Monnet Module MARS

TRAINING MATERIALS

MARS
Migration, Asylum and Rights of Minors

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- COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS on a New Pact on Migration and Asylum, COM(2020) 609 final, 23.9.2020 (and annexes)

- COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS EU strategy on the rights of the child, Brussels, COM(2021) 142 final, 24.3.2021

- REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on the implementation of Directive 2003/86/EC on the right to family reunification, COM(2019) 162 final, 29.3.2019

Section III – Case Law

- ECHR, Factsheet – Children’s rights, May 2021

- ECHR, Factsheet – Accompanied migrant minors in detention, April 2021

- ECHR, Guide on the case-law of the European Convention on Human Rights, *Immigration*, 30 April 2021

- ECHR, Guide on the case-law of the European Convention on Human Rights, *Right to respect for private and family life, home and correspondence*, 31 December 2020

- ECHR, Factsheet – Unaccompanied migrant minors in detention, June 2020

Section IV – ICJ Training materials (Fair Project)

- Guiding principles and definitions

- Access to fair procedures including the right to be heard and to participate in proceedings

- Access to justice in detention

- Access to justice for economic, social and cultural right

- Access to justice in the protection of their right to private and family life

- Redress through international human rights bodies and mechanisms

- Practical handbook for lawyers when representing a child

Section V – Data and reports

- FRA, Migration: Key fundamental rights concerns - Bulletin 2021, 25.2.2021

- UNHCR, UNICEF and IOM, Refugee and Migrant Children in Europe. Overview of Trends in 2020

- FRA, Update of the 2016 FRA Opinion on fundamental rights in the hotspots set up in Greece and Italy, 11.3.2019

See also

FRA, Council of Europe and European Court of Human Rights, Handbook on European law relating to asylum, borders and immigration - Edition 2020

FRA, Council of Europe and European Court of Human Rights, Handbook on European law relating to the rights of the child, 2015

Last Update: 22 June 2021

Convention on the Rights of the Child

Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989

entry into force 2 September 1990, in accordance with article 49

Preamble

The States Parties to the present Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

Recognizing that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,

Bearing in mind that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children,

Bearing in mind that, as indicated in the Declaration of the Rights of the Child, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth",

Recalling the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) ; and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict, Recognizing that, in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child, Recognizing the importance of international co-operation for improving the living conditions of children in every country, in particular in the developing countries,

Have agreed as follows:

PART I

Article 1

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 4

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

Article 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Article 6

1. States Parties recognize that every child has the inherent right to life. 2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and. as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

Article 10

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their

own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

Article 11

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.

2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 13

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others; or

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 14

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.

2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

Article 15

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.

2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 16

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.

2. The child has the right to the protection of the law against such interference or attacks.

Article 17

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.

To this end, States Parties shall:

(a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;

(b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;

(c) Encourage the production and dissemination of children's books;

(d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;

(e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

Article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 20

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Article 21

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

(a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;

(b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;

(c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;

(d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;

(e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

Article 22

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason , as set forth in the present Convention.

Article 23

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development

4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

Article 24

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

(a) To diminish infant and child mortality;

(b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;

(c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;

(d) To ensure appropriate pre-natal and post-natal health care for mothers;

(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;

(f) To develop preventive health care, guidance for parents and family planning education and services.

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

Article 25

States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

Article 26

1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.

2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

Article 27

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.

3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

Article 28

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

(a) Make primary education compulsory and available free to all;

(b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;

(c) Make higher education accessible to all on the basis of capacity by every appropriate means;

(d) Make educational and vocational information and guidance available and accessible to all children;

(e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy

throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 29

1. States Parties agree that the education of the child shall be directed to:

(a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;

(b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

(c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

(e) The development of respect for the natural environment.

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 30

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

Article 31

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

Article 32

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

(a) Provide for a minimum age or minimum ages for admission to employment;

(b) Provide for appropriate regulation of the hours and conditions of employment;

(c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

Article 33

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

(a) The inducement or coercion of a child to engage in any unlawful sexual activity;

(b) The exploitative use of children in prostitution or other unlawful sexual practices;

(c) The exploitative use of children in pornographic performances and materials.

Article 35

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

Article 36

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

Article 37

States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 38

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.

2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.

3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.

4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

(i) To be presumed innocent until proven guilty according to law;

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) To have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected. 4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

Article 41

Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in:

(a) The law of a State party; or

(b) International law in force for that State.

PART II

Article 42

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

Article 43

1. For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.

2. The Committee shall consist of ten experts of high moral standing and recognized competence in the field covered by this Convention. The members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution, as well as to the principal legal systems.

3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

4. The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to States Parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating States Parties which have nominated them, and shall submit it to the States Parties to the present Convention.

5. The elections shall be held at meetings of States Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two thirds of States Parties shall constitute

a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

6. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. The term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting.

7. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.

8. The Committee shall establish its own rules of procedure.

9. The Committee shall elect its officers for a period of two years.

10. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. The Committee shall normally meet annually. The duration of the meetings of the Committee shall be determined, and reviewed, if necessary, by a meeting of the States Parties to the present Convention, subject to the approval of the General Assembly.

11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

12. With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide.

Article 44

1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights

(a) Within two years of the entry into force of the Convention for the State Party concerned;

(b) Thereafter every five years.

2. Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.

3. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 (b) of the present article, repeat basic information previously provided.

4. The Committee may request from States Parties further information relevant to the implementation of the Convention.

5. The Committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities.

6. States Parties shall make their reports widely available to the public in their own countries.

Article 45

In order to foster the effective implementation of the Convention and to encourage international co-operation in the field covered by the Convention:

(a) The specialized agencies, the United Nations Children's Fund, and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies, the United Nations Children's Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies, the United Nations Children's Fund, and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;

(b) The Committee shall transmit, as it may consider appropriate, to the specialized agencies, the United Nations Children's Fund and other competent bodies, any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance, along with the Committee's observations and suggestions, if any, on these requests or indications;

(c) The Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child;

(d) The Committee may make suggestions and general recommendations based on information received pursuant to articles 44 and 45 of the present Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the General Assembly, together with comments, if any, from States Parties.

PART III

Article 46

The present Convention shall be open for signature by all States.

Article 47

The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 48

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 49

1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.

Article 50

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any

amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Convention and any earlier amendments which they have accepted.

Article 51

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.

2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

3. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General

Article 52

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

Article 53

The Secretary-General of the United Nations is designated as the depositary of the present Convention.

Article 54

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations. IN WITNESS THEREOF the undersigned plenipotentiaries, being duly authorized thereto by their respective governments, have signed the present Convention.

Convention relating to the Status of Refugees

Adopted on 28 July 1951 by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons convened under General Assembly resolution 429 (V) of 14 December 1950

Entry into force: 22 April 1954, in accordance with article 43

Preamble

The High Contracting Parties ,

Considering that the Charter of the United Nations and the Universal Declaration of Human Rights approved on 10 December 1948 by the General Assembly have affirmed the principle that human beings shall enjoy fundamental rights and freedoms without discrimination,

Considering that the United Nations has, on various occasions, manifested its profound concern for refugees and endeavoured to assure refugees the widest possible exercise of these fundamental rights and freedoms,

Considering that it is desirable to revise and consolidate previous international agreements relating to the status of refugees and to extend the scope of and the protection accorded by such instruments by means of a new agreement,

Considering that the grant of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot therefore be achieved without international co-operation,

Expressing the wish that all States, recognizing the social and humanitarian nature of the problem of refugees, will do everything within their power to prevent this problem from becoming a cause of tension between States,

Noting that the United Nations High Commissioner for Refugees is charged with the task of supervising international conventions providing for the protection of refugees, and recognizing that the effective co-ordination of measures taken to deal with this problem will depend upon the co-operation of States with the High Commissioner,

Have agreed as follows :

Chapter I

GENERAL PROVISIONS

Article 1. - Definition of the term "refugee"

A. For the purposes of the present Convention, the term "refugee" shall apply to any person who:

(1) Has been considered a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organization;

Decisions of non-eligibility taken by the International Refugee Organization during the period of its activities shall not prevent the status of refugee being accorded to persons who fulfil the conditions of paragraph 2 of this section;

(2) As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

In the case of a person who has more than one nationality, the term "the country of his nationality" shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.

B. (1) For the purposes of this Convention, the words "events occurring before 1 January 1951" in article 1, section A, shall be understood to mean either (a) "events occurring in Europe before 1 January 1951"; or (b) "events occurring in Europe or elsewhere before 1 January 1951"; and each Contracting State shall make a declaration at the time of signature, ratification or accession, specifying which of these meanings it applies for the purpose of its obligations under this Convention.

(2) Any Contracting State which has adopted alternative (a) may at any time extend its obligations by adopting alternative (b) by means of a notification addressed to the Secretary-General of the United Nations.

C. This Convention shall cease to apply to any person falling under the terms of section A if:

(1) He has voluntarily re-availed himself of the protection of the country of his nationality; or

(2) Having lost his nationality, he has voluntarily reacquired it; or

(3) He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or

(4) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution; or

(5) He can no longer, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality;

Provided that this paragraph shall not apply to a refugee falling under section A (1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality;

(6) Being a person who has no nationality he is, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, able to return to the country of his former habitual residence;

Provided that this paragraph shall not apply to a refugee falling under section A (1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to return to the country of his former habitual residence.

D. This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance.

When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall ipso facto be entitled to the benefits of this Convention.

E. This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.

F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

(a) He has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

(b) He has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;

(c) He has been guilty of acts contrary to the purposes and principles of the United Nations.

Article 2. - General obligations

Every refugee has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order.

Article 3. - Non-discrimination

The Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin.

Article 4. - Religion

The Contracting States shall accord to refugees within their territories treatment at least as favourable as that accorded to their nationals with respect to freedom to practise their religion and freedom as regards the religious education of their children.

Article 5. - Rights granted apart from this Convention

Nothing in this Convention shall be deemed to impair any rights and benefits granted by a Contracting State to refugees apart from this Convention.

Article 6. - The term "in the same circumstances"

For the purposes of this Convention, the term "in the same circumstances" implies that any requirements (including requirements as to length and conditions of sojourn or residence) which the particular individual would have to fulfil for the enjoyment of the right in question, if he were not a refugee, must be fulfilled by him, with the exception of requirements which by their nature a refugee is incapable of fulfilling.

Article 7. - Exemption from reciprocity

1. Except where this Convention contains more favourable provisions, a Contracting State shall accord to refugees the same treatment as is accorded to aliens generally.

2. After a period of three years' residence, all refugees shall enjoy exemption from legislative reciprocity in the territory of the Contracting States.

3. Each Contracting State shall continue to accord to refugees the rights and benefits to which they were already entitled, in the absence of reciprocity, at the date of entry into force of this Convention for that State.

4. The Contracting States shall consider favourably the possibility of according to refugees, in the absence of reciprocity, rights and benefits beyond those to which they are entitled according to

paragraphs 2 and 3, and to extending exemption from reciprocity to refugees who do not fulfil the conditions provided for in paragraphs 2 and 3.

5. The provisions of paragraphs 2 and 3 apply both to the rights and benefits referred to in articles 13, 18, 19, 21 and 22 of this Convention and to rights and benefits for which this Convention does not provide.

Article 8. - Exemption from exceptional measures

With regard to exceptional measures which may be taken against the person, property or interests of nationals of a foreign State, the Contracting States shall not apply such measures to a refugee who is formally a national of the said State solely on account of such nationality. Contracting States which, under their legislation, are prevented from applying the general principle expressed in this article, shall, in appropriate cases, grant exemptions in favour of such refugees.

Article 9. - Provisional measures

Nothing in this Convention shall prevent a Contracting State, in time of war or other grave and exceptional circumstances, from taking provisionally measures which it considers to be essential to the national security in the case of a particular person, pending a determination by the Contracting State that that person is in fact a refugee and that the continuance of such measures is necessary in his case in the interests of national security.

Article 10. - Continuity of residence

1. Where a refugee has been forcibly displaced during the Second World War and removed to the territory of a Contracting State, and is resident there, the period of such enforced sojourn shall be considered to have been lawful residence within that territory.

2. Where a refugee has been forcibly displaced during the Second World War from the territory of a Contracting State and has, prior to the date of entry into force of this Convention, returned there for the purpose of taking up residence, the period of residence before and after such enforced displacement shall be regarded as one uninterrupted period for any purposes for which uninterrupted residence is required.

Article 11. - Refugee seamen

In the case of refugees regularly serving as crew members on board a ship flying the flag of a Contracting State, that State shall give sympathetic consideration to their establishment on its territory and the issue of travel documents to them or their temporary admission to its territory particularly with a view to facilitating their establishment in another country.

Chapter II

JURIDICAL STATUS

Article 12. - Personal status

1. The personal status of a refugee shall be governed by the law of the country of his domicile or, if he has no domicile, by the law of the country of his residence.

2. Rights previously acquired by a refugee and dependent on personal status, more particularly rights attaching to marriage, shall be respected by a Contracting State, subject to compliance, if this be necessary, with the formalities required by the law of that State, provided that the right in question is one which would have been recognized by the law of that State had he not become a refugee.

Article 13. - Movable and immovable property

The Contracting States shall accord to a refugee treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the acquisition of movable and immovable property and other rights pertaining thereto, and to leases and other contracts relating to movable and immovable property.

Article 14. - Artistic rights and industrial property

In respect of the protection of industrial property, such as inventions, designs or models, trade marks, trade names, and of rights in literary, artistic and scientific works, a refugee shall be accorded in the country in which he has his habitual residence the same protection as is accorded to nationals of that country. In the territory of any other Contracting States, he shall be accorded the same protection as is accorded in that territory to nationals of the country in which he has his habitual residence.

Article 15. - Right of association

As regards non-political and non-profit-making associations and trade unions the Contracting States shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country, in the same circumstances.

Article 16. - Access to courts

1. A refugee shall have free access to the courts of law on the territory of all Contracting States.

2. A refugee shall enjoy in the Contracting State in which he has his habitual residence the same treatment as a national in matters pertaining to access to the courts, including legal assistance and exemption from cautio judicatum solvi .

3. A refugee shall be accorded in the matters referred to in paragraph 2 in countries other than that in which he has his habitual residence the treatment granted to a national of the country of his habitual residence.

Chapter III

GAINFUL EMPLOYMENT

Article 17. - Wage-earning employment

1. The Contracting States shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage-earning employment.

2. In any case, restrictive measures imposed on aliens or the employment of aliens for the protection of the national labour market shall not be applied to a refugee who was already exempt from them at the date of entry into force of this Convention for the Contracting State concerned, or who fulfils one of the following conditions:

(a) He has completed three years' residence in the country;

(b) He has a spouse possessing the nationality of the country of residence. A refugee may not invoke the benefit of this provision if he has abandoned his spouse;

(c) He has one or more children possessing the nationality of the country of residence.

3. The Contracting States shall give sympathetic consideration to assimilating the rights of all refugees with regard to wage-earning employment to those of nationals, and in particular of those refugees who

have entered their territory pursuant to programmes of labour recruitment or under immigration schemes.

Article 18. - Self-employment

The Contracting States shall accord to a refugee lawfully in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the right to engage on his own account in agriculture, industry, handicrafts and commerce and to establish commercial and industrial companies.

Article 19. - Liberal professions

1. Each Contracting State shall accord to refugees lawfully staying in their territory who hold diplomas recognized by the competent authorities of that State, and who are desirous of practising a liberal profession, treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

2. The Contracting States shall use their best endeavours consistently with their laws and constitutions to secure the settlement of such refugees in the territories, other than the metropolitan territory, for whose international relations they are responsible.

Chapter IV

WELFARE

Article 20. - Rationing

Where a rationing system exists, which applies to the population at large and regulates the general distribution of products in short supply, refugees shall be accorded the same treatment as nationals.

Article 21. - Housing

As regards housing, the Contracting States, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord to refugees lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

Article 22. - Public education

1. The Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education.

2. The Contracting States shall accord to refugees treatment as favourable as possible, and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships.

Article 23. - Public relief

The Contracting States shall accord to refugees lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals.

Article 24. - Labour legislation and social security

1. The Contracting States shall accord to refugees lawfully staying in their territory the same treatment as is accorded to nationals in respect of the following matters;

(a) In so far as such matters are governed by laws or regulations or are subject to the control of administrative authorities: remuneration, including family allowances where these form part of remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on home work, minimum age of employment, apprenticeship and training, women's work and the work of young persons, and the enjoyment of the benefits of collective bargaining;

(b) Social security (legal provisions in respect of employment injury, occupational diseases, maternity, sickness, disability, old age, death, unemployment, family responsibilities and any other contingency which, according to national laws or regulations, is covered by a social security scheme), subject to the following limitations:

(i) There may be appropriate arrangements for the maintenance of acquired rights and rights in course of acquisition;

(ii) National laws or regulations of the country of residence may prescribe special arrangements concerning benefits or portions of benefits which are payable wholly out of public funds, and concerning allowances paid to persons who do not fulfil the contribution conditions prescribed for the award of a normal pension.

2. The right to compensation for the death of a refugee resulting from employment injury or from occupational disease shall not be affected by the fact that the residence of the beneficiary is outside the territory of the Contracting State.

3. The Contracting States shall extend to refugees the benefits of agreements concluded between them, or which may be concluded between them in the future, concerning the maintenance of acquired rights and rights in the process of acquisition in regard to social security, subject only to the conditions which apply to nationals of the States signatory to the agreements in question.

4. The Contracting States will give sympathetic consideration to extending to refugees so far as possible the benefits of similar agreements which may at any time be in force between such Contracting States and non-contracting States.

Chapter V

ADMINISTRATIVE MEASURES

Article 25. - Administrative assistance

1. When the exercise of a right by a refugee would normally require the assistance of authorities of a foreign country to whom he cannot have recourse, the Contracting States in whose territory he is residing shall arrange that such assistance be afforded to him by their own authorities or by an international authority.

2. The authority or authorities mentioned in paragraph 1 shall deliver or cause to be delivered under their supervision to refugees such documents or certifications as would normally be delivered to aliens by or through their national authorities.

3. Documents or certifications so delivered shall stand in the stead of the official instruments delivered to aliens by or through their national authorities, and shall be given credence in the absence of proof to the contrary.

4. Subject to such exceptional treatment as may be granted to indigent persons, fees may be charged for the services mentioned herein, but such fees shall be moderate and commensurate with those charged to nationals for similar services.

5. The provisions of this article shall be without prejudice to articles 27 and 28.

Article 26. - Freedom of movement

Each Contracting State shall accord to refugees lawfully in its territory the right to choose their place of residence and to move freely within its territory subject to any regulations applicable to aliens generally in the same circumstances.

Article 27. - Identity papers

The Contracting States shall issue identity papers to any refugee in their territory who does not possess a valid travel document.

Article 28. - Travel documents

1. The Contracting States shall issue to refugees lawfully staying in their territory travel documents for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require, and the provisions of the Schedule to this Convention shall apply with respect to such documents. The Contracting States may issue such a travel document to any other refugee in their territory; they shall in particular give sympathetic consideration to the issue of such a travel document to refugees in their territory who are unable to obtain a travel document from the country of their lawful residence.

2. Travel documents issued to refugees under previous international agreements by Parties thereto shall be recognized and treated by the Contracting States in the same way as if they had been issued pursuant to this article.

Article 29. - Fiscal charges

1. The Contracting States shall not impose upon refugees duties, charges or taxes, of any description whatsoever, other or higher than those which are or may be levied on their nationals in similar situations.

2. Nothing in the above paragraph shall prevent the application to refugees of the laws and regulations concerning charges in respect of the issue to aliens of administrative documents including identity papers.

Article 30. - Transfer of assets

1. A Contracting State shall, in conformity with its laws and regulations, permit refugees to transfer assets which they have brought into its territory, to another country where they have been admitted for the purposes of resettlement.

2. A Contracting State shall give sympathetic consideration to the application of refugees for permission to transfer assets wherever they may be and which are necessary for their resettlement in another country to which they have been admitted.

Article 31. - Refugees unlawfully in the country of refuge

1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

2. The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.

Article 32. - Expulsion

1. The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order.

2. The expulsion of such a refugee shall be only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security otherwise require, the refugee shall be allowed to submit evidence to clear himself, and to appeal to and be represented for the purpose before competent authority or a person or persons specially designated by the competent authority.

3. The Contracting States shall allow such a refugee a reasonable period within which to seek legal admission into another country. The Contracting States reserve the right to apply during that period such internal measures as they may deem necessary.

Article 33. - Prohibition of expulsion or return ("refoulement")

1. No Contracting State shall expel or return (" refouler ") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country.

Article 34. - Naturalization

The Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.

Chapter VI

EXECUTORY AND TRANSITORY PROVISIONS

Article 35. - Co-operation of the national authorities with the United Nations

1. The Contracting States undertake to co-operate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of this Convention.

2. In order to enable the Office of the High Commissioner or any other agency of the United Nations which may succeed it, to make reports to the competent organs of the United Nations, the Contracting States undertake to provide them in the appropriate form with information and statistical data requested concerning:

(a) The condition of refugees,

(b) The implementation of this Convention, and

(c) Laws, regulations and decrees which are, or may hereafter be, in force relating to refugees.

Article 36. - Information on national legislation

The Contracting States shall communicate to the Secretary-General of the United Nations the laws and regulations which they may adopt to ensure the application of this Convention.

Article 37. - Relation to previous conventions

Without prejudice to article 28, paragraph 2, of this Convention, this Convention replaces, as between Parties to it, the Arrangements of 5 July 1922, 31 May 1924, 12 May 1926, 30 June 1928 and 30 July 1935, the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 and the Agreement of 15 October 1946.

Chapter VII

FINAL CLAUSES

Article 38. - Settlement of disputes

Any dispute between Parties to this Convention relating to its interpretation or application, which cannot be settled by other means, shall be referred to the International Court of Justice at the request of any one of the parties to the dispute.

Article 39. - Signature, ratification and accession

1. This Convention shall be opened for signature at Geneva on 28 July 1951 and shall thereafter be deposited with the Secretary-General of the United Nations. It shall be open for signature at the European Office of the United Nations from 28 July to 31 August 1951 and shall be re-opened for signature at the Headquarters of the United Nations from 17 September 1951 to 31 December 1952.

2. This Convention shall be open for signature on behalf of all States Members of the United Nations, and also on behalf of any other State invited to attend the Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons or to which an invitation to sign will have been addressed by the General Assembly. It shall be ratified and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. This Convention shall be open from 28 July 1951 for accession by the States referred to in paragraph 2 of this article. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 40. - Territorial application clause

1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.

2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.

3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.

Article 41. - Federal clause

In the case of a Federal or non-unitary State, the following provisions shall apply:

(a) With respect to those articles of this Convention that come within the legislative jurisdiction of the federal legislative authority, the obligations of the Federal Government shall to this extent be the same as those of parties which are not Federal States;

(b) With respect to those articles of this Convention that come within the legislative jurisdiction of constituent States, provinces or cantons which are not, under the constitutional system of the Federation, bound to take legislative action, the Federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of States, provinces or cantons at the earliest possible moment;

(c) A Federal State Party to this Convention shall, at the request of any other Contracting State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the Federation and its constituent units in regard to any particular provision of the Convention showing the extent to which effect has been given to that provision by legislative or other action.

Article 42. - Reservations

1. At the time of signature, ratification or accession, any State may make reservations to articles of the Convention other than to articles 1, 3, 4, 16 (1), 33, 36-46 inclusive.

2. Any State making a reservation in accordance with paragraph 1 of this article may at any time withdraw the reservation by a communication to that effect addressed to the Secretary-General of the United Nations.

Article 43. - Entry into force

1. This Convention shall come into force on the ninetieth day following the day of deposit of the sixth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the sixth instrument of ratification or accession, the Convention shall enter into force on the ninetieth day following the date of deposit by such State of its instrument of ratification or accession.

Article 44. - Denunciation

1. Any Contracting State may denounce this Convention at any time by a notification addressed to the Secretary-General of the United Nations.

2. Such denunciation shall take effect for the Contracting State concerned one year from the date upon which it is received by the Secretary-General of the United Nations.

3. Any State which has made a declaration or notification under article 40 may, at any time thereafter, by a notification to the Secretary-General of the United Nations, declare that the Convention shall cease to extend to such territory one year after the date of receipt of the notification by the Secretary-General.

Article 45. - Revision

1. Any Contracting State may request revision of this Convention at any time by a notification addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall recommend the steps, if any, to be taken in respect of such request.

Article 46. - Notifications by the Secretary-General of the United Nations

The Secretary-General of the United Nations shall inform all Members of the United Nations and non-member States referred to in article 39:

(a) Of declarations and notifications in accordance with section B of article 1;

(b) Of signatures, ratifications and accessions in accordance with article 39;

(c) Of declarations and notifications in accordance with article 40;

(d) Of reservations and withdrawals in accordance with article 42;

(e) Of the date on which this Convention will come into force in accordance with article 43;

(f) Of denunciations and notifications in accordance with article 44;

(g) Of requests for revision in accordance with article 45.

In faith whereof the undersigned, duly authorized, have signed this Convention on behalf of their respective Governments.

Done at Geneva, this twenty-eighth day of July, one thousand nine hundred and fifty-one, in a single copy, of which the English and French texts are equally authentic and which shall remain deposited in the archives of the United Nations, and certified true copies of which shall be delivered to all Members of the United Nations and to the non-member States referred to in article 39.

European Convention on Human Rights

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

COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

European Convention on Human Rights

as amended by Protocols Nos. 11 and 14

supplemented by Protocols Nos. 1, 4, 6, 7, 12, 13 and 16

The text of the Convention is presented as amended by the provisions of Protocol No. 14 (CETS No. 194) as from its entry into force on 1 June 2010. The text of the Convention had previously been amended according to the provisions of Protocol No. 3 (ETS No. 45), which entered into force on 21 September 1970, of Protocol No. 5 (ETS No. 55), which entered into force on 20 December 1971, and of Protocol No. 8 (ETS No. 118), which entered into force on 1 January 1990, and comprised also the text of Protocol No. 2 (ETS No. 44) which, in accordance with Article 5 paragraph 3 thereof, had been an integral part of the Convention since its entry into force on 21 September 1970. All provisions which had been amended or added by these Protocols were replaced by Protocol No. 11 (ETS No. 155), as from the date of its entry into force on 1 November 1998. As from that date, Protocol No. 9 (ETS No. 140), which entered into force on 1 October 1994, was repealed and Protocol No. 10 (ETS No. 146) lost its purpose.

The current state of signatures and ratifications of the Convention and its Protocols as well as the complete list of declarations and reservations are available at www.conventions.coe.int.

Only the English and French versions of the Convention are authentic.

European Court of Human Rights
Council of Europe
F-67075 Strasbourg cedex
www.echr.coe.int

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Convention for the Protection of Human Rights and Fundamental Freedoms

Rome, 4.XI.1950

THE GOVERNMENTS SIGNATORY HERETO, being members of the Council of Europe,

Considering the Universal Declaration of Human Rights proclaimed by the General Assembly of the United Nations on 10th December 1948;

Considering that this Declaration aims at securing the universal and effective recognition and observance of the Rights therein declared;

Considering that the aim of the Council of Europe is the achievement of greater unity between its members and that one of the methods by which that aim is to be pursued is the maintenance and further realisation of Human Rights and Fundamental Freedoms;

Reaffirming their profound belief in those fundamental freedoms which are the foundation of justice and peace in the world and are best maintained on the one hand by an effective political democracy and on the other by a common understanding and observance of the Human Rights upon which they depend;

Being resolved, as the governments of European countries which are like-minded and have a common heritage of political traditions, ideals, freedom and the rule of law, to take the first steps for the collective enforcement of certain of the rights stated in the Universal Declaration,

Have agreed as follows:

ARTICLE 1

Obligation to respect Human Rights

The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.

SECTION I
RIGHTS AND FREEDOMS

ARTICLE 2

Right to life

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection.

ARTICLE 3

Prohibition of torture

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

ARTICLE 4

Prohibition of slavery and forced labour

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

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

3. For the purpose of this Article the term "forced or compulsory labour" shall not include:

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

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

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

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

ARTICLE 5

Right to liberty and security

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court;

(b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.

ARTICLE 6

Right to a fair trial

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

(b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

ARTICLE 7

No punishment without law

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

ARTICLE 8

Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

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

ARTICLE 9

Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

ARTICLE 10

Freedom of expression

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

ARTICLE 11

Freedom of assembly and association

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

ARTICLE 12

Right to marry

Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

ARTICLE 13

Right to an effective remedy

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

ARTICLE 14

Prohibition of discrimination

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

ARTICLE 15

Derogation in time of emergency

1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

2. No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.

3. Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.

ARTICLE 16

Restrictions on political activity of aliens

Nothing in Articles 10, 11 and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.

ARTICLE 17

Prohibition of abuse of rights

Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

ARTICLE 18

Limitation on use of restrictions on rights

The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.

SECTION II
EUROPEAN COURT OF HUMAN RIGHTS

ARTICLE 19

Establishment of the Court

To ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto, there shall be set up a European Court of Human Rights, hereinafter referred to as "the Court". It shall function on a permanent basis.

ARTICLE 20

Number of judges

The Court shall consist of a number of judges equal to that of the High Contracting Parties.

ARTICLE 21

Criteria for office

1. The judges shall be of high moral character and must either possess the qualifications required for appointment to high judicial office or be jurisconsults of recognised competence.

2. The judges shall sit on the Court in their individual capacity.

3. During their term of office the judges shall not engage in any activity which is incompatible with their independence, impartiality or with the demands of a full-time office; all questions arising from the application of this paragraph shall be decided by the Court.

ARTICLE 22

Election of judges

The judges shall be elected by the Parliamentary Assembly with respect to each High Contracting Party by a majority of votes cast from a list of three candidates nominated by the High Contracting Party.

ARTICLE 23

Terms of office and dismissal

1. The judges shall be elected for a period of nine years. They may not be re-elected.

2. The terms of office of judges shall expire when they reach the age of 70.

3. The judges shall hold office until replaced. They shall, however, continue to deal with such cases as they already have under consideration.

4. No judge may be dismissed from office unless the other judges decide by a majority of two-thirds that that judge has ceased to fulfil the required conditions.

ARTICLE 24

Registry and rapporteurs

1. The Court shall have a Registry, the functions and organisation of which shall be laid down in the rules of the Court.

2. When sitting in a single-judge formation, the Court shall be assisted by rapporteurs who shall function under the authority of the President of the Court. They shall form part of the Court's Registry.

ARTICLE 25

Plenary Court

The plenary Court shall

(a) elect its President and one or two Vice-Presidents for a period of three years; they may be re-elected;

(b) set up Chambers, constituted for a fixed period of time;

(c) elect the Presidents of the Chambers of the Court; they may be re-elected;

(d) adopt the rules of the Court;

(e) elect the Registrar and one or more Deputy Registrars;

(f) make any request under Article 26, paragraph 2.

ARTICLE 26

Single-judge formation, Committees, Chambers and Grand Chamber

1. To consider cases brought before it, the Court shall sit in a single-judge formation, in committees of three judges, in Chambers of seven judges and in a Grand Chamber of seventeen judges. The Court's Chambers shall set up committees for a fixed period of time.

2. At the request of the plenary Court, the Committee of Ministers may, by a unanimous decision and for a fixed period, reduce to five the number of judges of the Chambers.

3. When sitting as a single judge, a judge shall not examine any application against the High Contracting Party in respect of which that judge has been elected.

4. There shall sit as an *ex officio* member of the Chamber and the Grand Chamber the judge elected in respect of the High Contracting Party concerned. If there is none or if that judge is

unable to sit, a person chosen by the President of the Court from a list submitted in advance by that Party shall sit in the capacity of judge.

5. The Grand Chamber shall also include the President of the Court, the Vice-Presidents, the Presidents of the Chambers and other judges chosen in accordance with the rules of the Court. When a case is referred to the Grand Chamber under Article 43, no judge from the Chamber which rendered the judgment shall sit in the Grand Chamber, with the exception of the President of the Chamber and the judge who sat in respect of the High Contracting Party concerned.

ARTICLE 27

Competence of single judges

1. A single judge may declare inadmissible or strike out of the Court's list of cases an application submitted under Article 34, where such a decision can be taken without further examination.

2. The decision shall be final.

3. If the single judge does not declare an application inadmissible or strike it out, that judge shall forward it to a committee or to a Chamber for further examination.

ARTICLE 28

Competence of Committees

1. In respect of an application submitted under Article 34, a committee may, by a unanimous vote,

(a) declare it inadmissible or strike it out of its list of cases, where such decision can be taken without further examination; or

(b) declare it admissible and render at the same time a judgment on the merits, if the underlying question in the case, concerning the interpretation or the application of the Convention or the Protocols thereto, is already the subject of well-established case-law of the Court.

2. Decisions and judgments under paragraph 1 shall be final.

3. If the judge elected in respect of the High Contracting Party concerned is not a member of the committee, the committee may at any stage of the proceedings invite that judge to take the place of one of the members of the committee, having regard to all relevant factors, including whether that Party has contested the application of the procedure under paragraph 1.(b).

ARTICLE 29

Decisions by Chambers on admissibility and merits

1. If no decision is taken under Article 27 or 28, or no judgment rendered under Article 28, a Chamber shall decide on the admissibility and merits of individual applications submitted under Article 34. The decision on admissibility may be taken separately.

2. A Chamber shall decide on the admissibility and merits of inter-State applications submitted under Article 33. The decision on admissibility shall be taken separately unless the Court, in exceptional cases, decides otherwise.

ARTICLE 30

Relinquishment of jurisdiction to the Grand Chamber

Where a case pending before a Chamber raises a serious question affecting the interpretation of the Convention or the Protocols thereto, or where the resolution of a question before the Chamber might have a result inconsistent with a judgment previously delivered by the Court, the Chamber may, at any

time before it has rendered its judgment, relinquish jurisdiction in favour of the Grand Chamber, unless one of the parties to the case objects.

ARTICLE 31

Powers of the Grand Chamber

The Grand Chamber shall

(a) determine applications submitted either under Article 33 or Article 34 when a Chamber has relinquished jurisdiction under Article 30 or when the case has been referred to it under Article 43;

(b) decide on issues referred to the Court by the Committee of Ministers in accordance with Article 46, paragraph 4; and

(c) consider requests for advisory opinions submitted under Article 47.

ARTICLE 32

Jurisdiction of the Court

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

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

ARTICLE 33

Inter-State cases

Any High Contracting Party may refer to the Court any alleged breach of the provisions of the Convention and the Protocols thereto by another High Contracting Party.

ARTICLE 34

Individual applications

The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.

ARTICLE 35

Admissibility criteria

1. The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken.

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

(a) is anonymous; or

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

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

(a) the application is incompatible with the provisions of the Convention or the Protocols thereto, manifestly ill-founded, or an abuse of the right of individual application; or

(b) the applicant has not suffered a significant disadvantage, unless respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits and provided that no case may be rejected on this ground which has not been duly considered by a domestic tribunal.

4. The Court shall reject any application which it considers inadmissible under this Article. It may do so at any stage of the proceedings.

ARTICLE 36

Third party intervention

1. In all cases before a Chamber or the Grand Chamber, a High Contracting Party one of whose nationals is an applicant shall have the right to submit written comments and to take part in hearings.

2. The President of the Court may, in the interest of the proper administration of justice, invite any High Contracting Party which is not a party to the proceedings or any person concerned who is not the applicant to submit written comments or take part in hearings.

3. In all cases before a Chamber or the Grand Chamber, the Council of Europe Commissioner for Human Rights may submit written comments and take part in hearings.

ARTICLE 37

Striking out applications

1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that

(a) the applicant does not intend to pursue his application; or

(b) the matter has been resolved; or

(c) for any other reason established by the Court, it is no longer justified to continue the examination of the application.

However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires.

2. The Court may decide to restore an application to its list of cases if it considers that the circumstances justify such a course.

ARTICLE 38

Examination of the case

The Court shall examine the case together with the representatives of the parties and, if need be, undertake an investigation, for the effective conduct of which the High Contracting Parties concerned shall furnish all necessary facilities.

ARTICLE 39

Friendly settlements

1. At any stage of the proceedings, the Court may place itself at the disposal of the parties concerned with a view to securing a friendly settlement of the matter on the basis of respect for human rights as defined in the Convention and the Protocols thereto.

2. Proceedings conducted under paragraph 1 shall be confidential.

3. If a friendly settlement is effected, the Court shall strike the case out of its list by means of a decision which shall be confined to a brief statement of the facts and of the solution reached.

4. This decision shall be transmitted to the Committee of Ministers, which shall supervise the execution of the terms of the friendly settlement as set out in the decision.

ARTICLE 40

Public hearings and access to documents

1. Hearings shall be in public unless the Court in exceptional circumstances decides otherwise.

2. Documents deposited with the Registrar shall be accessible to the public unless the President of the Court decides otherwise.

ARTICLE 41

Just satisfaction

If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.

ARTICLE 42

Judgments of Chambers

Judgments of Chambers shall become final in accordance with the provisions of Article 44, paragraph 2.

ARTICLE 43

Referral to the Grand Chamber

1. Within a period of three months from the date of the judgment of the Chamber, any party to the case may, in exceptional cases, request that the case be referred to the Grand Chamber.

2. A panel of five judges of the Grand Chamber shall accept the request if the case raises a serious question affecting the interpretation or application of the Convention or the Protocols thereto, or a serious issue of general importance.

3. If the panel accepts the request, the Grand Chamber shall decide the case by means of a judgment.

ARTICLE 44

Final judgments

1. The judgment of the Grand Chamber shall be final.
2. The judgment of a Chamber shall become final
   (a) when the parties declare that they will not request that the case be referred to the Grand Chamber; or
   (b) three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or
   (c) when the panel of the Grand Chamber rejects the request to refer under Article 43.
3. The final judgment shall be published.

ARTICLE 45

Reasons for judgments and decisions

1. Reasons shall be given for judgments as well as for decisions declaring applications admissible or inadmissible.

2. If a judgment does not represent, in whole or in part, the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.

ARTICLE 46

Binding force and execution of judgments

1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.

3. If the Committee of Ministers considers that the supervision of the execution of a final judgment is hindered by a problem of interpretation of the judgment, it may refer the matter to the Court for a ruling on the question of interpretation. A referral decision shall require a majority vote of two-thirds of the representatives entitled to sit on the committee.

4. If the Committee of Ministers considers that a High Contracting Party refuses to abide by a final judgment in a case to which it is a party, it may, after serving formal notice on that Party and by decision adopted by a majority vote of two-thirds of the representatives entitled to sit on the committee, refer to the Court the question whether that Party has failed to fulfil its obligation under paragraph1.

5. If the Court finds a violation of paragraph 1, it shall refer the case to the Committee of Ministers for consideration of the measures to be taken. If the Court finds no violation of paragraph 1, it shall refer the case to the Committee of Ministers, which shall close its examination of the case.

ARTICLE 47

Advisory opinions

1. The Court may, at the request of the Committee of Ministers, give advisory opinions on legal questions concerning the interpretation of the Convention and the Protocols thereto.

2. Such opinions shall not deal with any question relating to the content or scope of the rights or freedoms defined in Section I of the Convention and the Protocols thereto, or with any other question which the Court or the Committee of Ministers might have to consider in consequence of any such proceedings as could be instituted in accordance with the Convention.

3. Decisions of the Committee of Ministers to request an advisory opinion of the Court shall require a majority vote of the representatives entitled to sit on the committee.

ARTICLE 48

Advisory jurisdiction of the Court

The Court shall decide whether a request for an advisory opinion submitted by the Committee of Ministers is within its competence as defined in Article 47.

ARTICLE 49

Reasons for advisory opinions

1. Reasons shall be given for advisory opinions of the Court.

2. If the advisory opinion does not represent, in whole or in part, the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.

3. Advisory opinions of the Court shall be communicated to the Committee of Ministers.

ARTICLE 50

Expenditure on the Court

The expenditure on the Court shall be borne by the Council of Europe.

ARTICLE 51

Privileges and immunities of judges

The judges shall be entitled, during the exercise of their functions, to the privileges and immunities provided for in Article 40 of the Statute of the Council of Europe and in the agreements made thereunder.

SECTION III
MISCELLANEOUS PROVISIONS

ARTICLE 52

Inquiries by the Secretary General

On receipt of a request from the Secretary General of the Council of Europe any High Contracting Party shall furnish an explanation of the manner in which its internal law ensures the effective implementation of any of the provisions of the Convention.

ARTICLE 53

Safeguard for existing human rights

Nothing in this Convention shall be construed as limiting or derogating from any of the human rights and fundamental freedoms which may be ensured under the laws of any High Contracting Party or under any other agreement to which it is a party.

ARTICLE 54

Powers of the Committee of Ministers

Nothing in this Convention shall prejudice the powers conferred on the Committee of Ministers by the Statute of the Council of Europe.

ARTICLE 55

Exclusion of other means of dispute settlement

The High Contracting Parties agree that, except by special agreement, they will not avail themselves of treaties, conventions or declarations in force between them for the purpose of submitting, by way of petition, a dispute arising out of the interpretation or application of this Convention to a means of settlement other than those provided for in this Convention.

ARTICLE 56

Territorial application

1. Any State may at the time of its ratification or at any time thereafter declare by notification addressed to the Secretary General of the Council of Europe that the present Convention shall, subject to paragraph 4 of this Article, extend to all or any of the territories for whose international relations it is responsible.

2. The Convention shall extend to the territory or territories named in the notification as from the thirtieth day after the receipt of this notification by the Secretary General of the Council of Europe.

3. The provisions of this Convention shall be applied in such territories with due regard, however, to local requirements.

4. Any State which has made a declaration in accordance with paragraph 1 of this Article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it accepts the competence of the Court to receive applications from individuals, non-governmental organisations or groups of individuals as provided by Article 34 of the Convention.

ARTICLE 57

Reservations

1. Any State may, when signing this Convention or when depositing its instrument of ratification, make a reservation in respect of any particular provision of the Convention to the extent that any law then in force in its territory is not in conformity with the provision. Reservations of a general character shall not be permitted under this Article.

2. Any reservation made under this Article shall contain a brief statement of the law concerned.

ARTICLE 58

Denunciation

1. A High Contracting Party may denounce the present Convention only after the expiry of five years from the date on which it became a party to it and after six months' notice contained in a notification addressed to the Secretary General of the Council of Europe, who shall inform the other High Contracting Parties.

2. Such a denunciation shall not have the effect of releasing the High Contracting Party concerned from its obligations under this Convention in respect of any act which, being capable of constituting a violation of such obligations, may have been performed by it before the date at which the denunciation became effective.

3. Any High Contracting Party which shall cease to be a member of the Council of Europe shall cease to be a Party to this Convention under the same conditions.

4. The Convention may be denounced in accordance with the provisions of the preceding paragraphs in respect of any territory to which it has been declared to extend under the terms of Article 56.

ARTICLE 59

Signature and ratification

1. This Convention shall be open to the signature of the members of the Council of Europe. It shall be ratified. Ratifications shall be deposited with the Secretary General of the Council of Europe.

2. The European Union may accede to this Convention.

3. The present Convention shall come into force after the deposit of ten instruments of ratification.

4. As regards any signatory ratifying subsequently, the Convention shall come into force at the date of the deposit of its instrument of ratification.

5. The Secretary General of the Council of Europe shall notify all the members of the Council of Europe of the entry into force of the Convention, the names of the High Contracting Parties who have ratified it, and the deposit of all instruments of ratification which may be effected subsequently.

Done at Rome this 4th day of November 1950, in English and French, both texts being equally authentic, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General shall transmit certified copies to each of the signatories.

Protocol

to the Convention for the Protection of Human Rights and Fundamental Freedoms

Paris, 20.III.1952

The Governments signatory hereto, being members of the Council of Europe,

Being resolved to take steps to ensure the collective enforcement of certain rights and freedoms other than those already included in Section I of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention"),

Have agreed as follows:

ARTICLE 1

Protection of property

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

ARTICLE 2

Right to education

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

ARTICLE 3

Right to free elections

The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

ARTICLE 4

Territorial application

Any High Contracting Party may at the time of signature or ratification or at any time thereafter communicate to the Secretary General of the Council of Europe a declaration stating the extent to which it undertakes that the provisions of the present Protocol shall apply to such of the territories for the international relations of which it is responsible as are named therein.

Any High Contracting Party which has communicated a declaration in virtue of the preceding paragraph may from time to time communicate a further declaration modifying the terms of any former declaration or terminating the application of the provisions of this Protocol in respect of any territory.

A declaration made in accordance with this Article shall be deemed to have been made in accordance with paragraph 1 of Article 56 of the Convention.

ARTICLE 5

Relationship to the Convention

As between the High Contracting Parties the provisions of Articles 1, 2, 3 and 4 of this Protocol shall be regarded as additional Articles to the Convention and all the provisions of the Convention shall apply accordingly.

ARTICLE 6

Signature and ratification

This Protocol shall be open for signature by the members of the Council of Europe, who are the signatories of the Convention; it shall be ratified at the same time as or after the ratification of the Convention. It shall enter into force after the deposit of ten instruments of ratification. As regards any signatory ratifying subsequently, the Protocol shall enter into force at the date of the deposit of its instrument of ratification.

The instruments of ratification shall be deposited with the Secretary General of the Council of Europe, who will notify all members of the names of those who have ratified.

DONE AT PARIS ON THE 20TH DAY OF MARCH 1952, in English and French, both texts being equally authentic, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General shall transmit certified copies to each of the signatory governments.

Protocol No. 4

to the Convention for the Protection of Human Rights and Fundamental Freedoms securing certain rights and freedoms other than those already included in the Convention and in the First Protocol thereto

Strasbourg, 16.IX.1963

THE GOVERNMENTS SIGNATORY HERETO, being members of the Council of Europe,

Being resolved to take steps to ensure the collective enforcement of certain rights and freedoms other than those already included in Section I of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4th November 1950 (hereinafter referred to as the "Convention") and in Articles 1 to 3 of the First Protocol to the Convention, signed at Paris on 20th March 1952,

Have agreed as follows:

ARTICLE 1

Prohibition of imprisonment for debt

No one shall be deprived of his liberty merely on the ground of inability to fulfil a contractual obligation.

ARTICLE 2

Freedom of movement

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of ordre public, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society.

ARTICLE 3

Prohibition of expulsion of nationals

1. No one shall be expelled, by means either of an individual or of a collective measure, from the territory of the State of which he is a national.

2. No one shall be deprived of the right to enter the territory of the State of which he is a national.

ARTICLE 4

Prohibition of collective expulsion of aliens

Collective expulsion of aliens is prohibited.

ARTICLE 5

Territorial application

1. Any High Contracting Party may, at the time of signature or ratification of this Protocol, or at any time thereafter, communicate to the Secretary General of the Council of Europe a declaration stating the extent to which it undertakes that the provisions of this Protocol shall apply to such of the territories for the international relations of which it is responsible as are named therein.

2. Any High Contracting Party which has communicated a declaration in virtue of the preceding paragraph may, from time to time, communicate a further declaration modifying the terms of any former declaration or terminating the application of the provisions of this Protocol in respect of any territory.

3. A declaration made in accordance with this Article shall be deemed to have been made in accordance with paragraph 1 of Article 56 of the Convention.

4. The territory of any State to which this Protocol applies by virtue of ratification or acceptance by that State, and each territory to which this Protocol is applied by virtue of a declaration by that State under this Article, shall be treated as separate territories for the purpose of the references in Articles 2 and 3 to the territory of a State.

5. Any State which has made a declaration in accordance with paragraph 1 or 2 of this Article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it accepts the competence of the Court to receive applications from individuals, non-governmental organisations or groups of individuals as provided in Article 34 of the Convention in respect of all or any of Articles 1 to 4 of this Protocol.

ARTICLE 6

Relationship to the Convention

As between the High Contracting Parties the provisions of Articles 1 to 5 of this Protocol shall be regarded as additional Articles to the Convention, and all the provisions of the Convention shall apply accordingly.

ARTICLE 7

Signature and ratification

1. This Protocol shall be open for signature by the members of the Council of Europe who are the signatories of the Convention; it shall be ratified at the same time as or after the ratification of the Convention. It shall enter into force after the deposit of five instruments of ratification. As regards any signatory ratifying subsequently, the Protocol shall enter into force at the date of the deposit of its instrument of ratification.

2. The instruments of ratification shall be deposited with the Secretary General of the Council of Europe, who will notify all members of the names of those who have ratified.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Strasbourg, this 16th day of September 1963, in English and in French, both texts being equally authoritative, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General shall transmit certified copies to each of the signatory States.

Protocol No. 6

to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty

Strasbourg, 28.IV.1983

THE MEMBER STATES OF THE COUNCIL OF EUROPE, signatory to this Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention"),

Considering that the evolution that has occurred in several member States of the Council of Europe expresses a general tendency in favour of abolition of the death penalty;

Have agreed as follows:

ARTICLE 1

Abolition of the death penalty

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

ARTICLE 2

Death penalty in time of war

A State may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war; such penalty shall be applied only in the instances laid down in the law and in accordance with its provisions. The State shall communicate to the Secretary General of the Council of Europe the relevant provisions of that law.

ARTICLE 3

Prohibition of derogations

No derogation from the provisions of this Protocol shall be made under Article 15 of the Convention.

ARTICLE 4

Prohibition of reservations

No reservation may be made under Article 57 of the Convention in respect of the provisions of this Protocol.

ARTICLE 5

Territorial application

1. Any State may at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which this Protocol shall apply.

2. Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration. In respect of such territory the Protocol shall enter into force on the first day of the month following the date of receipt of such declaration by the Secretary General.

3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the date of receipt of such notification by the Secretary General.

ARTICLE 6

Relationship to the Convention

As between the States Parties the provisions of Articles 1 to 5 of this Protocol shall be regarded as additional Articles to the Convention and all the provisions of the Convention shall apply accordingly.

ARTICLE 7

Signature and ratification

The Protocol shall be open for signature by the member States of the Council of Europe, signatories to the Convention. It shall be subject to ratification, acceptance or approval. A member State of the Council of Europe may not ratify, accept or approve this Protocol unless it has, simultaneously or previously, ratified the Convention. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

ARTICLE 8

Entry into force

1. This Protocol shall enter into force on the first day of the month following the date on which five member States of the Council of Europe have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 7.

2. In respect of any member State which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the date of the deposit of the instrument of ratification, acceptance or approval.

ARTICLE 9

Depositary functions

The Secretary General of the Council of Europe shall notify the member States of the Council of:

(a) any signature;

(b) the deposit of any instrument of ratification, acceptance or approval;

(c) any date of entry into force of this Protocol in accordance with Articles 5 and 8;

(d) any other act, notification or communication relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Strasbourg, this 28th day of April 1983, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe.

Protocol No. 7

to the Convention for the Protection of Human Rights and Fundamental Freedoms

Strasbourg, 22.XI.1984

THE MEMBER STATES OF THE COUNCIL OF EUROPE, signatory hereto,

Being resolved to take further steps to ensure the collective enforcement of certain rights and freedoms by means of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention"),

Have agreed as follows:

ARTICLE 1

Procedural safeguards relating to expulsion of aliens

1. An alien lawfully resident in the territory of a State shall not be expelled therefrom except in pursuance of a decision reached in accordance with law and shall be allowed:

   (a) to submit reasons against his expulsion,

   (b) to have his case reviewed, and

   (c) to be represented for these purposes before the competent authority or a person or persons designated by that authority.

2. An alien may be expelled before the exercise of his rights under paragraph 1.(a), (b) and (c) of this Article, when such expulsion is necessary in the interests of public order or is grounded on reasons of national security.

ARTICLE 2

Right of appeal in criminal matters

1. Everyone convicted of a criminal offence by a tribunal shall have the right to have his conviction or sentence reviewed by a higher tribunal. The exercise of this right, including the grounds on which it may be exercised, shall be governed by law.

2. This right may be subject to exceptions in regard to offences of a minor character, as prescribed by law, or in cases in which the person concerned was tried in the first instance by the highest tribunal or was convicted following an appeal against acquittal.

ARTICLE 3

Compensation for wrongful conviction

When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed, or he has been pardoned, on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to the law or the practice of the State concerned, unless it is proved that the nondisclosure of the unknown fact in time is wholly or partly attributable to him.

ARTICLE 4

Right not to be tried or punished twice

1. No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.

2. The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and penal procedure of the State concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case.

3. No derogation from this Article shall be made under Article 15 of the Convention.

ARTICLE 5

Equality between spouses

Spouses shall enjoy equality of rights and responsibilities of a private law character between them, and in their relations with their children, as to marriage, during marriage and in the event of its dissolution. This Article shall not prevent States from taking such measures as are necessary in the interests of the children.

ARTICLE 6

Territorial application

1. Any State may at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which the Protocol shall apply and State the extent to which it undertakes that the provisions of this Protocol shall apply to such territory or territories.

2. Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration. In respect of such territory the Protocol shall enter into force on the first day of the month following the expiration of a period of two months after the date of receipt by the Secretary General of such declaration.

3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn or modified by a notification addressed to the Secretary General. The withdrawal or modification shall become effective on the first day of the month following the expiration of a period of two months after the date of receipt of such notification by the Secretary General.

4. A declaration made in accordance with this Article shall be deemed to have been made in accordance with paragraph 1 of Article 56 of the Convention.

5. The territory of any State to which this Protocol applies by virtue of ratification, acceptance or approval by that State, and each territory to which this Protocol is applied by virtue of a declaration by that State under this Article, may be treated as separate territories for the purpose of the reference in Article 1 to the territory of a State.

6. Any State which has made a declaration in accordance with paragraph 1 or 2 of this Article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it accepts the competence of the Court to receive applications from individuals, non-governmental organisations or groups of individuals as provided in Article 34 of the Convention in respect of Articles 1 to 5 of this Protocol.

ARTICLE 7

Relationship to the Convention

As between the States Parties, the provisions of Article 1 to 6 of this Protocol shall be regarded as additional Articles to the Convention, and all the provisions of the Convention shall apply accordingly.

ARTICLE 8

Signature and ratification

This Protocol shall be open for signature by member States of the Council of Europe which have signed the Convention. It is subject to ratification, acceptance or approval. A member State of the Council of Europe may not ratify, accept or approve this Protocol without previously or simultaneously ratifying the Convention. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

ARTICLE 9

Entry into force

1. This Protocol shall enter into force on the first day of the month following the expiration of a period of two months after the date on which seven member States of the Council of Europe have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 8.

2. In respect of any member State which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the expiration of a period of two months after the date of the deposit of the instrument of ratification, acceptance or approval.

ARTICLE 10

Depositary functions

The Secretary General of the Council of Europe shall notify all the member States of the Council of Europe of:

(a) any signature;

(b) the deposit of any instrument of ratification, acceptance or approval;

(c) any date of entry into force of this Protocol in accordance with Articles 6 and 9;

(d) any other act, notification or declaration relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Strasbourg, this 22nd day of November 1984, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe.

Protocol No. 12

to the Convention for the Protection of Human Rights and Fundamental Freedoms

Rome, 4.XI.2000

THE MEMBER STATES OF THE COUNCIL OF EUROPE, signatory hereto,

Having regard to the fundamental principle according to which all persons are equal before the law and are entitled to the equal protection of the law;

Being resolved to take further steps to promote the equality of all persons through the collective enforcement of a general prohibition of discrimination by means of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention");

Reaffirming that the principle of non-discrimination does not prevent States Parties from taking measures in order to promote full and effective equality, provided that there is an objective and reasonable justification for those measures,

Have agreed as follows:

ARTICLE 1

General prohibition of discrimination

1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.

ARTICLE 2

Territorial application

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which this Protocol shall apply.

2. Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration. In respect of such territory the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt by the Secretary General of such declaration.

3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn or modified by a notification addressed to the Secretary General of the Council of Europe. The withdrawal or modification shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

4. A declaration made in accordance with this Article shall be deemed to have been made in accordance with paragraph 1 of Article 56 of the Convention.

5. Any State which has made a declaration in accordance with paragraph 1 or 2 of this Article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it accepts the competence of the Court to receive applications from individuals, non-governmental organisations or groups of individuals as provided by Article 34 of the Convention in respect of Article 1 of this Protocol.

ARTICLE 3

Relationship to the Convention

As between the States Parties, the provisions of Articles 1 and 2 of this Protocol shall be regarded as additional Articles to the Convention, and all the provisions of the Convention shall apply accordingly.

ARTICLE 4

Signature and ratification

This Protocol shall be open for signature by member States of the Council of Europe which have signed the Convention. It is subject to ratification, acceptance or approval. A member State of the Council of Europe may not ratify, accept or approve this Protocol without previously or simultaneously ratifying the Convention. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

ARTICLE 5

Entry into force

1. This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date on which ten member States of the Council of Europe have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 4.

2. In respect of any member State which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

ARTICLE 6

Depositary functions

The Secretary General of the Council of Europe shall notify all the member States of the Council of Europe of:

(a) any signature;

(b) the deposit of any instrument of ratification, acceptance or approval;

(c) any date of entry into force of this Protocol in accordance with Articles 2 and 5;

(d) any other act, notification or communication relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Rome, this 4th day of November 2000, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe.

Protocol No. 13

to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty in all circumstances

Vilnius, 3.V.2002

THE MEMBER STATES OF THE COUNCIL OF EUROPE, signatory hereto,

Convinced that everyone's right to life is a basic value in a democratic society and that the abolition of the death penalty is essential for the protection of this right and for the full recognition of the inherent dignity of all human beings;

Wishing to strengthen the protection of the right to life guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention");

Noting that Protocol No. 6 to the Convention, concerning the Abolition of the Death Penalty, signed at Strasbourg on 28 April 1983, does not exclude the death penalty in respect of acts committed in time of war or of imminent threat of war;

Being resolved to take the final step in order to abolish the death penalty in all circumstances,

Have agreed as follows:

ARTICLE 1

Abolition of the death penalty

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

ARTICLE 2

Prohibition of derogations

No derogation from the provisions of this Protocol shall be made under Article 15 of the Convention.

ARTICLE 3

Prohibition of reservations

No reservation may be made under Article 57 of the Convention in respect of the provisions of this Protocol.

ARTICLE 4

Territorial application

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which this Protocol shall apply.

2. Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration. In respect of such territory the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt by the Secretary General of such declaration.

3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn or modified by a notification addressed to the Secretary General. The withdrawal or modification shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

ARTICLE 5

Relationship to the Convention

As between the States Parties the provisions of Articles 1 to 4 of this Protocol shall be regarded as additional Articles to the Convention, and all the provisions of the Convention shall apply accordingly.

ARTICLE 6

Signature and ratification

This Protocol shall be open for signature by member States of the Council of Europe which have signed the Convention. It is subject to ratification, acceptance or approval. A member State of the Council of Europe may not ratify, accept or approve this Protocol without previously or simultaneously ratifying the Convention. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

ARTICLE 7

Entry into force

1. This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date on which ten member States of the Council of Europe have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 6.

2. In respect of any member State which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

ARTICLE 8

Depositary functions

The Secretary General of the Council of Europe shall notify all the member States of the Council of Europe of:

(a) any signature;

(b) the deposit of any instrument of ratification, acceptance or approval;

(c) any date of entry into force of this Protocol in accordance with Articles 4 and 7;

(d) any other act, notification or communication relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Vilnius, this 3rd day of May 2002, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe.

Protocol No. 16

to the Convention on the Protection of Human Rights and Fundamental Freedoms

Strasbourg, 2.X.2013

The member States of the Council of Europe and other High Contracting Parties to the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention"), signatories hereto,

Having regard to the provisions of the Convention and, in particular, Article 19 establishing the European Court of Human Rights (hereinafter referred to as "the Court");

Considering that the extension of the Court's competence to give advisory opinions will further enhance the interaction between the Court and national authorities and thereby reinforce implementation of the Convention, in accordance with the principle of subsidiarity;

Having regard to Opinion No. 285 (2013) adopted by the Parliamentary Assembly of the Council of Europe on 28 June 2013,

Have agreed as follows:

ARTICLE 1

1. Highest courts and tribunals of a High Contracting Party, as specified in accordance with Article 10, may request the Court to give advisory opinions on questions of principle relating to the interpretation or application of the rights and freedoms defined in the Convention or the protocols thereto.

2. The requesting court or tribunal may seek an advisory opinion only in the context of a case pending before it.

3. The requesting court or tribunal shall give reasons for its request and shall provide the relevant legal and factual background of the pending case.

ARTICLE 2

1. A panel of five judges of the Grand Chamber shall decide whether to accept the request for an advisory opinion, having regard to Article 1. The panel shall give reasons for any refusal to accept the request.

2. If the panel accepts the request, the Grand Chamber shall deliver the advisory opinion.

3. The panel and the Grand Chamber, as referred to in the preceding paragraphs, shall include ex officio the judge elected in respect of the High Contracting Party to which the requesting court or tribunal pertains. If there is none or if that judge is unable to sit, a person chosen by the President of the Court from a list submitted in advance by that Party shall sit in the capacity of judge.

ARTICLE 3

The Council of Europe Commissioner for Human Rights and the High Contracting Party to which the requesting court or tribunal pertains shall have the right to submit written comments and take part in any hearing. The President of the Court may, in the interest of the proper administration of justice, invite any other High Contracting Party or person also to submit written comments or take part in any hearing.

ARTICLE 4

1. Reasons shall be given for advisory opinions.

2. If the advisory opinion does not represent, in whole or in part, the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.

3. Advisory opinions shall be communicated to the requesting court or tribunal and to the High Contracting Party to which that court or tribunal pertains.

4. Advisory opinions shall be published.

ARTICLE 5

Advisory opinions shall not be binding.

ARTICLE 6

As between the High Contracting Parties the provisions of Articles 1 to 5 of this Protocol shall be regarded as additional articles to the Convention, and all the provisions of the Convention shall apply accordingly.

ARTICLE 7

1. This Protocol shall be open for signature by the High Contracting Parties to the Convention, which may express their consent to be bound by:

   (a) signature without reservation as to ratification, acceptance or approval; or

   (b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval.

2. The instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

ARTICLE 8

1. This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date on which ten High Contracting Parties to the Convention have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 7.

2. In respect of any High Contracting Party to the Convention which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of the expression of its consent to be bound by the Protocol in accordance with the provisions of Article 7.

ARTICLE 9

No reservation may be made under Article 57 of the Convention in respect of the provisions of this Protocol.

ARTICLE 10

Each High Contracting Party to the Convention shall, at the time of signature or when depositing its instrument of ratification, acceptance or approval, by means of a declaration addressed to the Secretary General of the Council of Europe, indicate the courts or tribunals that it designates for the purposes of Article 1, paragraph 1, of this Protocol. This declaration may be modified at any later date and in the same manner.

ARTICLE 11

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe and the other High Contracting Parties to the Convention of:

(a) a any signature;

(b) the deposit of any instrument of ratification, acceptance or approval;

(c) any date of entry into force of this Protocol in accordance with Article 8;

(d) any declaration made in accordance with Article 10; and

(e) any other act, notification or communication relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Strasbourg, this 2nd day of October 2013, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe and to the other High Contracting Parties to the Convention.

European Convention
on Human Rights

European Court of Human Rights
Council of Europe
F-67075 Strasbourg cedex

www.echr.coe.int

ENG

CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

(2012/C 326/02)

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CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

The European Parliament, the Council and the Commission solemnly proclaim the following text as the Charter of Fundamental Rights of the European Union.

CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Preamble

The peoples of Europe, in creating an ever closer union among them, are resolved to share a peaceful future based on common values.

Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice.

The Union contributes to the preservation and to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels; it seeks to promote balanced and sustainable development and ensures free movement of persons, services, goods and capital, and the freedom of establishment.

To this end, it is necessary to strengthen the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible in a Charter.

This Charter reaffirms, with due regard for the powers and tasks of the Union and for the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Union and by the Council of Europe and the case-law of the Court of Justice of the European Union and of the European Court of Human Rights. In this context the Charter will be interpreted by the courts of the Union and the Member States with due regard to the explanations prepared under the authority of the Praesidium of the Convention which drafted the Charter and updated under the responsibility of the Praesidium of the European Convention.

Enjoyment of these rights entails responsibilities and duties with regard to other persons, to the human community and to future generations.

The Union therefore recognises the rights, freedoms and principles set out hereafter.

TITLE I

DIGNITY

Article 1

Human dignity

Human dignity is inviolable. It must be respected and protected.

Article 2

Right to life

1. Everyone has the right to life.

2. No one shall be condemned to the death penalty, or executed.

Article 3

Right to the integrity of the person

1. Everyone has the right to respect for his or her physical and mental integrity.

2. In the fields of medicine and biology, the following must be respected in particular:

(a) the free and informed consent of the person concerned, according to the procedures laid down by law;

(b) the prohibition of eugenic practices, in particular those aiming at the selection of persons;

(c) the prohibition on making the human body and its parts as such a source of financial gain;

(d) the prohibition of the reproductive cloning of human beings.

Article 4

Prohibition of torture and inhuman or degrading treatment or punishment

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

Article 5

Prohibition of slavery and forced labour

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

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

3. Trafficking in human beings is prohibited.

TITLE II

FREEDOMS

Article 6

Right to liberty and security

Everyone has the right to liberty and security of person.

Article 7

Respect for private and family life

Everyone has the right to respect for his or her private and family life, home and communications.

Article 8

Protection of personal data

1. Everyone has the right to the protection of personal data concerning him or her.

2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.

3. Compliance with these rules shall be subject to control by an independent authority.

Article 9

Right to marry and right to found a family

The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.

Article 10

Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.

2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.

Article 11

Freedom of expression and information

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

2. The freedom and pluralism of the media shall be respected.

Article 12

Freedom of assembly and of association

1. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.

2. Political parties at Union level contribute to expressing the political will of the citizens of the Union.

Article 13

Freedom of the arts and sciences

The arts and scientific research shall be free of constraint. Academic freedom shall be respected.

Article 14

Right to education

1. Everyone has the right to education and to have access to vocational and continuing training.

2. This right includes the possibility to receive free compulsory education.

3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.

Article 15

Freedom to choose an occupation and right to engage in work

1. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.

2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.

3. Nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.

Article 16

Freedom to conduct a business

The freedom to conduct a business in accordance with Union law and national laws and practices is recognised.

Article 17

Right to property

1. Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest.

2. Intellectual property shall be protected.

Article 18

Right to asylum

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty on European Union and the Treaty on the Functioning of the European Union (hereinafter referred to as 'the Treaties').

Article 19

Protection in the event of removal, expulsion or extradition

1. Collective expulsions are prohibited.

2. No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

TITLE III

EQUALITY

Article 20

Equality before the law

Everyone is equal before the law.

Article 21

Non-discrimination

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.

2. Within the scope of application of the Treaties and without prejudice to any of their specific provisions, any discrimination on grounds of nationality shall be prohibited.

Article 22

Cultural, religious and linguistic diversity

The Union shall respect cultural, religious and linguistic diversity.

Article 23

Equality between women and men

Equality between women and men must be ensured in all areas, including employment, work and pay.

The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

Article 24

The rights of the child

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.

2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.

3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

Article 25

The rights of the elderly

The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.

Article 26

Integration of persons with disabilities

The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

TITLE IV

SOLIDARITY

Article 27

Workers' right to information and consultation within the undertaking

Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Union law and national laws and practices.

Article 28

Right of collective bargaining and action

Workers and employers, or their respective organisations, have, in accordance with Union law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.

Article 29

Right of access to placement services

Everyone has the right of access to a free placement service.

Article 30

Protection in the event of unjustified dismissal

Every worker has the right to protection against unjustified dismissal, in accordance with Union law and national laws and practices.

Article 31

Fair and just working conditions

1. Every worker has the right to working conditions which respect his or her health, safety and dignity.

2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

Article 32

Prohibition of child labour and protection of young people at work

The employment of children is prohibited. The minimum age of admission to employment may not be lower than the minimum school-leaving age, without prejudice to such rules as may be more favourable to young people and except for limited derogations.

Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.

Article 33

Family and professional life

1. The family shall enjoy legal, economic and social protection.

2. To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child.

Article 34

Social security and social assistance

1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Union law and national laws and practices.

2. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Union law and national laws and practices.

3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Union law and national laws and practices.

Article 35

Health care

Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all the Union's policies and activities.

Article 36

Access to services of general economic interest

The Union recognises and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the Treaties, in order to promote the social and territorial cohesion of the Union.

Article 37

Environmental protection

A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.

Article 38

Consumer protection

Union policies shall ensure a high level of consumer protection.

TITLE V

CITIZENS' RIGHTS

Article 39

Right to vote and to stand as a candidate at elections to the European Parliament

1. Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.

2. Members of the European Parliament shall be elected by direct universal suffrage in a free and secret ballot.

Article 40

Right to vote and to stand as a candidate at municipal elections

Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he or she resides under the same conditions as nationals of that State.

Article 41

Right to good administration

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union.

2. This right includes:

(a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;

(b) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;

(c) the obligation of the administration to give reasons for its decisions.

3. Every person has the right to have the Union make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.

4. Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language.

Article 42

Right of access to documents

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the institutions, bodies, offices and agencies of the Union, whatever their medium.

Article 43

European Ombudsman

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to refer to the European Ombudsman cases of maladministration in the activities of the institutions, bodies, offices or agencies of the Union, with the exception of the Court of Justice of the European Union acting in its judicial role.

Article 44

Right to petition

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to petition the European Parliament.

Article 45

Freedom of movement and of residence

1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.

2. Freedom of movement and residence may be granted, in accordance with the Treaties, to nationals of third countries legally resident in the territory of a Member State.

Article 46

Diplomatic and consular protection

Every citizen of the Union shall, in the territory of a third country in which the Member State of which he or she is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State.

TITLE VI

JUSTICE

Article 47

Right to an effective remedy and to a fair trial

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.

Article 48

Presumption of innocence and right of defence

1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.

2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed.

Article 49

Principles of legality and proportionality of criminal offences and penalties

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed. If, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that penalty shall be applicable.

2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles recognised by the community of nations.

3. The severity of penalties must not be disproportionate to the criminal offence.

Article 50

Right not to be tried or punished twice in criminal proceedings for the same criminal offence

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law.

TITLE VII

GENERAL PROVISIONS GOVERNING THE INTERPRETATION AND APPLICATION OF THE CHARTER

Article 51

Field of application

1. The provisions of this Charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the Treaties.

2. The Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks as defined in the Treaties.

Article 52

Scope and interpretation of rights and principles

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.

2. Rights recognised by this Charter for which provision is made in the Treaties shall be exercised under the conditions and within the limits defined by those Treaties.

3. In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.

4. In so far as this Charter recognises fundamental rights as they result from the constitutional traditions common to the Member States, those rights shall be interpreted in harmony with those traditions.

5. The provisions of this Charter which contain principles may be implemented by legislative and executive acts taken by institutions, bodies, offices and agencies of the Union, and by acts of Member States when they are implementing Union law, in the exercise of their respective powers. They shall be judicially cognisable only in the interpretation of such acts and in the ruling on their legality.

6. Full account shall be taken of national laws and practices as specified in this Charter.

7. The explanations drawn up as a way of providing guidance in the interpretation of this Charter shall be given due regard by the courts of the Union and of the Member States.

Article 53

Level of protection

Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions.

Article 54

Prohibition of abuse of rights

Nothing in this Charter shall be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognised in this Charter or at their limitation to a greater extent than is provided for herein.

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The above text adapts the wording of the Charter proclaimed on 7 December 2000, and will replace it as from the date of entry into force of the Treaty of Lisbon.

COUNCIL DIRECTIVE 2003/86/EC
of 22 September 2003
on the right to family reunification

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 63(3)(a) thereof,

Having regard to the proposal from the Commission [1],

Having regard to the opinion of the European Parliament [2],

Having regard to the opinion of the European Economic and Social Committee [3],

Having regard to the opinion of the Committee of the Regions [4],

Whereas:

(1) With a view to the progressive establishment of an area of freedom, security and justice, the Treaty establishing the European Community provides both for the adoption of measures aimed at ensuring the free movement of persons, in conjunction with flanking measures relating to external border controls, asylum and immigration, and for the adoption of measures relating to asylum, immigration and safeguarding the rights of third country nationals.

(2) Measures concerning family reunification should be adopted in conformity with the obligation to protect the family and respect family life enshrined in many instruments of international law. This Directive respects the fundamental rights and observes the principles recognised in particular in Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and in the Charter of Fundamental Rights of the European Union.

(3) The European Council, at its special meeting in Tampere on 15 and 16 October 1999, acknowledged the need for harmonisation of national legislation on the conditions for admission and residence of third country nationals. In this context, it has in particular stated that the European Union should ensure fair treatment of third country nationals residing lawfully on the territory of the Member States and that a more vigorous integration policy should aim at granting them rights and obligations comparable to those of citizens of the European Union. The European Council accordingly asked the Council rapidly to adopt the legal instruments on the basis of Commission proposals. The need for achieving the objectives defined at Tampere have been reaffirmed by the Laeken European Council on 14 and 15 December 2001.

(4) Family reunification is a necessary way of making family life possible. It helps to create sociocultural stability facilitating the integration of third country nationals in the Member State, which also serves to promote economic and social cohesion, a fundamental Community objective stated in the Treaty.

(5) Member States should give effect to the provisions of this Directive without discrimination on the basis of sex, race, colour, ethnic or social origin, genetic characteristics, language, religion or beliefs, political or other opinions, membership of a national minority, fortune, birth, disabilities, age or sexual orientation.

(6) To protect the family and establish or preserve family life, the material conditions for exercising the right to family reunification should be determined on the basis of common criteria.

(7) Member States should be able to apply this Directive also when the family enters together.

(8) Special attention should be paid to the situation of refugees on account of the reasons which obliged them to flee their country and prevent them from leading a normal family life there. More favourable conditions should therefore be laid down for the exercise of their right to family reunification.

(9) Family reunification should apply in any case to members of the nuclear family, that is to say the spouse and the minor children.

(10) It is for the Member States to decide whether they wish to authorise family reunification for relatives in the direct ascending line, adult unmarried children, unmarried or registered partners as well as, in the event of a polygamous marriage, minor children of a further spouse and the sponsor. Where a Member State authorises family reunification of these persons, this is without prejudice of the possibility, for Member States which do not recognise the existence of family ties in the cases covered by this provision, of not granting to the said persons the treatment of family members with regard to the right to reside in another Member State, as defined by the relevant EC legislation.

[1] OJ C 116 E, 26.4.2000, p. 66, and OJ C 62 E, 27.2.2001, p. 99.
[2] OJ C 135, 7.5.2001, p. 174.
[3] OJ C 204, 18.7.2000, p. 40.
[4] OJ C 73, 26.3.2003, p. 16.

(11) The right to family reunification should be exercised in proper compliance with the values and principles recognised by the Member States, in particular with respect to the rights of women and of children; such compliance justifies the possible taking of restrictive measures against applications for family reunification of polygamous households.

(12) The possibility of limiting the right to family reunification of children over the age of 12, whose primary residence is not with the sponsor, is intended to reflect the children's capacity for integration at early ages and shall ensure that they acquire the necessary education and language skills in school.

(13) A set of rules governing the procedure for examination of applications for family reunification and for entry and residence of family members should be laid down. Those procedures should be effective and manageable, taking account of the normal workload of the Member States' administrations, as well as transparent and fair, in order to offer appropriate legal certainty to those concerned.

(14) Family reunification may be refused on duly justified grounds. In particular, the person who wishes to be granted family reunification should not constitute a threat to public policy or public security. The notion of public policy may cover a conviction for committing a serious crime. In this context it has to be noted that the notion of public policy and public security covers also cases in which a third country national belongs to an association which supports terrorism, supports such an association or has extremist aspirations.

(15) The integration of family members should be promoted. For that purpose, they should be granted a status independent of that of the sponsor, in particular in cases of breakup of marriages and partnerships, and access to education, employment and vocational training on the same terms as the person with whom they are reunited, under the relevant conditions.

(16) Since the objectives of the proposed action, namely the establishment of a right to family reunification for third country nationals to be exercised in accordance with common rules, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved by the Community, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

(17) In accordance with Articles 1 and 2 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community and without prejudice to Article 4 of the said Protocol these Member States are not participating in the adoption of this Directive and are not bound by or subject to its application.

(18) In accordance with Article 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and the Treaty establishing the European Community, Denmark does not take part in the adoption of this Directive, and is not bound by it or subject to its application,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

General provisions

Article 1

The purpose of this Directive is to determine the conditions for the exercise of the right to family reunification by third country nationals residing lawfully in the territory of the Member States.

Article 2

For the purposes of this Directive:

(a) 'third country national' means any person who is not a citizen of the Union within the meaning of Article 17(1) of the Treaty;

(b) 'refugee' means any third country national or stateless person enjoying refugee status within the meaning of the Geneva Convention relating to the status of refugees of 28 July 1951, as amended by the Protocol signed in New York on 31 January 1967;

(c) 'sponsor' means a third country national residing lawfully in a Member State and applying or whose family members apply for family reunification to be joined with him/her;

(d) 'family reunification' means the entry into and residence in a Member State by family members of a third country national residing lawfully in that Member State in order to preserve the family unit, whether the family relationship arose before or after the resident's entry;

(e) 'residence permit' means any authorisation issued by the authorities of a Member State allowing a third country national to stay legally in its territory, in accordance with the provisions of Article 1(2)(a) of Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third country nationals [1];

[1] OJ L 157, 15.6.2002, p. 1.

(f) 'unaccompanied minor' means third country nationals or stateless persons below the age of eighteen, who arrive on the territory of the Member States unaccompanied by an adult responsible by law or custom, and for as long as they are not effectively taken into the care of such a person, or minors who are left unaccompanied after they entered the territory of the Member States.

Article 3

1. This Directive shall apply where the sponsor is holding a residence permit issued by a Member State for a period of validity of one year or more who has reasonable prospects of obtaining the right of permanent residence, if the members of his or her family are third country nationals of whatever status.

2. This Directive shall not apply where the sponsor is:

(a) applying for recognition of refugee status whose application has not yet given rise to a final decision;

(b) authorised to reside in a Member State on the basis of temporary protection or applying for authorisation to reside on that basis and awaiting a decision on his status;

(c) authorised to reside in a Member State on the basis of a subsidiary form of protection in accordance with international obligations, national legislation or the practice of the Member States or applying for authorisation to reside on that basis and awaiting a decision on his status.

3. This Directive shall not apply to members of the family of a Union citizen.

4. This Directive is without prejudice to more favourable provisions of:

(a) bilateral and multilateral agreements between the Community or the Community and its Member States, on the one hand, and third countries, on the other;

(b) the European Social Charter of 18 October 1961, the amended European Social Charter of 3 May 1987 and the European Convention on the legal status of migrant workers of 24 November 1977.

5. This Directive shall not affect the possibility for the Member States to adopt or maintain more favourable provisions.

CHAPTER II

Family members

Article 4

1. The Member States shall authorise the entry and residence, pursuant to this Directive and subject to compliance with the conditions laid down in Chapter IV, as well as in Article 16, of the following family members:

(a) the sponsor's spouse;

(b) the minor children of the sponsor and of his/her spouse, including children adopted in accordance with a decision taken by the competent authority in the Member State concerned or a decision which is automatically enforceable due to international obligations of that Member State or must be recognised in accordance with international obligations;

(c) the minor children including adopted children of the sponsor where the sponsor has custody and the children are dependent on him or her. Member States may authorise the reunification of children of whom custody is shared, provided the other party sharing custody has given his or her agreement;

(d) the minor children including adopted children of the spouse where the spouse has custody and the children are dependent on him or her. Member States may authorise the reunification of children of whom custody is shared, provided the other party sharing custody has given his or her agreement.

The minor children referred to in this Article must be below the age of majority set by the law of the Member State concerned and must not be married.

By way of derogation, where a child is aged over 12 years and arrives independently from the rest of his/her family, the Member State may, before authorising entry and residence under this Directive, verify whether he or she meets a condition for integration provided for by its existing legislation on the date of implementation of this Directive.

2. The Member States may, by law or regulation, authorise the entry and residence, pursuant to this Directive and subject to compliance with the conditions laid down in Chapter IV, of the following family members:

(a) first-degree relatives in the direct ascending line of the sponsor or his or her spouse, where they are dependent on them and do not enjoy proper family support in the country of origin;

(b) the adult unmarried children of the sponsor or his or her spouse, where they are objectively unable to provide for their own needs on account of their state of health.

3. The Member States may, by law or regulation, authorise the entry and residence, pursuant to this Directive and subject to compliance with the conditions laid down in Chapter IV, of the unmarried partner, being a third country national, with whom the sponsor is in a duly attested stable long-term relationship, or of a third country national who is bound to the sponsor by a registered partnership in accordance with Article 5(2), and of the unmarried minor children, including adopted children, as well as the adult unmarried children who are objectively unable to provide for their own needs on account of their state of health, of such persons.

Member States may decide that registered partners are to be treated equally as spouses with respect to family reunification.

4. In the event of a polygamous marriage, where the sponsor already has a spouse living with him in the territory of a Member State, the Member State concerned shall not authorise the family reunification of a further spouse.

By way of derogation from paragraph 1(c), Member States may limit the family reunification of minor children of a further spouse and the sponsor.

5. In order to ensure better integration and to prevent forced marriages Member States may require the sponsor and his/her spouse to be of a minimum age, and at maximum 21 years, before the spouse is able to join him/her.

6. By way of derogation, Member States may request that the applications concerning family reunification of minor children have to be submitted before the age of 15, as provided for by its existing legislation on the date of the implementation of this Directive. If the application is submitted after the age of 15, the Member States which decide to apply this derogation shall authorise the entry and residence of such children on grounds other than family reunification.

CHAPTER III

Submission and examination of the application

Article 5

1. Member States shall determine whether, in order to exercise the right to family reunification, an application for entry and residence shall be submitted to the competent authorities of the Member State concerned either by the sponsor or by the family member or members.

2. The application shall be accompanied by documentary evidence of the family relationship and of compliance with the conditions laid down in Articles 4 and 6 and, where applicable, Articles 7 and 8, as well as certified copies of family member(s)' travel documents.

If appropriate, in order to obtain evidence that a family relationship exists, Member States may carry out interviews with the sponsor and his/her family members and conduct other investigations that are found to be necessary.

When examining an application concerning the unmarried partner of the sponsor, Member States shall consider, as evidence of the family relationship, factors such as a common child, previous cohabitation, registration of the partnership and any other reliable means of proof.

3. The application shall be submitted and examined when the family members are residing outside the territory of the Member State in which the sponsor resides.

By way of derogation, a Member State may, in appropriate circumstances, accept an application submitted when the family members are already in its territory.

4. The competent authorities of the Member State shall give the person, who has submitted the application, written notification of the decision as soon as possible and in any event no later than nine months from the date on which the application was lodged.

In exceptional circumstances linked to the complexity of the examination of the application, the time limit referred to in the first subparagraph may be extended.

Reasons shall be given for the decision rejecting the application. Any consequences of no decision being taken by the end of the period provided for in the first subparagraph shall be determined by the national legislation of the relevant Member State.

5. When examining an application, the Member States shall have due regard to the best interests of minor children.

CHAPTER IV

Requirements for the exercise of the right to family reunification

Article 6

1. The Member States may reject an application for entry and residence of family members on grounds of public policy, public security or public health.

2. Member States may withdraw or refuse to renew a family member's residence permit on grounds of public policy or public security or public health.

When taking the relevant decision, the Member State shall consider, besides Article 17, the severity or type of offence against public policy or public security committed by the family member, or the dangers that are emanating from such person.

3. Renewal of the residence permit may not be withheld and removal from the territory may not be ordered by the competent authority of the Member State concerned on the sole ground of illness or disability suffered after the issue of the residence permit.

Article 7

1. When the application for family reunification is submitted, the Member State concerned may require the person who has submitted the application to provide evidence that the sponsor has:

(a) accommodation regarded as normal for a comparable family in the same region and which meets the general health and safety standards in force in the Member State concerned;

(b) sickness insurance in respect of all risks normally covered for its own nationals in the Member State concerned for himself/herself and the members of his/her family;

(c) stable and regular resources which are sufficient to maintain himself/herself and the members of his/her family, without recourse to the social assistance system of the Member State concerned. Member States shall evaluate these resources by reference to their nature and regularity and may take into account the level of minimum national wages and pensions as well as the number of family members.

2. Member States may require third country nationals to comply with integration measures, in accordance with national law.

With regard to the refugees and/or family members of refugees referred to in Article 12 the integration measures referred to in the first subparagraph may only be applied once the persons concerned have been granted family reunification.

Article 8

Member States may require the sponsor to have stayed lawfully in their territory for a period not exceeding two years, before having his/her family members join him/her.

By way of derogation, where the legislation of a Member State relating to family reunification in force on the date of adoption of this Directive takes into account its reception capacity, the Member State may provide for a waiting period of no more than three years between submission of the application for family reunification and the issue of a residence permit to the family members.

CHAPTER V

Family reunification of refugees

Article 9

1. This Chapter shall apply to family reunification of refugees recognised by the Member States.

2. Member States may confine the application of this Chapter to refugees whose family relationships predate their entry.

3. This Chapter is without prejudice to any rules granting refugee status to family members.

Article 10

1. Article 4 shall apply to the definition of family members except that the third subparagraph of paragraph 1 thereof shall not apply to the children of refugees.

2. The Member States may authorise family reunification of other family members not referred to in Article 4, if they are dependent on the refugee.

3. If the refugee is an unaccompanied minor, the Member States:

(a) shall authorise the entry and residence for the purposes of family reunification of his/her first-degree relatives in the direct ascending line without applying the conditions laid down in Article 4(2)(a);

(b) may authorise the entry and residence for the purposes of family reunification of his/her legal guardian or any other member of the family, where the refugee has no relatives in the direct ascending line or such relatives cannot be traced.

Article 11

1. Article 5 shall apply to the submission and examination of the application, subject to paragraph 2 of this Article.

2. Where a refugee cannot provide official documentary evidence of the family relationship, the Member States shall take into account other evidence, to be assessed in accordance with national law, of the existence of such relationship. A decision rejecting an application may not be based solely on the fact that documentary evidence is lacking.

Article 12

1. By way of derogation from Article 7, the Member States shall not require the refugee and/or family member(s) to provide, in respect of applications concerning those family members referred to in Article 4(1), the evidence that the refugee fulfils the requirements set out in Article 7.

Without prejudice to international obligations, where family reunification is possible in a third country with which the sponsor and/or family member has special links, Member States may require provision of the evidence referred to in the first subparagraph.

Member States may require the refugee to meet the conditions referred to in Article 7(1) if the application for family reunification is not submitted within a period of three months after the granting of the refugee status.

2. By way of derogation from Article 8, the Member States shall not require the refugee to have resided in their territory for a certain period of time, before having his/her family members join him/her.

CHAPTER VI

Entry and residence of family members

Article 13

1. As soon as the application for family reunification has been accepted, the Member State concerned shall authorise the entry of the family member or members. In that regard, the Member State concerned shall grant such persons every facility for obtaining the requisite visas.

2. The Member State concerned shall grant the family members a first residence permit of at least one year's duration. This residence permit shall be renewable.

3. The duration of the residence permits granted to the family member(s) shall in principle not go beyond the date of expiry of the residence permit held by the sponsor.

Article 14

1. The sponsor's family members shall be entitled, in the same way as the sponsor, to:

(a) access to education;

(b) access to employment and self-employed activity;

(c) access to vocational guidance, initial and further training and retraining.

2. Member States may decide according to national law the conditions under which family members shall exercise an employed or self-employed activity. These conditions shall set a time limit which shall in no case exceed 12 months, during which Member States may examine the situation of their labour market before authorising family members to exercise an employed or self-employed activity.

3. Member States may restrict access to employment or self-employed activity by first-degree relatives in the direct ascending line or adult unmarried children to whom Article 4(2) applies.

Article 15

1. Not later than after five years of residence, and provided that the family member has not been granted a residence permit for reasons other than family reunification, the spouse or unmarried partner and a child who has reached majority shall be entitled, upon application, if required, to an autonomous residence permit, independent of that of the sponsor.

Member States may limit the granting of the residence permit referred to in the first subparagraph to the spouse or unmarried partner in cases of breakdown of the family relationship.

2. The Member States may issue an autonomous residence permit to adult children and to relatives in the direct ascending line to whom Article 4(2) applies.

3. In the event of widowhood, divorce, separation, or death of first-degree relatives in the direct ascending or descending line, an autonomous residence permit may be issued, upon application, if required, to persons who have entered by virtue of family reunification. Member States shall lay down provisions ensuring the granting of an autonomous residence permit in the event of particularly difficult circumstances.

4. The conditions relating to the granting and duration of the autonomous residence permit are established by national law.

CHAPTER VII

Penalties and redress

Article 16

1. Member States may reject an application for entry and residence for the purpose of family reunification, or, if appropriate, withdraw or refuse to renew a family member's residence permit, in the following circumstances:

(a) where the conditions laid down by this Directive are not or are no longer satisfied.

When renewing the residence permit, where the sponsor has not sufficient resources without recourse to the social assistance system of the Member State, as referred to in Article 7(1)(c), the Member State shall take into account the contributions of the family members to the household income;

(b) where the sponsor and his/her family member(s) do not or no longer live in a real marital or family relationship;

(c) where it is found that the sponsor or the unmarried partner is married or is in a stable long-term relationship with another person.

2. Member States may also reject an application for entry and residence for the purpose of family reunification, or withdraw or refuse to renew the family member's residence permits, where it is shown that:

(a) false or misleading information, false or falsified documents were used, fraud was otherwise committed or other unlawful means were used;

(b) the marriage, partnership or adoption was contracted for the sole purpose of enabling the person concerned to enter or reside in a Member State.

When making an assessment with respect to this point, Member States may have regard in particular to the fact that the marriage, partnership or adoption was contracted after the sponsor had been issued his/her residence permit.

3. The Member States may withdraw or refuse to renew the residence permit of a family member where the sponsor's residence comes to an end and the family member does not yet enjoy an autonomous right of residence under Article 15.

4. Member States may conduct specific checks and inspections where there is reason to suspect that there is fraud or a marriage, partnership or adoption of convenience as defined by paragraph 2. Specific checks may also be undertaken on the occasion of the renewal of family members' residence permit.

Article 17

Member States shall take due account of the nature and solidity of the person's family relationships and the duration of his residence in the Member State and of the existence of family, cultural and social ties with his/her country of origin where they reject an application, withdraw or refuse to renew a residence permit or decide to order the removal of the sponsor or members of his family.

Article 18

The Member States shall ensure that the sponsor and/or the members of his/her family have the right to mount a legal challenge where an application for family reunification is rejected or a residence permit is either not renewed or is withdrawn or removal is ordered.

The procedure and the competence according to which the right referred to in the first subparagraph is exercised shall be established by the Member States concerned.

CHAPTER VIII

Final provisions

Article 19

Periodically, and for the first time not later than 3 October 2007, the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States and shall propose such amendments as may appear necessary. These proposals for amendments shall be made by way of priority in relation to Articles 3, 4, 7, 8 and 13.

Article 20

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by not later than 3 October 2005. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

Article 21

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Union*.

Article 22

This Directive is addressed to the Member States in accordance with the Treaty establishing the European Community.

Done at Brussels, 22 September 2003.

For the Council

The President

F. FRATTINI

DIRECTIVE 2013/33/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 26 June 2013

laying down standards for the reception of applicants for international protection (recast)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 78(2)(f) thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Economic and Social Committee ([1]),

Having regard to the opinion of the Committee of the Regions ([2]),

Acting in accordance with the ordinary legislative procedure ([3]),

Whereas:

(1) A number of substantive changes are to be made to Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers ([4]). In the interests of clarity, that Directive should be recast.

(2) A common policy on asylum, including a Common European Asylum System, is a constituent part of the European Union's objective of progressively establishing an area of freedom, security and justice open to those who, forced by circumstances, legitimately seek protection in the Union. Such a policy should be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States.

(3) At its special meeting in Tampere on 15 and 16 October 1999, the European Council agreed to work towards establishing a Common European Asylum System, based on the full and inclusive application of the Geneva Convention Relating to the Status of Refugees of 28 July 1951, as supplemented by the New York Protocol of 31 January 1967 ('the Geneva Convention'), thus affirming the principle of *non-refoulement*. The first phase of a Common European Asylum System was achieved through the adoption of relevant legal instruments, including Directive 2003/9/EC, provided for in the Treaties.

(4) The European Council, at its meeting of 4 November 2004, adopted The Hague Programme, which set the objectives to be implemented in the area of freedom, security and justice in the period 2005-2010. In this respect, The Hague Programme invited the European Commission to conclude the evaluation of the first-phase instruments and to submit the second-phase instruments and measures to the European Parliament and to the Council.

(5) The European Council, at its meeting of 10-11 December 2009, adopted the Stockholm Programme, which reiterated the commitment to the objective of establishing by 2012 a common area of protection and solidarity based on a common asylum procedure and a uniform status for those granted international protection based on high protection standards and fair and effective procedures. The Stockholm Programme further provides that it is crucial that individuals, regardless of the Member State in which their application for international protection is made, are offered an equivalent level of treatment as regards reception conditions.

(6) The resources of the European Refugee Fund and of the European Asylum Support Office should be mobilised to provide adequate support to Member States' efforts in implementing the standards set in the second phase of the Common European Asylum System, in particular to those Member States which are faced with specific and disproportionate pressures on their asylum systems, due in particular to their geographical or demographic situation.

(7) In the light of the results of the evaluations undertaken of the implementation of the first-phase instruments, it is appropriate, at this stage, to confirm the principles underlying Directive 2003/9/EC with a view to ensuring improved reception conditions for applicants for international protection ('applicants').

([1]) OJ C 317, 23.12.2009, p. 110 and OJ C 24, 28.1.2012, p. 80.
([2]) OJ C 79, 27.3.2010, p. 58.
([3]) Position of the European Parliament of 7 May 2009 (OJ C 212 E, 5.8.2010, p. 348) and position of the Council at first reading of 6 June 2013 (not yet published in the Official Journal). Position of the European Parliament of 10 June 2013 (not yet published in the Official Journal).
([4]) OJ L 31, 6.2.2003, p. 18.

(8) In order to ensure equal treatment of applicants throughout the Union, this Directive should apply during all stages and types of procedures concerning applications for international protection, in all locations and facilities hosting applicants and for as long as they are allowed to remain on the territory of the Member States as applicants.

(9) In applying this Directive, Member States should seek to ensure full compliance with the principles of the best interests of the child and of family unity, in accordance with the Charter of Fundamental Rights of the European Union, the 1989 United Nations Convention on the Rights of the Child and the European Convention for the Protection of Human Rights and Fundamental Freedoms respectively.

(10) With respect to the treatment of persons falling within the scope of this Directive, Member States are bound by obligations under instruments of international law to which they are party.

(11) Standards for the reception of applicants that will suffice to ensure them a dignified standard of living and comparable living conditions in all Member States should be laid down.

(12) The harmonisation of conditions for the reception of applicants should help to limit the secondary movements of applicants influenced by the variety of conditions for their reception.

(13) With a view to ensuring equal treatment amongst all applicants for international protection and guaranteeing consistency with current EU asylum *acquis*, in particular with Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted [1], it is appropriate to extend the scope of this Directive in order to include applicants for subsidiary protection.

(14) The reception of persons with special reception needs should be a primary concern for national authorities in order to ensure that such reception is specifically designed to meet their special reception needs.

(15) The detention of applicants should be applied in accordance with the underlying principle that a person should not be held in detention for the sole reason that he or she is seeking international protection, particularly in accordance with the international legal obligations of the Member States and with Article 31 of the Geneva Convention. Applicants may be detained only under very clearly defined exceptional circumstances laid down in this Directive and subject to the principle of necessity and proportionality with regard to both to the manner and the purpose of such detention. Where an applicant is held in detention he or she should have effective access to the necessary procedural guarantees, such as judicial remedy before a national judicial authority.

(16) With regard to administrative procedures relating to the grounds for detention, the notion of 'due diligence' at least requires that Member States take concrete and meaningful steps to ensure that the time needed to verify the grounds for detention is as short as possible, and that there is a real prospect that such verification can be carried out successfully in the shortest possible time. Detention shall not exceed the time reasonably needed to complete the relevant procedures.

(17) The grounds for detention set out in this Directive are without prejudice to other grounds for detention, including detention grounds within the framework of criminal proceedings, which are applicable under national law, unrelated to the third country national's or stateless person's application for international protection.

(18) Applicants who are in detention should be treated with full respect for human dignity and their reception should be specifically designed to meet their needs in that situation. In particular, Member States should ensure that Article 37 of the 1989 United Nations Convention on the Rights of the Child is applied.

(19) There may be cases where it is not possible in practice to immediately ensure certain reception guarantees in detention, for example due to the geographical location or the specific structure of the detention facility. However, any derogation from those guarantees should be temporary and should only be applied under the circumstances set out in this Directive. Derogations should only be applied in exceptional circumstances and should be duly justified, taking into consideration the circumstances of each case, including the level of severity of the derogation applied, its duration and its impact on the applicant concerned.

[1] OJ L 337, 20.12.2011, p. 9.

(20) In order to better ensure the physical and psychological integrity of the applicants, detention should be a measure of last resort and may only be applied after all non-custodial alternative measures to detention have been duly examined. Any alternative measure to detention must respect the fundamental human rights of applicants.

(21) In order to ensure compliance with the procedural guarantees consisting in the opportunity to contact organisations or groups of persons that provide legal assistance, information should be provided on such organisations and groups of persons.

(22) When deciding on housing arrangements, Member States should take due account of the best interests of the child, as well as of the particular circumstances of any applicant who is dependent on family members or other close relatives such as unmarried minor siblings already present in the Member State.

(23) In order to promote the self-sufficiency of applicants and to limit wide discrepancies between Member States, it is essential to provide clear rules on the applicants' access to the labour market.

(24) To ensure that the material support provided to applicants complies with the principles set out in this Directive, it is necessary that Member States determine the level of such support on the basis of relevant references. That does not mean that the amount granted should be the same as for nationals. Member States may grant less favourable treatment to applicants than to nationals as specified in this Directive.

(25) The possibility of abuse of the reception system should be restricted by specifying the circumstances in which material reception conditions for applicants may be reduced or withdrawn while at the same time ensuring a dignified standard of living for all applicants.

(26) The efficiency of national reception systems and cooperation among Member States in the field of reception of applicants should be secured.

(27) Appropriate coordination should be encouraged between the competent authorities as regards the reception of applicants, and harmonious relationships between local communities and accommodation centres should therefore be promoted.

(28) Member States should have the power to introduce or maintain more favourable provisions for third-country nationals and stateless persons who ask for international protection from a Member State.

(29) In this spirit, Member States are also invited to apply the provisions of this Directive in connection with procedures for deciding on applications for forms of protection other than that provided for under Directive 2011/95/EU.

(30) The implementation of this Directive should be evaluated at regular intervals.

(31) Since the objective of this Directive, namely to establish standards for the reception of applicants in Member States, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of this Directive, be better achieved at the Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

(32) In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of 28 September 2011 [1], Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.

(33) In accordance with Articles 1 and 2 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the TEU, and to the Treaty on the Functioning of the European Union (TFEU), and without prejudice to Article 4 of that Protocol, the United Kingdom and Ireland are not taking part in the adoption of this Directive and are not bound by it or subject to its application.

(34) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application.

[1] OJ C 369, 17.12.2011, p. 14.

(35) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, this Directive seeks to ensure full respect for human dignity and to promote the application of Articles 1, 4, 6, 7, 18, 21, 24 and 47 of the Charter and has to be implemented accordingly.

(36) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive change as compared with Directive 2003/9/EC. The obligation to transpose the provisions which are unchanged arises under that Directive.

(37) This Directive should be without prejudice to the obligations of the Member States relating to the time-limit for transposition into national law of Directive 2003/9/EC set out in Annex II, Part B,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

PURPOSE, DEFINITIONS AND SCOPE

Article 1

Purpose

The purpose of this Directive is to lay down standards for the reception of applicants for international protection ('applicants') in Member States.

Article 2

Definitions

For the purposes of this Directive:

(a) 'application for international protection': means an application for international protection as defined in Article 2(h) of Directive 2011/95/EU;

(b) 'applicant': means a third-country national or a stateless person who has made an application for international protection in respect of which a final decision has not yet been taken;

(c) 'family members': means, in so far as the family already existed in the country of origin, the following members of the applicant's family who are present in the same Member State in relation to the application for international protection:

— the spouse of the applicant or his or her unmarried partner in a stable relationship, where the law or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to third-country nationals;

— the minor children of couples referred to in the first indent or of the applicant, on condition that they are unmarried and regardless of whether they were born in or out of wedlock or adopted as defined under national law;

— the father, mother or another adult responsible for the applicant whether by law or by the practice of the Member State concerned, when that applicant is a minor and unmarried;

(d) 'minor': means a third-country national or stateless person below the age of 18 years;

(e) 'unaccompanied minor': means a minor who arrives on the territory of the Member States unaccompanied by an adult responsible for him or her whether by law or by the practice of the Member State concerned, and for as long as he or she is not effectively taken into the care of such a person; it includes a minor who is left unaccompanied after he or she has entered the territory of the Member States;

(f) 'reception conditions': means the full set of measures that Member States grant to applicants in accordance with this Directive;

(g) 'material reception conditions': means the reception conditions that include housing, food and clothing provided in kind, or as financial allowances or in vouchers, or a combination of the three, and a daily expenses allowance;

(h) 'detention': means confinement of an applicant by a Member State within a particular place, where the applicant is deprived of his or her freedom of movement;

(i) 'accommodation centre': means any place used for the collective housing of applicants;

(j) 'representative': means a person or an organisation appointed by the competent bodies in order to assist and represent an unaccompanied minor in procedures provided for in this Directive with a view to ensuring the best interests of the child and exercising legal capacity for the minor where necessary. Where an organisation is appointed as a representative, it shall designate a person responsible for carrying out the duties of representative in respect of the unaccompanied minor, in accordance with this Directive;

(k) 'applicant with special reception needs': means a vulnerable person, in accordance with Article 21, who is in need of special guarantees in order to benefit from the rights and comply with the obligations provided for in this Directive.

Article 3

Scope

1. This Directive shall apply to all third-country nationals and stateless persons who make an application for international protection on the territory, including at the border, in the territorial waters or in the transit zones of a Member State, as long as they are allowed to remain on the territory as applicants, as well as to family members, if they are covered by such application for international protection according to national law.

2. This Directive shall not apply in cases of requests for diplomatic or territorial asylum submitted to representations of Member States.

3. This Directive shall not apply when the provisions of Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof [1] are applied.

4. Member States may decide to apply this Directive in connection with procedures for deciding on applications for kinds of protection other than that emanating from Directive 2011/95/EU.

Article 4

More favourable provisions

Member States may introduce or retain more favourable provisions in the field of reception conditions for applicants and other close relatives of the applicant who are present in the same Member State when they are dependent on him or her, or for humanitarian reasons, insofar as these provisions are compatible with this Directive.

CHAPTER II

GENERAL PROVISIONS ON RECEPTION CONDITIONS

Article 5

Information

1. Member States shall inform applicants, within a reasonable time not exceeding 15 days after they have lodged their application for international protection, of at least any established benefits and of the obligations with which they must comply relating to reception conditions.

Member States shall ensure that applicants are provided with information on organisations or groups of persons that provide specific legal assistance and organisations that might be able to help or inform them concerning the available reception conditions, including health care.

2. Member States shall ensure that the information referred to in paragraph 1 is in writing and, in a language that the applicant understands or is reasonably supposed to understand. Where appropriate, this information may also be supplied orally.

Article 6

Documentation

1. Member States shall ensure that, within three days of the lodging of an application for international protection, the applicant is provided with a document issued in his or her own name certifying his or her status as an applicant or testifying that he or she is allowed to stay on the territory of the Member State while his or her application is pending or being examined.

If the holder is not free to move within all or a part of the territory of the Member State, the document shall also certify that fact.

2. Member States may exclude application of this Article when the applicant is in detention and during the examination of an application for international protection made at the border or within the context of a procedure to decide on the right of the applicant to enter the territory of a Member State. In specific cases, during the examination of an application for international protection, Member States may provide applicants with other evidence equivalent to the document referred to in paragraph 1.

3. The document referred to in paragraph 1 need not certify the identity of the applicant.

4. Member States shall adopt the necessary measures to provide applicants with the document referred to in paragraph 1, which must be valid for as long as they are authorised to remain on the territory of the Member State concerned.

5. Member States may provide applicants with a travel document when serious humanitarian reasons arise that require their presence in another State.

[1] OJ L 212, 7.8.2001, p. 12.

6. Member States shall not impose unnecessary or disproportionate documentation or other administrative requirements on applicants before granting them the rights to which they are entitled under this Directive for the sole reason that they are applicants for international protection.

Article 7

Residence and freedom of movement

1. Applicants may move freely within the territory of the host Member State or within an area assigned to them by that Member State. The assigned area shall not affect the unalienable sphere of private life and shall allow sufficient scope for guaranteeing access to all benefits under this Directive.

2. Member States may decide on the residence of the applicant for reasons of public interest, public order or, when necessary, for the swift processing and effective monitoring of his or her application for international protection.

3. Member States may make provision of the material reception conditions subject to actual residence by the applicants in a specific place, to be determined by the Member States. Such a decision, which may be of a general nature, shall be taken individually and established by national law.

4. Member States shall provide for the possibility of granting applicants temporary permission to leave the place of residence mentioned in paragraphs 2 and 3 and/or the assigned area mentioned in paragraph 1. Decisions shall be taken individually, objectively and impartially and reasons shall be given if they are negative.

The applicant shall not require permission to keep appointments with authorities and courts if his or her appearance is necessary.

5. Member States shall require applicants to inform the competent authorities of their current address and notify any change of address to such authorities as soon as possible.

Article 8

Detention

1. Member States shall not hold a person in detention for the sole reason that he or she is an applicant in accordance with Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection [1].

2. When it proves necessary and on the basis of an individual assessment of each case, Member States may detain an applicant, if other less coercive alternative measures cannot be applied effectively.

3. An applicant may be detained only:

(a) in order to determine or verify his or her identity or nationality;

(b) in order to determine those elements on which the application for international protection is based which could not be obtained in the absence of detention, in particular when there is a risk of absconding of the applicant;

(c) in order to decide, in the context of a procedure, on the applicant's right to enter the territory;

(d) when he or she is detained subject to a return procedure under Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals [2], in order to prepare the return and/or carry out the removal process, and the Member State concerned can substantiate on the basis of objective criteria, including that he or she already had the opportunity to access the asylum procedure, that there are reasonable grounds to believe that he or she is making the application for international protection merely in order to delay or frustrate the enforcement of the return decision;

(e) when protection of national security or public order so requires;

(f) in accordance with Article 28 of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person [3].

The grounds for detention shall be laid down in national law.

4. Member States shall ensure that the rules concerning alternatives to detention, such as regular reporting to the authorities, the deposit of a financial guarantee, or an obligation to stay at an assigned place, are laid down in national law.

[1] See page 60 of this Official Journal.

[2] OJ L 348, 24.12.2008, p. 98.

[3] See page 31 of this Official Journal.

Article 9

Guarantees for detained applicants

1. An applicant shall be detained only for as short a period as possible and shall be kept in detention only for as long as the grounds set out in Article 8(3) are applicable.

Administrative procedures relevant to the grounds for detention set out in Article 8(3) shall be executed with due diligence. Delays in administrative procedures that cannot be attributed to the applicant shall not justify a continuation of detention.

2. Detention of applicants shall be ordered in writing by judicial or administrative authorities. The detention order shall state the reasons in fact and in law on which it is based.

3. Where detention is ordered by administrative authorities, Member States shall provide for a speedy judicial review of the lawfulness of detention to be conducted *ex officio* and/or at the request of the applicant. When conducted *ex officio*, such review shall be decided on as speedily as possible from the beginning of detention. When conducted at the request of the applicant, it shall be decided on as speedily as possible after the launch of the relevant proceedings. To this end, Member States shall define in national law the period within which the judicial review *ex officio* and/or the judicial review at the request of the applicant shall be conducted.

Where, as a result of the judicial review, detention is held to be unlawful, the applicant concerned shall be released immediately.

4. Detained applicants shall immediately be informed in writing, in a language which they understand or are reasonably supposed to understand, of the reasons for detention and the procedures laid down in national law for challenging the detention order, as well as of the possibility to request free legal assistance and representation.

5. Detention shall be reviewed by a judicial authority at reasonable intervals of time, *ex officio* and/or at the request of the applicant concerned, in particular whenever it is of a prolonged duration, relevant circumstances arise or new information becomes available which may affect the lawfulness of detention.

6. In cases of a judicial review of the detention order provided for in paragraph 3, Member States shall ensure that applicants have access to free legal assistance and representation. This shall include, at least, the preparation of the required procedural documents and participation in the hearing before the judicial authorities on behalf of the applicant. Free legal assistance and representation shall be provided by suitably qualified persons as admitted or permitted under national law whose interests do not conflict or could not potentially conflict with those of the applicant.

7. Member States may also provide that free legal assistance and representation are granted:

(a) only to those who lack sufficient resources; and/or

(b) only through the services provided by legal advisers or other counsellors specifically designated by national law to assist and represent applicants.

8. Member States may also:

(a) impose monetary and/or time limits on the provision of free legal assistance and representation, provided that such limits do not arbitrarily restrict access to legal assistance and representation;

(b) provide that, as regards fees and other costs, the treatment of applicants shall not be more favourable than the treatment generally accorded to their nationals in matters pertaining to legal assistance.

9. Member States may demand to be reimbursed wholly or partially for any costs granted if and when the applicant's financial situation has improved considerably or if the decision to grant such costs was taken on the basis of false information supplied by the applicant.

10. Procedures for access to legal assistance and representation shall be laid down in national law.

Article 10

Conditions of detention

1. Detention of applicants shall take place, as a rule, in specialised detention facilities. Where a Member State cannot provide accommodation in a specialised detention facility and is obliged to resort to prison accommodation, the detained applicant shall be kept separately from ordinary prisoners and the detention conditions provided for in this Directive shall apply.

As far as possible, detained applicants shall be kept separately from other third-country nationals who have not lodged an application for international protection.

When applicants cannot be detained separately from other third-country nationals, the Member State concerned shall ensure that the detention conditions provided for in this Directive are applied.

2. Detained applicants shall have access to open-air spaces.

3. Member States shall ensure that persons representing the United Nations High Commissioner for Refugees (UNHCR) have the possibility to communicate with and visit applicants in conditions that respect privacy. That possibility shall also apply to an organisation which is working on the territory of the Member State concerned on behalf of UNHCR pursuant to an agreement with that Member State.

4. Member States shall ensure that family members, legal advisers or counsellors and persons representing relevant non-governmental organisations recognised by the Member State concerned have the possibility to communicate with and visit applicants in conditions that respect privacy. Limits to access to the detention facility may be imposed only where, by virtue of national law, they are objectively necessary for the security, public order or administrative management of the detention facility, provided that access is not thereby severely restricted or rendered impossible.

5. Member States shall ensure that applicants in detention are systematically provided with information which explains the rules applied in the facility and sets out their rights and obligations in a language which they understand or are reasonably supposed to understand. Member States may derogate from this obligation in duly justified cases and for a reasonable period which shall be as short as possible, in the event that the applicant is detained at a border post or in a transit zone. This derogation shall not apply in cases referred to in Article 43 of Directive 2013/32/EU.

Article 11

Detention of vulnerable persons and of applicants with special reception needs

1. The health, including mental health, of applicants in detention who are vulnerable persons shall be of primary concern to national authorities.

Where vulnerable persons are detained, Member States shall ensure regular monitoring and adequate support taking into account their particular situation, including their health.

2. Minors shall be detained only as a measure of last resort and after it having been established that other less coercive alternative measures cannot be applied effectively. Such detention shall be for the shortest period of time and all efforts shall be made to release the detained minors and place them in accommodation suitable for minors.

The minor's best interests, as prescribed in Article 23(2), shall be a primary consideration for Member States.

Where minors are detained, they shall have the possibility to engage in leisure activities, including play and recreational activities appropriate to their age.

3. Unaccompanied minors shall be detained only in exceptional circumstances. All efforts shall be made to release the detained unaccompanied minor as soon as possible.

Unaccompanied minors shall never be detained in prison accommodation.

As far as possible, unaccompanied minors shall be provided with accommodation in institutions provided with personnel and facilities which take into account the needs of persons of their age.

Where unaccompanied minors are detained, Member States shall ensure that they are accommodated separately from adults.

4. Detained families shall be provided with separate accommodation guaranteeing adequate privacy.

5. Where female applicants are detained, Member States shall ensure that they are accommodated separately from male applicants, unless the latter are family members and all individuals concerned consent thereto.

Exceptions to the first subparagraph may also apply to the use of common spaces designed for recreational or social activities, including the provision of meals.

6. In duly justified cases and for a reasonable period that shall be as short as possible Member States may derogate from the third subparagraph of paragraph 2, paragraph 4 and the first subparagraph of paragraph 5, when the applicant is detained at a border post or in a transit zone, with the exception of the cases referred to in Article 43 of Directive 2013/32/EU.

Article 12

Families

Member States shall take appropriate measures to maintain as far as possible family unity as present within their territory, if applicants are provided with housing by the Member State concerned. Such measures shall be implemented with the applicant's agreement.

Article 13

Medical screening

Member States may require medical screening for applicants on public health grounds.

Article 14

Schooling and education of minors

1. Member States shall grant to minor children of applicants and to applicants who are minors access to the education system under similar conditions as their own nationals for so long as an expulsion measure against them or their parents is not actually enforced. Such education may be provided in accommodation centres.

The Member State concerned may stipulate that such access must be confined to the State education system.

Member States shall not withdraw secondary education for the sole reason that the minor has reached the age of majority.

2. Access to the education system shall not be postponed for more than three months from the date on which the application for international protection was lodged by or on behalf of the minor.

Preparatory classes, including language classes, shall be provided to minors where it is necessary to facilitate their access to and participation in the education system as set out in paragraph 1.

3. Where access to the education system as set out in paragraph 1 is not possible due to the specific situation of the minor, the Member State concerned shall offer other education arrangements in accordance with its national law and practice.

Article 15

Employment

1. Member States shall ensure that applicants have access to the labour market no later than 9 months from the date when the application for international protection was lodged if a first instance decision by the competent authority has not been taken and the delay cannot be attributed to the applicant.

2. Member States shall decide the conditions for granting access to the labour market for the applicant, in accordance with their national law, while ensuring that applicants have effective access to the labour market.

For reasons of labour market policies, Member States may give priority to Union citizens and nationals of States parties to the Agreement on the European Economic Area, and to legally resident third-country nationals.

3. Access to the labour market shall not be withdrawn during appeals procedures, where an appeal against a negative decision in a regular procedure has suspensive effect, until such time as a negative decision on the appeal is notified.

Article 16

Vocational training

Member States may allow applicants access to vocational training irrespective of whether they have access to the labour market.

Access to vocational training relating to an employment contract shall depend on the extent to which the applicant has access to the labour market in accordance with Article 15.

Article 17

General rules on material reception conditions and health care

1. Member States shall ensure that material reception conditions are available to applicants when they make their application for international protection.

2. Member States shall ensure that material reception conditions provide an adequate standard of living for applicants, which guarantees their subsistence and protects their physical and mental health.

Member States shall ensure that that standard of living is met in the specific situation of vulnerable persons, in accordance with Article 21, as well as in relation to the situation of persons who are in detention.

3. Member States may make the provision of all or some of the material reception conditions and health care subject to the condition that applicants do not have sufficient means to have a standard of living adequate for their health and to enable their subsistence.

4. Member States may require applicants to cover or contribute to the cost of the material reception conditions and of the health care provided for in this Directive, pursuant to the provision of paragraph 3, if the applicants have sufficient resources, for example if they have been working for a reasonable period of time.

If it transpires that an applicant had sufficient means to cover material reception conditions and health care at the time when those basic needs were being covered, Member States may ask the applicant for a refund.

5. Where Member States provide material reception conditions in the form of financial allowances or vouchers, the amount thereof shall be determined on the basis of the level(s) established by the Member State concerned either by law or by the practice to ensure adequate standards of living for nationals. Member States may grant less favourable treatment to applicants compared with nationals in this respect, in particular where material support is partially provided in kind or where those level(s), applied for nationals, aim to ensure a standard of living higher than that prescribed for applicants under this Directive.

Article 18

Modalities for material reception conditions

1. Where housing is provided in kind, it should take one or a combination of the following forms:

(a) premises used for the purpose of housing applicants during the examination of an application for international protection made at the border or in transit zones;

(b) accommodation centres which guarantee an adequate standard of living;

(c) private houses, flats, hotels or other premises adapted for housing applicants.

2. Without prejudice to any specific conditions of detention as provided for in Articles 10 and 11, in relation to housing referred to in paragraph 1(a), (b) and (c) of this Article Member States shall ensure that:

(a) applicants are guaranteed protection of their family life;

(b) applicants have the possibility of communicating with relatives, legal advisers or counsellors, persons representing UNHCR and other relevant national, international and non-governmental organisations and bodies;

(c) family members, legal advisers or counsellors, persons representing UNHCR and relevant non-governmental organisations recognised by the Member State concerned are granted access in order to assist the applicants. Limits on such access may be imposed only on grounds relating to the security of the premises and of the applicants.

3. Member States shall take into consideration gender and age-specific concerns and the situation of vulnerable persons in relation to applicants within the premises and accommodation centres referred to in paragraph 1(a) and (b).

4. Member States shall take appropriate measures to prevent assault and gender-based violence, including sexual assault and harassment, within the premises and accommodation centres referred to in paragraph 1(a) and (b).

5. Member States shall ensure, as far as possible, that dependent adult applicants with special reception needs are accommodated together with close adult relatives who are already present in the same Member State and who are responsible for them whether by law or by the practice of the Member State concerned.

6. Member States shall ensure that transfers of applicants from one housing facility to another take place only when necessary. Member States shall provide for the possibility for applicants to inform their legal advisers or counsellors of the transfer and of their new address.

7. Persons working in accommodation centres shall be adequately trained and shall be bound by the confidentiality rules provided for in national law in relation to any information they obtain in the course of their work.

8. Member States may involve applicants in managing the material resources and non-material aspects of life in the centre through an advisory board or council representing residents.

9. In duly justified cases, Member States may exceptionally set modalities for material reception conditions different from those provided for in this Article, for a reasonable period which shall be as short as possible, when:

(a) an assessment of the specific needs of the applicant is required, in accordance with Article 22;

(b) housing capacities normally available are temporarily exhausted.

Such different conditions shall in any event cover basic needs.

Article 19

Health care

1. Member States shall ensure that applicants receive the necessary health care which shall include, at least, emergency care and essential treatment of illnesses and of serious mental disorders.

2. Member States shall provide necessary medical or other assistance to applicants who have special reception needs, including appropriate mental health care where needed.

CHAPTER III

REDUCTION OR WITHDRAWAL OF MATERIAL RECEPTION CONDITIONS

Article 20

Reduction or withdrawal of material reception conditions

1. Member States may reduce or, in exceptional and duly justified cases, withdraw material reception conditions where an applicant:

(a) abandons the place of residence determined by the competent authority without informing it or, if requested, without permission; or

(b) does not comply with reporting duties or with requests to provide information or to appear for personal interviews concerning the asylum procedure during a reasonable period laid down in national law; or

(c) has lodged a subsequent application as defined in Article 2(q) of Directive 2013/32/EU.

In relation to cases (a) and (b), when the applicant is traced or voluntarily reports to the competent authority, a duly motivated decision, based on the reasons for the disappearance, shall be taken on the reinstallation of the grant of some or all of the material reception conditions withdrawn or reduced.

2. Member States may also reduce material reception conditions when they can establish that the applicant, for no justifiable reason, has not lodged an application for international protection as soon as reasonably practicable after arrival in that Member State.

3. Member States may reduce or withdraw material reception conditions where an applicant has concealed financial resources, and has therefore unduly benefited from material reception conditions.

4. Member States may determine sanctions applicable to serious breaches of the rules of the accommodation centres as well as to seriously violent behaviour.

5. Decisions for reduction or withdrawal of material reception conditions or sanctions referred to in paragraphs 1, 2, 3 and 4 of this Article shall be taken individually, objectively and impartially and reasons shall be given. Decisions shall be based on the particular situation of the person concerned, especially with regard to persons covered by Article 21, taking into account the principle of proportionality. Member States shall under all circumstances ensure access to health care in accordance with Article 19 and shall ensure a dignified standard of living for all applicants.

6. Member States shall ensure that material reception conditions are not withdrawn or reduced before a decision is taken in accordance with paragraph 5.

CHAPTER IV

PROVISIONS FOR VULNERABLE PERSONS

Article 21

General principle

Member States shall take into account the specific situation of vulnerable persons such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation, in the national law implementing this Directive.

Article 22

Assessment of the special reception needs of vulnerable persons

1. In order to effectively implement Article 21, Member States shall assess whether the applicant is an applicant with special reception needs. Member States shall also indicate the nature of such needs.

That assessment shall be initiated within a reasonable period of time after an application for international protection is made and may be integrated into existing national procedures. Member States shall ensure that those special reception needs are also addressed, in accordance with the provisions of this Directive, if they become apparent at a later stage in the asylum procedure.

Member States shall ensure that the support provided to applicants with special reception needs in accordance with this Directive takes into account their special reception needs throughout the duration of the asylum procedure and shall provide for appropriate monitoring of their situation.

2. The assessment referred to in paragraph 1 need not take the form of an administrative procedure.

3. Only vulnerable persons in accordance with Article 21 may be considered to have special reception needs and thus benefit from the specific support provided in accordance with this Directive.

4. The assessment provided for in paragraph 1 shall be without prejudice to the assessment of international protection needs pursuant to Directive 2011/95/EU.

Article 23

Minors

1. The best interests of the child shall be a primary consideration for Member States when implementing the provisions of this Directive that involve minors. Member States shall ensure a standard of living adequate for the minor's physical, mental, spiritual, moral and social development.

2. In assessing the best interests of the child, Member States shall in particular take due account of the following factors:

(a) family reunification possibilities;

(b) the minor's well-being and social development, taking into particular consideration the minor's background;

(c) safety and security considerations, in particular where there is a risk of the minor being a victim of human trafficking;

(d) the views of the minor in accordance with his or her age and maturity.

3. Member States shall ensure that minors have access to leisure activities, including play and recreational activities appropriate to their age within the premises and accommodation centres referred to in Article 18(1)(a) and (b) and to open-air activities.

4. Member States shall ensure access to rehabilitation services for minors who have been victims of any form of abuse, neglect, exploitation, torture or cruel, inhuman and degrading treatment, or who have suffered from armed conflicts, and ensure that appropriate mental health care is developed and qualified counselling is provided when needed.

5. Member States shall ensure that minor children of applicants or applicants who are minors are lodged with their parents, their unmarried minor siblings or with the adult responsible for them whether by law or by the practice of the Member State concerned, provided it is in the best interests of the minors concerned.

Article 24

Unaccompanied minors

1. Member States shall as soon as possible take measures to ensure that a representative represents and assists the unaccompanied minor to enable him or her to benefit from the rights and comply with the obligations provided for in this Directive. The unaccompanied minor shall be informed immediately of the appointment of the representative. The representative shall perform his or her duties in accordance with the principle of the best interests of the child, as prescribed in Article 23(2), and shall have the necessary expertise to that end. In order to ensure the minor's well-being and social development referred to in Article 23(2)(b), the person acting as representative shall be changed only when necessary. Organisations or individuals whose interests conflict or could potentially conflict with those of the unaccompanied minor shall not be eligible to become representatives.

Regular assessments shall be made by the appropriate authorities, including as regards the availability of the necessary means for representing the unaccompanied minor.

2. Unaccompanied minors who make an application for international protection shall, from the moment they are admitted to the territory until the moment when they are obliged to leave the Member State in which the application for international protection was made or is being examined, be placed:

(a) with adult relatives;

(b) with a foster family;

(c) in accommodation centres with special provisions for minors;

(d) in other accommodation suitable for minors.

Member States may place unaccompanied minors aged 16 or over in accommodation centres for adult applicants, if it is in their best interests, as prescribed in Article 23(2).

As far as possible, siblings shall be kept together, taking into account the best interests of the minor concerned and, in particular, his or her age and degree of maturity. Changes of residence of unaccompanied minors shall be limited to a minimum.

3. Member States shall start tracing the members of the unaccompanied minor's family, where necessary with the assistance of international or other relevant organisations, as soon as possible after an application for international protection is made, whilst protecting his or her best interests. In cases where there may be a threat to the life or integrity of the minor or his or her close relatives, particularly if they have remained in the country of origin, care must be taken to ensure that the collection, processing and circulation of information concerning those persons is undertaken on a confidential basis, so as to avoid jeopardising their safety.

4. Those working with unaccompanied minors shall have had and shall continue to receive appropriate training concerning their needs, and shall be bound by the confidentiality rules provided for in national law, in relation to any information they obtain in the course of their work.

Article 25

Victims of torture and violence

1. Member States shall ensure that persons who have been subjected to torture, rape or other serious acts of violence receive the necessary treatment for the damage caused by such acts, in particular access to appropriate medical and psychological treatment or care.

2. Those working with victims of torture, rape or other serious acts of violence shall have had and shall continue to receive appropriate training concerning their needs, and shall be bound by the confidentiality rules provided for in national law, in relation to any information they obtain in the course of their work.

CHAPTER V

APPEALS

Article 26

Appeals

1. Member States shall ensure that decisions relating to the granting, withdrawal or reduction of benefits under this Directive or decisions taken under Article 7 which affect applicants individually may be the subject of an appeal within the procedures laid down in national law. At least in the last instance the possibility of an appeal or a review, in fact and in law, before a judicial authority shall be granted.

2. In cases of an appeal or a review before a judicial authority referred to in paragraph 1, Member States shall ensure that free legal assistance and representation is made available on request in so far as such aid is necessary to ensure effective access to justice. This shall include, at least, the preparation of the required procedural documents and participation in the hearing before the judicial authorities on behalf of the applicant.

Free legal assistance and representation shall be provided by suitably qualified persons, as admitted or permitted under national law, whose interests do not conflict or could not potentially conflict with those of the applicant.

3. Member States may also provide that free legal assistance and representation are granted:

(a) only to those who lack sufficient resources; and/or

(b) only through the services provided by legal advisers or other counsellors specifically designated by national law to assist and represent applicants.

Member States may provide that free legal assistance and representation not be made available if the appeal or review is considered by a competent authority to have no tangible prospect of success. In such a case, Member States shall ensure that legal assistance and representation is not arbitrarily restricted and that the applicant's effective access to justice is not hindered.

4. Member States may also:

(a) impose monetary and/or time limits on the provision of free legal assistance and representation, provided that such limits do not arbitrarily restrict access to legal assistance and representation;

(b) provide that, as regards fees and other costs, the treatment of applicants shall not be more favorable than the treatment generally accorded to their nationals in matters pertaining to legal assistance.

5. Member States may demand to be reimbursed wholly or partially for any costs granted if and when the applicant's financial situation has improved considerably or if the decision to grant such costs was taken on the basis of false information supplied by the applicant.

6. Procedures for access to legal assistance and representation shall be laid down in national law.

CHAPTER VI

ACTIONS TO IMPROVE THE EFFICIENCY OF THE RECEPTION SYSTEM

Article 27

Competent authorities

Each Member State shall notify the Commission of the authorities responsible for fulfilling the obligations arising under this Directive. Member States shall inform the Commission of any changes in the identity of such authorities.

Article 28

Guidance, monitoring and control system

1. Member States shall, with due respect to their constitutional structure, put in place relevant mechanisms in order to ensure that appropriate guidance, monitoring and control of the level of reception conditions are established.

2. Member States shall submit relevant information to the Commission in the form set out in Annex I, by 20 July 2016 at the latest.

Article 29

Staff and resources

1. Member States shall take appropriate measures to ensure that authorities and other organisations implementing this Directive have received the necessary basic training with respect to the needs of both male and female applicants.

2. Member States shall allocate the necessary resources in connection with the national law implementing this Directive.

CHAPTER VII

FINAL PROVISIONS

Article 30

Reports

By 20 July 2017 at the latest, the Commission shall report to the European Parliament and the Council on the application of this Directive and shall propose any amendments that are necessary.

Member States shall send the Commission all the information that is appropriate for drawing up the report by 20 July 2016.

After presenting the first report, the Commission shall report to the European Parliament and the Council on the application of this Directive at least every five years.

Article 31

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles 1 to 12, 14 to 28 and 30 and Annex I by 20 July 2015 at the latest. They shall forthwith communicate to the Commission the text of those measures.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. They shall also include a statement that references in existing laws, regulations and administrative provisions to the directive repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 32

Repeal

Directive 2003/9/EC is repealed for the Members States bound by this Directive with effect from 21 July 2015, without prejudice to the obligations of the Member States relating to the time-limit for transposition into national law of the Directive set out in Annex II, Part B.

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex III.

Article 33

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Articles 13 and 29 shall apply from 21 July 2015.

Article 34

Addressees

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Brussels, 26 June 2013.

For the European Parliament	*For the Council*
The President	*The President*
M. SCHULZ	A. SHATTER

ANNEX I

Reporting form on the information to be submitted by Member States, as required under Article 28(2)

After the date referred to in Article 28(2), the information to be submitted by Member States shall be re-submitted to the Commission when there is a substantial change in the national law or practice that supersedes the information provided.

1. On the basis of Articles 2(k) and 22, please explain the different steps for the identification of persons with special reception needs, including the moment when it is triggered and its consequences in relation to addressing such needs, in particular for unaccompanied minors, victims of torture, rape or other serious forms of psychological, physical or sexual violence and victims of human trafficking.

2. Provide full information on the type, name and format of the documents provided for in Article 6.

3. With reference to Article 15, please indicate the extent to which any particular conditions are attached to labour market access for applicants, and describe such restrictions in detail.

4. With reference to Article 2(g), please describe how material reception conditions are provided (i.e. which material reception conditions are provided in kind, in money, in vouchers or in a combination of those elements) and indicate the level of the daily expenses allowance provided to applicants.

5. Where applicable, with reference to Article 17(5), please explain the point(s) of reference applied by national law or practice with a view to determining the level of financial assistance provided to applicants. To the extent that there is less favourable treatment of applicants compared with nationals, explain the reasons for it.

ANNEX II

PART A

Repealed Directive

(referred to in Article 32)

Council Directive 2003/9/EC (OJ L 31, 6.2.2003, p. 18).

PART B

Time-limit for transposition into national law

(referred to in Article 32)

Directive	Time-limit for transposition
2003/9/EC	6 February 2005

ANNEX III

Correlation Table

Directive 2003/9/EC	This Directive
Article 1	Article 1
Article 2, introductory wording	Article 2, introductory wording
Article 2(a)	—
Article 2(b)	—
—	Article 2(a)
Article 2(c)	Article 2(b)
Article 2(d), introductory wording	Article 2(c), introductory wording
Article 2(d)(i)	Article 2(c), first indent
Article 2(d)(ii)	Article 2(c), second indent
—	Article 2(c), third indent
Article 2(e), (f) and (g)	—
—	Article 2(d)
Article 2(h)	Article 2(e)
Article 2(i)	Article 2(f)
Article 2(j)	Article 2(g)
Article 2(k)	Article 2(h)
Article 2(l)	Article 2(i)
—	Article 2(j)
—	Article 2(k)
Article 3	Article 3
Article 4	Article 4
Article 5	Article 5
Article 6(1) to (5)	Article 6(1) to (5)
—	Article 6(6)
Article 7(1) and (2)	Article 7(1) and (2)
Article 7(3)	—
Article 7(4) to (6)	Article 7(3) to (5)

Directive 2003/9/EC	This Directive
—	Article 8
—	Article 9
—	Article 10
—	Article 11
Article 8	Article 12
Article 9	Article 13
Article 10(1)	Article 14(1)
Article 10(2)	Article 14(2), first subparagraph
—	Article 14(2), second subparagraph
Article 10(3)	Article 14(3)
Article 11(1)	—
—	Article 15(1)
Article 11(2)	Article 15(2)
Article 11(3)	Article 15(3)
Article 11(4)	—
Article 12	Article 16
Article 13(1) to (4)	Article 17(1) to (4)
Article 13(5)	—
—	Article 17(5)
Article 14(1)	Article 18(1)
Article 14(2), first subparagraph, introductory wording, points (a) and (b)	Article 18(2), introductory wording, points (a) and (b)
Article 14(7)	Article 18(2)(c)
—	Article 18(3)
Article 14(2), second subparagraph	Article 18(4)
Article 14(3)	—
—	Article 18(5)

Directive 2003/9/EC	This Directive
Article 14(4)	Article 18(6)
Article 14(5)	Article 18(7)
Article 14(6)	Article 18(8)
Article 14(8), first subparagraph, introductory wording, first indent	Article 18(9), first subparagraph, introductory wording, point (a)
Article 14(8), first subparagraph, second indent	—
Article 14(8), first subparagraph, third indent	Article 18(9), first subparagraph, point (b)
Article 14(8), first subparagraph, fourth indent	—
Article 14(8), second subparagraph	Article 18(9), second subparagraph
Article 15	Article 19
Article 16(1), introductory wording	Article 20(1), introductory wording
Article 16(1)(a), first subparagraph, first, second and third indents	Article 20(1), first subparagraph, points (a), (b) and (c)
Article 16(1)(a), second subparagraph	Article 20(1), second subparagraph
Article 16(1)(b)	—
Article 16(2)	—
—	Article 20(2) and (3)
Article 16(3) to (5)	Article 20(4) to (6)
Article 17(1)	Article 21
Article 17(2)	—
—	Article 22
Article 18(1)	Article 23(1)
—	Article 23(2) and (3)
Article 18(2)	Article 23(4)
—	Article 23(5)
Article 19	Article 24
Article 20	Article 25(1)
—	Article 25(2)
Article 21(1)	Article 26(1)

Directive 2003/9/EC	This Directive
—	Article 26(2) to (5)
Article 21(2)	Article 26(6)
Article 22	—
—	Article 27
Article 23	Article 28(1)
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REGULATION (EU) No 604/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 26 June 2013

establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 78(2)(e) thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Economic and Social Committee [1],

Having regard to the opinion of the Committee of the Regions [2],

Acting in accordance with the ordinary legislative procedure [3],

Whereas:

(1) A number of substantive changes are to be made to Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national [4]. In the interests of clarity, that Regulation should be recast.

(2) A common policy on asylum, including a Common European Asylum System (CEAS), is a constituent part of the European Union's objective of progressively establishing an area of freedom, security and justice open to those who, forced by circumstances, legitimately seek protection in the Union.

(3) The European Council, at its special meeting in Tampere on 15 and 16 October 1999, agreed to work towards establishing the CEAS, based on the full and inclusive application of the Geneva Convention Relating to the Status of Refugees of 28 July 1951, as supplemented by the New York Protocol of 31 January 1967 ('the Geneva Convention'), thus ensuring that nobody is sent back to persecution, i.e. maintaining the principle of *non-refoulement*. In this respect, and without the responsibility criteria laid down in this Regulation being affected, Member States, all respecting the principle of *non-refoulement*, are considered as safe countries for third-country nationals.

(4) The Tampere conclusions also stated that the CEAS should include, in the short-term, a clear and workable method for determining the Member State responsible for the examination of an asylum application.

(5) Such a method should be based on objective, fair criteria both for the Member States and for the persons concerned. It should, in particular, make it possible to determine rapidly the Member State responsible, so as to guarantee effective access to the procedures for granting international protection and not to compromise the objective of the rapid processing of applications for international protection.

(6) The first phase in the creation of a CEAS that should lead, in the longer term, to a common procedure and a uniform status, valid throughout the Union, for those granted international protection, has now been completed. The European Council of 4 November 2004 adopted The Hague Programme which set the objectives to be implemented in the area of freedom, security and justice in the period 2005-2010. In this respect, The Hague Programme invited the European Commission to conclude the evaluation of the first-phase legal instruments and to submit the second-phase instruments and measures to the European Parliament and to the Council with a view to their adoption before 2010.

(7) In the Stockholm Programme, the European Council reiterated its commitment to the objective of establishing a common area of protection and solidarity in accordance with Article 78 of the Treaty on the Functioning of the European Union (TFEU), for those granted

[1] OJ C 317, 23.12.2009, p. 115.
[2] OJ C 79, 27.3.2010, p. 58.
[3] Position of the European Parliament of 7 May 2009 (OJ C 212 E, 5.8.2010, p. 370) and position of the Council at first reading of 6 June 2013 (not yet published in the Official Journal). Position of the European Parliament of 10 June 2013 (not yet published in the Official Journal).
[4] OJ L 50, 25.2.2003, p. 1.

international protection, by 2012 at the latest. Furthermore it emphasised that the Dublin system remains a cornerstone in building the CEAS, as it clearly allocates responsibility among Member States for the examination of applications for international protection.

(8) The resources of the European Asylum Support Office (EASO), established by Regulation (EU) No 439/2010 of the European Parliament and of the Council [1], should be available to provide adequate support to the relevant services of the Member States responsible for implementing this Regulation. In particular, EASO should provide solidarity measures, such as the Asylum Intervention Pool with asylum support teams, to assist those Member States which are faced with particular pressure and where applicants for international protection ('applicants') cannot benefit from adequate standards, in particular as regards reception and protection.

(9) In the light of the results of the evaluations undertaken of the implementation of the first-phase instruments, it is appropriate, at this stage, to confirm the principles underlying Regulation (EC) No 343/2003, while making the necessary improvements, in the light of experience, to the effectiveness of the Dublin system and the protection granted to applicants under that system. Given that a well-functioning Dublin system is essential for the CEAS, its principles and functioning should be reviewed as other components of the CEAS and Union solidarity tools are built up. A comprehensive 'fitness check' should be foreseen by conducting an evidence-based review covering the legal, economic and social effects of the Dublin system, including its effects on fundamental rights.

(10) In order to ensure equal treatment for all applicants and beneficiaries of international protection, and consistency with the current Union asylum *acquis*, in particular with Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted [2], the scope of this Regulation encompasses applicants for subsidiary protection and persons eligible for subsidiary protection.

(11) Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection [3] should apply to the procedure for the determination of the Member State responsible as regulated under this Regulation, subject to the limitations in the application of that Directive.

(12) Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection [4] should apply in addition and without prejudice to the provisions concerning the procedural safeguards regulated under this Regulation, subject to the limitations in the application of that Directive.

(13) In accordance with the 1989 United Nations Convention on the Rights of the Child and with the Charter of Fundamental Rights of the European Union, the best interests of the child should be a primary consideration of Member States when applying this Regulation. In assessing the best interests of the child, Member States should, in particular, take due account of the minor's well-being and social development, safety and security considerations and the views of the minor in accordance with his or her age and maturity, including his or her background. In addition, specific procedural guarantees for unaccompanied minors should be laid down on account of their particular vulnerability.

(14) In accordance with the European Convention for the Protection of Human Rights and Fundamental Freedoms and with the Charter of Fundamental Rights of the European Union, respect for family life should be a primary consideration of Member States when applying this Regulation.

(15) The processing together of the applications for international protection of the members of one family by a single Member State makes it possible to ensure that the applications are examined thoroughly, the decisions taken in respect of them are consistent and the members of one family are not separated.

(16) In order to ensure full respect for the principle of family unity and for the best interests of the child, the existence of a relationship of dependency between an applicant and his or her child, sibling or parent on account of the applicant's pregnancy or maternity, state of health or old age, should become a binding responsibility criterion. When the applicant is an unaccompanied minor, the presence of a family member or relative on the territory of another Member State who can take care of him or her should also become a binding responsibility criterion.

[1] OJ L 132, 29.5.2010, p. 11.
[2] OJ L 337, 20.12.2011, p. 9.
[3] See page 96 of this Official Journal.
[4] See page 60 of this Official Journal.

(17) Any Member State should be able to derogate from the responsibility criteria, in particular on humanitarian and compassionate grounds, in order to bring together family members, relatives or any other family relations and examine an application for international protection lodged with it or with another Member State, even if such examination is not its responsibility under the binding criteria laid down in this Regulation.

(18) A personal interview with the applicant should be organised in order to facilitate the determination of the Member State responsible for examining an application for international protection. As soon as the application for international protection is lodged, the applicant should be informed of the application of this Regulation and of the possibility, during the interview, of providing information regarding the presence of family members, relatives or any other family relations in the Member States, in order to facilitate the procedure for determining the Member State responsible.

(19) In order to guarantee effective protection of the rights of the persons concerned, legal safeguards and the right to an effective remedy in respect of decisions regarding transfers to the Member State responsible should be established, in accordance, in particular, with Article 47 of the Charter of Fundamental Rights of the European Union. In order to ensure that international law is respected, an effective remedy against such decisions should cover both the examination of the application of this Regulation and of the legal and factual situation in the Member State to which the applicant is transferred.

(20) The detention of applicants should be applied in accordance with the underlying principle that a person should not be held in detention for the sole reason that he or she is seeking international protection. Detention should be for as short a period as possible and subject to the principles of necessity and proportionality. In particular, the detention of applicants must be in accordance with Article 31 of the Geneva Convention. The procedures provided for under this Regulation in respect of a detained person should be applied as a matter of priority, within the shortest possible deadlines. As regards the general guarantees governing detention, as well as detention conditions, where appropriate, Member States should apply the provisions of Directive 2013/33/EU also to persons detained on the basis of this Regulation.

(21) Deficiencies in, or the collapse of, asylum systems, often aggravated or contributed to by particular pressures on them, can jeopardise the smooth functioning of the system put in place under this Regulation, which could lead to a risk of a violation of the rights of applicants as set out in the Union asylum *acquis* and the Charter of Fundamental Rights of the European Union, other international human rights and refugee rights.

(22) A process for early warning, preparedness and management of asylum crises serving to prevent a deterioration in, or the collapse of, asylum systems, with EASO playing a key role using its powers under Regulation (EU) No 439/2010, should be established in order to ensure robust cooperation within the framework of this Regulation and to develop mutual trust among Member States with respect to asylum policy. Such a process should ensure that the Union is alerted as soon as possible when there is a concern that the smooth functioning of the system set up by this Regulation is being jeopardised as a result of particular pressure on, and/or deficiencies in, the asylum systems of one or more Member States. Such a process would allow the Union to promote preventive measures at an early stage and pay the appropriate political attention to such situations. Solidarity, which is a pivotal element in the CEAS, goes hand in hand with mutual trust. By enhancing such trust, the process for early warning, preparedness and management of asylum crises could improve the steering of concrete measures of genuine and practical solidarity towards Member States, in order to assist the affected Member States in general and the applicants in particular. In accordance with Article 80 TFEU, Union acts should, whenever necessary, contain appropriate measures to give effect to the principle of solidarity, and the process should be accompanied by such measures. The conclusions on a Common Framework for genuine and practical solidarity towards Member States facing particular pressures on their asylum systems, including through mixed migration flows, adopted by the Council on 8 March 2012, provide for a 'tool box' of existing and potential new measures, which should be taken into account in the context of a mechanism for early warning, preparedness and crisis management.

(23) Member States should collaborate with EASO in the gathering of information concerning their ability to manage particular pressure on their asylum and reception systems, in particular within the framework of the application of this Regulation. EASO should regularly report on the information gathered in accordance with Regulation (EU) No 439/2010.

(24) In accordance with Commission Regulation (EC) No 1560/2003 [1], transfers to the Member State responsible for examining an application for international protection may be carried out on a voluntary basis, by supervised departure or under escort. Member States should promote voluntary transfers by providing adequate information to the applicant and should ensure that supervised or escorted transfers are undertaken in a humane manner, in full compliance with fundamental rights and respect for human dignity, as well as the

[1] OJ L 222, 5.9.2003, p. 3.

best interests of the child and taking utmost account of developments in the relevant case law, in particular as regards transfers on humanitarian grounds.

(25) The progressive creation of an area without internal frontiers in which free movement of persons is guaranteed in accordance with the TFEU and the establishment of Union policies regarding the conditions of entry and stay of third-country nationals, including common efforts towards the management of external borders, makes it necessary to strike a balance between responsibility criteria in a spirit of solidarity.

(26) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data [1] applies to the processing of personal data by the Member States under this Regulation.

(27) The exchange of an applicant's personal data, including sensitive data on his or her health, prior to a transfer, will ensure that the competent asylum authorities are in a position to provide applicants with adequate assistance and to ensure continuity in the protection and rights afforded to them. Special provisions should be made to ensure the protection of data relating to applicants involved in that situation, in accordance with Directive 95/46/EC.

(28) The application of this Regulation can be facilitated, and its effectiveness increased, by bilateral arrangements between Member States for improving communication between competent departments, reducing time limits for procedures or simplifying the processing of requests to take charge or take back, or establishing procedures for the performance of transfers.

(29) Continuity between the system for determining the Member State responsible established by Regulation (EC) No 343/2003 and the system established by this Regulation should be ensured. Similarly, consistency should be ensured between this Regulation and Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparisons with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes [2].

(30) The operation of the Eurodac system, as established by Regulation (EU) No 603/2013, should facilitate the application of this Regulation.

(31) The operation of the Visa Information System, as established by Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas [3], and in particular the implementation of Articles 21 and 22 thereof, should facilitate the application of this Regulation.

(32) With respect to the treatment of persons falling within the scope of this Regulation, Member States are bound by their obligations under instruments of international law, including the relevant case-law of the European Court of Human Rights.

(33) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers [4].

(34) The examination procedure should be used for the adoption of a common leaflet on Dublin/Eurodac, as well as a specific leaflet for unaccompanied minors; of a standard form for the exchange of relevant information on unaccompanied minors; of uniform conditions for the consultation and exchange of information on minors and dependent persons; of uniform conditions on the preparation and submission of take charge and take back requests; of two lists of relevant elements of proof and circumstantial evidence, and the periodical revision thereof; of a *laissez passer*; of uniform conditions for the consultation and exchange of information regarding transfers; of a standard form for the exchange of data before a transfer; of a common health certificate; of uniform conditions and practical arrangements for the exchange of information on a person's health data before a transfer, and of secure electronic transmission channels for the transmission of requests.

[1] OJ L 281, 23.11.1995, p. 31.

[2] See page 1 of this Official Journal.

[3] OJ L 218, 13.8.2008, p. 60.

[4] OJ L 55, 28.2.2011, p. 13.

(35) In order to provide for supplementary rules, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of the identification of family members, siblings or relatives of an unaccompanied minor; the criteria for establishing the existence of proven family links; the criteria for assessing the capacity of a relative to take care of an unaccompanied minor, including where family members, siblings or relatives of the unaccompanied minor stay in more than one Member State; the elements for assessing a dependency link; the criteria for assessing the capacity of a person to take care of a dependent person and the elements to be taken into account in order to assess the inability to travel for a significant period of time. In exercising its powers to adopt delegated acts, the Commission shall not exceed the scope of the best interests of the child as provided for under Article 6(3) of this Regulation. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

(36) In the application of this Regulation, including the preparation of delegated acts, the Commission should consult experts from, among others, all relevant national authorities.

(37) Detailed rules for the application of Regulation (EC) No 343/2003 have been laid down by Regulation (EC) No 1560/2003. Certain provisions of Regulation (EC) No 1560/2003 should be incorporated into this Regulation, either for reasons of clarity or because they can serve a general objective. In particular, it is important, both for the Member States and the applicants concerned, that there should be a general mechanism for finding a solution in cases where Member States differ over the application of a provision of this Regulation. It is therefore justified to incorporate the mechanism provided for in Regulation (EC) No 1560/2003 for the settling of disputes on the humanitarian clause into this Regulation and to extend its scope to the entirety of this Regulation.

(38) The effective monitoring of the application of this Regulation requires that it be evaluated at regular intervals.

(39) This Regulation respects the fundamental rights and observes the principles which are acknowledged, in particular, in the Charter of Fundamental Rights of the European Union. In particular, this Regulation seeks to ensure full observance of the right to asylum guaranteed by Article 18 of the Charter as well as the rights recognised under Articles 1, 4, 7, 24 and 47 thereof. This Regulation should therefore be applied accordingly.

(40) Since the objective of this Regulation, namely the establishment of criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of this Regulation, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

(41) In accordance with Article 3 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the TEU and to the TFEU, those Member States have notified their wish to take part in the adoption and application of this Regulation.

(42) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT MATTER AND DEFINITIONS

Article 1

Subject matter

This Regulation lays down the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person ('the Member State responsible').

Article 2

Definitions

For the purposes of this Regulation:

(a) 'third-country national' means any person who is not a citizen of the Union within the meaning of Article 20(1) TFEU and who is not national of a State which participates in this Regulation by virtue of an agreement with the European Union;

(b) 'application for international protection' means an application for international protection as defined in Article 2(h) of Directive 2011/95/EU;

(c) 'applicant' means a third-country national or a stateless person who has made an application for international protection in respect of which a final decision has not yet been taken;

(d) 'examination of an application for international protection' means any examination of, or decision or ruling concerning, an application for international protection by the competent authorities in accordance with Directive 2013/32/EU and Directive 2011/95/EU, except for procedures for determining the Member State responsible in accordance with this Regulation;

(e) 'withdrawal of an application for international protection' means the actions by which the applicant terminates the procedures initiated by the submission of his or her application for international protection, in accordance with Directive 2013/32/EU, either explicitly or tacitly;

(f) 'beneficiary of international protection' means a third-country national or a stateless person who has been granted international protection as defined in Article 2(a) of Directive 2011/95/EU;

(g) 'family members' means, insofar as the family already existed in the country of origin, the following members of the applicant's family who are present on the territory of the Member States:

— the spouse of the applicant or his or her unmarried partner in a stable relationship, where the law or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to third-country nationals,

— the minor children of couples referred to in the first indent or of the applicant, on condition that they are unmarried and regardless of whether they were born in or out of wedlock or adopted as defined under national law,

— when the applicant is a minor and unmarried, the father, mother or another adult responsible for the applicant, whether by law or by the practice of the Member State where the adult is present,

— when the beneficiary of international protection is a minor and unmarried, the father, mother or another adult responsible for him or her whether by law or by the practice of the Member State where the beneficiary is present;

(h) 'relative' means the applicant's adult aunt or uncle or grandparent who is present in the territory of a Member State, regardless of whether the applicant was born in or out of wedlock or adopted as defined under national law;

(i) 'minor' means a third-country national or a stateless person below the age of 18 years;

(j) 'unaccompanied minor' means a minor who arrives on the territory of the Member States unaccompanied by an adult responsible for him or her, whether by law or by the practice of the Member State concerned, and for as long as he or she is not effectively taken into the care of such an adult; it includes a minor who is left unaccompanied after he or she has entered the territory of Member States;

(k) 'representative' means a person or an organisation appointed by the competent bodies in order to assist and represent an unaccompanied minor in procedures provided for in this Regulation with a view to ensuring the best interests of the child and exercising legal capacity for the minor where necessary. Where an organisation is appointed as a representative, it shall designate a person responsible for carrying out its duties in respect of the minor, in accordance with this Regulation;

(l) 'residence document' means any authorisation issued by the authorities of a Member State authorising a third-country national or a stateless person to stay on its territory, including the documents substantiating the authorisation to remain on the territory under temporary protection arrangements or until the circumstances preventing a removal order from being carried out no longer apply, with the exception of visas and residence authorisations issued during the period required to determine the Member State responsible as established in this Regulation or during the examination of an application for international protection or an application for a residence permit;

(m) 'visa' means the authorisation or decision of a Member State required for transit or entry for an intended stay in that Member State or in several Member States. The nature of the visa shall be determined in accordance with the following definitions:

— 'long-stay visa' means an authorisation or decision issued by one of the Member States in accordance with its national law or Union law required for entry for an intended stay in that Member State of more than three months,

— 'short-stay visa' means an authorisation or decision of a Member State with a view to transit through or an intended stay on the territory of one or more or all the Member States of a duration of no more than three months in any six-month period beginning on the date of first entry on the territory of the Member States,

— 'airport transit visa' means a visa valid for transit through the international transit areas of one or more airports of the Member States;

(n) 'risk of absconding' means the existence of reasons in an individual case, which are based on objective criteria defined by law, to believe that an applicant or a third-country national or a stateless person who is subject to a transfer procedure may abscond.

CHAPTER II

GENERAL PRINCIPLES AND SAFEGUARDS

Article 3

Access to the procedure for examining an application for international protection

1. Member States shall examine any application for international protection by a third-country national or a stateless person who applies on the territory of any one of them, including at the border or in the transit zones. The application shall be examined by a single Member State, which shall be the one which the criteria set out in Chapter III indicate is responsible.

2. Where no Member State responsible can be designated on the basis of the criteria listed in this Regulation, the first Member State in which the application for international protection was lodged shall be responsible for examining it.

Where it is impossible to transfer an applicant to the Member State primarily designated as responsible because there are substantial grounds for believing that there are systemic flaws in the asylum procedure and in the reception conditions for applicants in that Member State, resulting in a risk of inhuman or degrading treatment within the meaning of Article 4 of the Charter of Fundamental Rights of the European Union, the determining Member State shall continue to examine the criteria set out in Chapter III in order to establish whether another Member State can be designated as responsible.

Where the transfer cannot be made pursuant to this paragraph to any Member State designated on the basis of the criteria set out in Chapter III or to the first Member State with which the application was lodged, the determining Member State shall become the Member State responsible.

3. Any Member State shall retain the right to send an applicant to a safe third country, subject to the rules and safeguards laid down in Directive 2013/32/EU.

Article 4

Right to information

1. As soon as an application for international protection is lodged within the meaning of Article 20(2) in a Member State, its competent authorities shall inform the applicant of the application of this Regulation, and in particular of:

(a) the objectives of this Regulation and the consequences of making another application in a different Member State as well as the consequences of moving from one Member State to another during the phases in which the Member State responsible under this Regulation is being determined and the application for international protection is being examined;

(b) the criteria for determining the Member State responsible, the hierarchy of such criteria in the different steps of the procedure and their duration, including the fact that an application for international protection lodged in one Member State can result in that Member State becoming responsible under this Regulation even if such responsibility is not based on those criteria;

(c) the personal interview pursuant to Article 5 and the possibility of submitting information regarding the presence of family members, relatives or any other family relations in the Member States, including the means by which the applicant can submit such information;

(d) the possibility to challenge a transfer decision and, where applicable, to apply for a suspension of the transfer;

(e) the fact that the competent authorities of Member States can exchange data on him or her for the sole purpose of implementing their obligations arising under this Regulation;

(f) the right of access to data relating to him or her and the right to request that such data be corrected if inaccurate or be deleted if unlawfully processed, as well as the procedures for exercising those rights, including the contact details of the authorities referred to in Article 35 and of the national data protection authorities responsible for hearing claims concerning the protection of personal data.

2. The information referred to in paragraph 1 shall be provided in writing in a language that the applicant understands or is reasonably supposed to understand. Member States shall use the common leaflet drawn up pursuant to paragraph 3 for that purpose.

Where necessary for the proper understanding of the applicant, the information shall also be supplied orally, for example in connection with the personal interview as referred to in Article 5.

3. The Commission shall, by means of implementing acts, draw up a common leaflet, as well as a specific leaflet for unaccompanied minors, containing at least the information referred to in paragraph 1 of this Article. This common leaflet shall also include information regarding the application of Regulation (EU) No 603/2013 and, in particular, the purpose for which the data of an applicant may be processed within Eurodac. The common leaflet shall be established in such a manner as to enable Member States to complete it with additional Member State-specific information. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2) of this Regulation.

Article 5

Personal interview

1. In order to facilitate the process of determining the Member State responsible, the determining Member State shall conduct a personal interview with the applicant. The interview shall also allow the proper understanding of the information supplied to the applicant in accordance with Article 4.

2. The personal interview may be omitted if:

(a) the applicant has absconded; or

(b) after having received the information referred to in Article 4, the applicant has already provided the information relevant to determine the Member State responsible by other means. The Member State omitting the interview shall give the applicant the opportunity to present all further information which is relevant to correctly determine the Member State responsible before a decision is taken to transfer the applicant to the Member State responsible pursuant to Article 26(1).

3. The personal interview shall take place in a timely manner and, in any event, before any decision is taken to transfer the applicant to the Member State responsible pursuant to Article 26(1).

4. The personal interview shall be conducted in a language that the applicant understands or is reasonably supposed to understand and in which he or she is able to communicate. Where necessary, Member States shall have recourse to an interpreter who is able to ensure appropriate communication between the applicant and the person conducting the personal interview.

5. The personal interview shall take place under conditions which ensure appropriate confidentiality. It shall be conducted by a qualified person under national law.

6. The Member State conducting the personal interview shall make a written summary thereof which shall contain at least the main information supplied by the applicant at the interview. This summary may either take the form of a report or a standard form. The Member State shall ensure that the applicant and/or the legal advisor or other counsellor who is representing the applicant have timely access to the summary.

Article 6

Guarantees for minors

1. The best interests of the child shall be a primary consideration for Member States with respect to all procedures provided for in this Regulation.

2. Member States shall ensure that a representative represents and/or assists an unaccompanied minor with respect to all procedures provided for in this Regulation. The representative shall have the qualifications and expertise to ensure that the best interests of the minor are taken into consideration during the procedures carried out under this Regulation. Such representative shall have access to the content of the relevant documents in the applicant's file including the specific leaflet for unaccompanied minors.

This paragraph shall be without prejudice to the relevant provisions in Article 25 of Directive 2013/32/EU.

3. In assessing the best interests of the child, Member States shall closely cooperate with each other and shall, in particular, take due account of the following factors:

(a) family reunification possibilities;

(b) the minor's well-being and social development;

(c) safety and security considerations, in particular where there is a risk of the minor being a victim of human trafficking;

(d) the views of the minor, in accordance with his or her age and maturity.

4. For the purpose of applying Article 8, the Member State where the unaccompanied minor lodged an application for international protection shall, as soon as possible, take appropriate action to identify the family members, siblings or relatives of the unaccompanied minor on the territory of Member States, whilst protecting the best interests of the child.

To that end, that Member State may call for the assistance of international or other relevant organisations, and may facilitate the minor's access to the tracing services of such organisations.

The staff of the competent authorities referred to in Article 35 who deal with requests concerning unaccompanied minors shall have received, and shall continue to receive, appropriate training concerning the specific needs of minors.

5. With a view to facilitating the appropriate action to identify the family members, siblings or relatives of the unaccompanied minor living in the territory of another Member State pursuant to paragraph 4 of this Article, the Commission shall adopt implementing acts including a standard form for the exchange of relevant information between Member States. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2).

CHAPTER III

CRITERIA FOR DETERMINING THE MEMBER STATE RESPONSIBLE

Article 7

Hierarchy of criteria

1. The criteria for determining the Member State responsible shall be applied in the order in which they are set out in this Chapter.

2. The Member State responsible in accordance with the criteria set out in this Chapter shall be determined on the basis of the situation obtaining when the applicant first lodged his or her application for international protection with a Member State.

3. In view of the application of the criteria referred to in Articles 8, 10 and 16, Member States shall take into consideration any available evidence regarding the presence, on the territory of a Member State, of family members, relatives or any other family relations of the applicant, on condition that such evidence is produced before another Member State accepts the request to take charge or take back the person concerned, pursuant to Articles 22 and 25 respectively, and that the previous applications for international protection of the applicant have not yet been the subject of a first decision regarding the substance.

Article 8

Minors

1. Where the applicant is an unaccompanied minor, the Member State responsible shall be that where a family member or a sibling of the unaccompanied minor is legally present, provided that it is in the best interests of the minor. Where the applicant is a married minor whose spouse is not legally present on the territory of the Member States, the Member State responsible shall be the Member State where the father, mother or other adult responsible for the minor, whether by law or by the practice of that Member State, or sibling is legally present.

2. Where the applicant is an unaccompanied minor who has a relative who is legally present in another Member State and where it is established, based on an individual examination, that the relative can take care of him or her, that Member State shall unite the minor with his or her relative and shall be the Member State responsible, provided that it is in the best interests of the minor.

3. Where family members, siblings or relatives as referred to in paragraphs 1 and 2, stay in more than one Member State, the Member State responsible shall be decided on the basis of what is in the best interests of the unaccompanied minor.

4. In the absence of a family member, a sibling or a relative as referred to in paragraphs 1 and 2, the Member State responsible shall be that where the unaccompanied minor has lodged his or her application for international protection, provided that it is in the best interests of the minor.

5. The Commission shall be empowered to adopt delegated acts in accordance with Article 45 concerning the identification of family members, siblings or relatives of the unaccompanied minor; the criteria for establishing the existence of proven family links; the criteria for assessing the capacity of a relative to take care of the unaccompanied minor, including where family members, siblings or relatives of the unaccompanied minor stay in more than one Member State. In exercising its powers to adopt delegated acts, the Commission shall not exceed the scope of the best interests of the child as provided for under Article 6(3).

6. The Commission shall, by means of implementing acts, establish uniform conditions for the consultation and the exchange of information between Member States. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2).

Article 9

Family members who are beneficiaries of international protection

Where the applicant has a family member, regardless of whether the family was previously formed in the country of origin, who has been allowed to reside as a beneficiary of international protection in a Member State, that Member State shall be responsible for examining the application for international protection, provided that the persons concerned expressed their desire in writing.

Article 10

Family members who are applicants for international protection

If the applicant has a family member in a Member State whose application for international protection in that Member State has not yet been the subject of a first decision regarding the substance, that Member State shall be responsible for examining the application for international protection, provided that the persons concerned expressed their desire in writing.

Article 11

Family procedure

Where several family members and/or minor unmarried siblings submit applications for international protection in the same Member State simultaneously, or on dates close enough for the procedures for determining the Member State responsible to be conducted together, and where the application of the criteria set out in this Regulation would lead to their being separated, the Member State responsible shall be determined on the basis of the following provisions:

(a) responsibility for examining the applications for international protection of all the family members and/or minor unmarried siblings shall lie with the Member State which the criteria indicate is responsible for taking charge of the largest number of them;

(b) failing this, responsibility shall lie with the Member State which the criteria indicate is responsible for examining the application of the oldest of them.

Article 12

Issue of residence documents or visas

1. Where the applicant is in possession of a valid residence document, the Member State which issued the document shall be responsible for examining the application for international protection.

2. Where the applicant is in possession of a valid visa, the Member State which issued the visa shall be responsible for examining the application for international protection, unless the visa was issued on behalf of another Member State under a representation arrangement as provided for in Article 8 of Regulation (EC) No 810/2009 of the European Parliament and of the Council, of 13 July 2009, establishing a Community Code on Visas [1]. In such a case, the represented Member State shall be responsible for examining the application for international protection.

3. Where the applicant is in possession of more than one valid residence document or visa issued by different Member States, the responsibility for examining the application for international protection shall be assumed by the Member States in the following order:

(a) the Member State which issued the residence document conferring the right to the longest period of residency or, where the periods of validity are identical, the Member State which issued the residence document having the latest expiry date;

(b) the Member State which issued the visa having the latest expiry date where the various visas are of the same type;

(c) where visas are of different kinds, the Member State which issued the visa having the longest period of validity or, where the periods of validity are identical, the Member State which issued the visa having the latest expiry date.

4. Where the applicant is in possession only of one or more residence documents which have expired less than two years previously or one or more visas which have expired less than six months previously and which enabled him or her actually to enter the territory of a Member State, paragraphs 1, 2 and 3 shall apply for such time as the applicant has not left the territories of the Member States.

Where the applicant is in possession of one or more residence documents which have expired more than two years previously or one or more visas which have expired more than six months previously and enabled him or her actually to enter the territory of a Member State and where he has not left the territories of the Member States, the Member State in which the application for international protection is lodged shall be responsible.

5. The fact that the residence document or visa was issued on the basis of a false or assumed identity or on submission of forged, counterfeit or invalid documents shall not prevent responsibility being allocated to the Member State which issued it. However, the Member State issuing the residence document or visa shall not be responsible if it can establish that a fraud was committed after the document or visa had been issued.

Article 13

Entry and/or stay

1. Where it is established, on the basis of proof or circumstantial evidence as described in the two lists mentioned in Article 22(3) of this Regulation, including the data referred to in Regulation (EU) No 603/2013, that an applicant has irregularly crossed the border into a Member State by land, sea or air having come from a third country, the Member State thus entered shall be responsible for examining the application for international protection. That responsibility shall cease 12 months after the date on which the irregular border crossing took place.

2. When a Member State cannot or can no longer be held responsible in accordance with paragraph 1 of this Article and where it is established, on the basis of proof or circumstantial evidence as described in the two lists mentioned in Article 22(3), that the applicant — who has entered the territories of the Member States irregularly or whose circumstances of entry cannot be established — has been living for a continuous period of at least five months in a Member State before lodging the application for international protection, that Member State shall be responsible for examining the application for international protection.

If the applicant has been living for periods of time of at least five months in several Member States, the Member State where he or she has been living most recently shall be responsible for examining the application for international protection.

[1] OJ L 243, 15.9.2009, p. 1.

Article 14

Visa waived entry

1. If a third-country national or a stateless person enters into the territory of a Member State in which the need for him or her to have a visa is waived, that Member State shall be responsible for examining his or her application for international protection.

2. The principle set out in paragraph 1 shall not apply if the third-country national or the stateless person lodges his or her application for international protection in another Member State in which the need for him or her to have a visa for entry into the territory is also waived. In that case, that other Member State shall be responsible for examining the application for international protection.

Article 15

Application in an international transit area of an airport

Where the application for international protection is made in the international transit area of an airport of a Member State by a third-country national or a stateless person, that Member State shall be responsible for examining the application.

CHAPTER IV

DEPENDENT PERSONS AND DISCRETIONARY CLAUSES

Article 16

Dependent persons

1. Where, on account of pregnancy, a new-born child, serious illness, severe disability or old age, an applicant is dependent on the assistance of his or her child, sibling or parent legally resident in one of the Member States, or his or her child, sibling or parent legally resident in one of the Member States is dependent on the assistance of the applicant, Member States shall normally keep or bring together the applicant with that child, sibling or parent, provided that family ties existed in the country of origin, that the child, sibling or parent or the applicant is able to take care of the dependent person and that the persons concerned expressed their desire in writing.

2. Where the child, sibling or parent referred to in paragraph 1 is legally resident in a Member State other than the one where the applicant is present, the Member State responsible shall be the one where the child, sibling or parent is legally resident unless the applicant's health prevents him or her from travelling to that Member State for a significant period of time. In such a case, the Member State responsible shall be the one where the applicant is present. Such Member State shall not be subject to the obligation to bring the child, sibling or parent of the applicant to its territory.

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 45 concerning the elements to be taken into account in order to assess the dependency link, the criteria for establishing the existence of proven family links, the criteria for assessing the capacity of the person concerned to take care of the dependent person and the elements to be taken into account in order to assess the inability to travel for a significant period of time.

4. The Commission shall, by means of implementing acts, establish uniform conditions for the consultation and exchange of information between Member States. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2).

Article 17

Discretionary clauses

1. By way of derogation from Article 3(1), each Member State may decide to examine an application for international protection lodged with it by a third-country national or a stateless person, even if such examination is not its responsibility under the criteria laid down in this Regulation.

The Member State which decides to examine an application for international protection pursuant to this paragraph shall become the Member State responsible and shall assume the obligations associated with that responsibility. Where applicable, it shall inform, using the 'DubliNet' electronic communication network set up under Article 18 of Regulation (EC) No 1560/2003, the Member State previously responsible, the Member State conducting a procedure for determining the Member State responsible or the Member State which has been requested to take charge of, or to take back, the applicant.

The Member State which becomes responsible pursuant to this paragraph shall forthwith indicate it in Eurodac in accordance with Regulation (EU) No 603/2013 by adding the date when the decision to examine the application was taken.

2. The Member State in which an application for international protection is made and which is carrying out the process of determining the Member State responsible, or the Member State responsible, may, at any time before a first decision regarding the substance is taken, request another Member State to take charge of an applicant in order to bring together any family relations, on humanitarian grounds based in particular on family or cultural considerations, even where that other Member State is not responsible under the criteria laid down in Articles 8 to 11 and 16. The persons concerned must express their consent in writing.

The request to take charge shall contain all the material in the possession of the requesting Member State to allow the requested Member State to assess the situation.

The requested Member State shall carry out any necessary checks to examine the humanitarian grounds cited, and shall reply to the requesting Member State within two months of receipt of the request using the 'DubliNet' electronic communication network set up under Article 18 of Regulation (EC) No 1560/2003. A reply refusing the request shall state the reasons on which the refusal is based.

Where the requested Member State accepts the request, responsibility for examining the application shall be transferred to it.

CHAPTER V

OBLIGATIONS OF THE MEMBER STATE RESPONSIBLE

Article 18

Obligations of the Member State responsible

1. The Member State responsible under this Regulation shall be obliged to:

(a) take charge, under the conditions laid down in Articles 21, 22 and 29, of an applicant who has lodged an application in a different Member State;

(b) take back, under the conditions laid down in Articles 23, 24, 25 and 29, an applicant whose application is under examination and who made an application in another Member State or who is on the territory of another Member State without a residence document;

(c) take back, under the conditions laid down in Articles 23, 24, 25 and 29, a third-country national or a stateless person who has withdrawn the application under examination and made an application in another Member State or who is on the territory of another Member State without a residence document;

(d) take back, under the conditions laid down in Articles 23, 24, 25 and 29, a third-country national or a stateless person whose application has been rejected and who made an application in another Member State or who is on the territory of another Member State without a residence document.

2. In the cases falling within the scope of paragraph 1(a) and (b), the Member State responsible shall examine or complete the examination of the application for international protection made by the applicant.

In the cases falling within the scope of paragraph 1(c), when the Member State responsible had discontinued the examination of an application following its withdrawal by the applicant before a decision on the substance has been taken at first instance, that Member State shall ensure that the applicant is entitled to request that the examination of his or her application be completed or to lodge a new application for international protection, which shall not be treated as a subsequent application as provided for in Directive 2013/32/EU. In such cases, Member States shall ensure that the examination of the application is completed.

In the cases falling within the scope of paragraph 1(d), where the application has been rejected at first instance only, the Member State responsible shall ensure that the person concerned has or has had the opportunity to seek an effective remedy pursuant to Article 46 of Directive 2013/32/EU.

Article 19

Cessation of responsibilities

1. Where a Member State issues a residence document to the applicant, the obligations specified in Article 18(1) shall be transferred to that Member State.

2. The obligations specified in Article 18(1) shall cease where the Member State responsible can establish, when requested to take charge or take back an applicant or another person as referred to in Article 18(1)(c) or (d), that the person concerned has left the territory of the Member States for at least three months, unless the person concerned is in possession of a valid residence document issued by the Member State responsible.

An application lodged after the period of absence referred to in the first subparagraph shall be regarded as a new application giving rise to a new procedure for determining the Member State responsible.

3. The obligations specified in Article 18(1)(c) and (d) shall cease where the Member State responsible can establish, when requested to take back an applicant or another person as referred to in Article 18(1)(c) or (d), that the person concerned has left the territory of the Member States in compliance with a return decision or removal order issued following the withdrawal or rejection of the application.

An application lodged after an effective removal has taken place shall be regarded as a new application giving rise to a new procedure for determining the Member State responsible.

CHAPTER VI

PROCEDURES FOR TAKING CHARGE AND TAKING BACK

SECTION I

Start of the procedure

Article 20

Start of the procedure

1. The process of determining the Member State responsible shall start as soon as an application for international protection is first lodged with a Member State.

2. An application for international protection shall be deemed to have been lodged once a form submitted by the applicant or a report prepared by the authorities has reached the competent authorities of the Member State concerned. Where an application is not made in writing, the time elapsing between the statement of intention and the preparation of a report should be as short as possible.

3. For the purposes of this Regulation, the situation of a minor who is accompanying the applicant and meets the definition of family member shall be indissociable from that of his or her family member and shall be a matter for the Member State responsible for examining the application for international protection of that family member, even if the minor is not individually an applicant, provided that it is in the minor's best interests. The same treatment shall be applied to children born after the applicant arrives on the territory of the Member States, without the need to initiate a new procedure for taking charge of them.

4. Where an application for international protection is lodged with the competent authorities of a Member State by an applicant who is on the territory of another Member State, the determination of the Member State responsible shall be made by the Member State in whose territory the applicant is present. The latter Member State shall be informed without delay by the Member State which received the application and shall then, for the purposes of this Regulation, be regarded as the Member State with which the application for international protection was lodged.

The applicant shall be informed in writing of this change in the determining Member State and of the date on which it took place.

5. An applicant who is present in another Member State without a residence document or who there lodges an application for international protection after withdrawing his or her first application made in a different Member State during the process of determining the Member State responsible shall be taken back, under the conditions laid down in Articles 23, 24, 25 and 29, by the Member State with which that application for international protection was first lodged, with a view to completing the process of determining the Member State responsible.

That obligation shall cease where the Member State requested to complete the process of determining the Member State responsible can establish that the applicant has in the meantime left the territory of the Member States for a period of at least three months or has obtained a residence document from another Member State.

An application lodged after the period of absence referred to in the second subparagraph shall be regarded as a new application giving rise to a new procedure for determining the Member State responsible.

SECTION II

Procedures for take charge requests

Article 21

Submitting a take charge request

1. Where a Member State with which an application for international protection has been lodged considers that another Member State is responsible for examining the application, it may, as quickly as possible and in any event within three months of the date on which the application was lodged within the meaning of Article 20(2), request that other Member State to take charge of the applicant.

Notwithstanding the first subparagraph, in the case of a Eurodac hit with data recorded pursuant to Article 14 of Regulation (EU) No 603/2013, the request shall be sent within two months of receiving that hit pursuant to Article 15(2) of that Regulation.

Where the request to take charge of an applicant is not made within the periods laid down in the first and second subparagraphs, responsibility for examining the application for international protection shall lie with the Member State in which the application was lodged.

2. The requesting Member State may ask for an urgent reply in cases where the application for international protection was lodged after leave to enter or remain was refused, after an arrest for an unlawful stay or after the service or execution of a removal order.

The request shall state the reasons warranting an urgent reply and the period within which a reply is expected. That period shall be at least one week.

3. In the cases referred to in paragraphs 1 and 2, the request that charge be taken by another Member State shall be made using a standard form and including proof or circumstantial evidence as described in the two lists mentioned in Article 22(3) and/or relevant elements from the applicant's statement, enabling the authorities of the requested Member State to check whether it is responsible on the basis of the criteria laid down in this Regulation.

The Commission shall, by means of implementing acts, adopt uniform conditions on the preparation and submission of take charge requests. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2).

Article 22

Replying to a take charge request

1. The requested Member State shall make the necessary checks, and shall give a decision on the request to take charge of an applicant within two months of receipt of the request.

2. In the procedure for determining the Member State responsible elements of proof and circumstantial evidence shall be used.

3. The Commission shall, by means of implementing acts, establish, and review periodically, two lists, indicating the relevant elements of proof and circumstantial evidence in accordance with the criteria set out in points (a) and (b) of this paragraph. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2).

(a) Proof:

(i) this refers to formal proof which determines responsibility pursuant to this Regulation, as long as it is not refuted by proof to the contrary;

(ii) the Member States shall provide the Committee provided for in Article 44 with models of the different types of administrative documents, in accordance with the typology established in the list of formal proofs;

(b) Circumstantial evidence:

(i) this refers to indicative elements which while being refutable may be sufficient, in certain cases, according to the evidentiary value attributed to them;

(ii) their evidentiary value, in relation to the responsibility for examining the application for international protection shall be assessed on a case-by-case basis.

4. The requirement of proof should not exceed what is necessary for the proper application of this Regulation.

5. If there is no formal proof, the requested Member State shall acknowledge its responsibility if the circumstantial evidence is coherent, verifiable and sufficiently detailed to establish responsibility.

6. Where the requesting Member State has pleaded urgency in accordance with the provisions of Article 21(2), the requested Member State shall make every effort to comply with the time limit requested. In exceptional cases, where it can be demonstrated that the examination of a request for taking charge of an applicant is particularly complex, the requested Member State may give its reply after the time limit requested, but in any event within one month. In such situations the requested Member State must communicate its decision to postpone a reply to the requesting Member State within the time limit originally requested.

7. Failure to act within the two-month period mentioned in paragraph 1 and the one-month period mentioned in paragraph 6 shall be tantamount to accepting the request, and entail the obligation to take charge of the person, including the obligation to provide for proper arrangements for arrival.

SECTION III

Procedures for take back requests

Article 23

Submitting a take back request when a new application has been lodged in the requesting Member State

1. Where a Member State with which a person as referred to in Article 18(1)(b), (c) or (d) has lodged a new application for international protection considers that another Member State is responsible in accordance with Article 20(5) and Article 18(1)(b), (c) or (d), it may request that other Member State to take back that person.

2. A take back request shall be made as quickly as possible and in any event within two months of receiving the Eurodac hit, pursuant to Article 9(5) of Regulation (EU) No 603/2013.

If the take back request is based on evidence other than data obtained from the Eurodac system, it shall be sent to the requested Member State within three months of the date on which the application for international protection was lodged within the meaning of Article 20(2).

3. Where the take back request is not made within the periods laid down in paragraph 2, responsibility for examining the application for international protection shall lie with the Member State in which the new application was lodged.

4. A take back request shall be made using a standard form and shall include proof or circumstantial evidence as described in the two lists mentioned in Article 22(3) and/or relevant elements from the statements of the person concerned, enabling the authorities of the requested Member State to check whether it is responsible on the basis of the criteria laid down in this Regulation.

The Commission shall, by means of implementing acts, adopt uniform conditions for the preparation and submission of take back requests. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2).

Article 24

Submitting a take back request when no new application has been lodged in the requesting Member State

1. Where a Member State on whose territory a person as referred to in Article 18(1)(b), (c) or (d) is staying without a residence document and with which no new application for international protection has been lodged considers that another Member State is responsible in accordance with Article 20(5) and Article 18(1)(b), (c) or (d), it may request that other Member State to take back that person.

2. By way of derogation from Article 6(2) of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country

nationals ([1]), where a Member State on whose territory a person is staying without a residence document decides to search the Eurodac system in accordance with Article 17 of Regulation (EU) No 603/2013, the request to take back a person as referred to in Article 18(1)(b) or (c) of this Regulation, or a person as referred to in its Article 18(1)(d) whose application for international protection has not been rejected by a final decision, shall be made as quickly as possible and in any event within two months of receipt of the Eurodac hit, pursuant to Article 17(5) of Regulation (EU) No 603/2013.

If the take back request is based on evidence other than data obtained from the Eurodac system, it shall be sent to the requested Member State within three months of the date on which the requesting Member State becomes aware that another Member State may be responsible for the person concerned.

3. Where the take back request is not made within the periods laid down in paragraph 2, the Member State on whose territory the person concerned is staying without a residence document shall give that person the opportunity to lodge a new application.

4. Where a person as referred to in Article 18(1)(d) of this Regulation whose application for international protection has been rejected by a final decision in one Member State is on the territory of another Member State without a residence document, the latter Member State may either request the former Member State to take back the person concerned or carry out a return procedure in accordance with Directive 2008/115/EC.

When the latter Member State decides to request the former Member State to take back the person concerned, the rules laid down in Directive 2008/115/EC shall not apply.

5. The request for the person referred to in Article 18(1)(b), (c) or (d) to be taken back shall be made using a standard form and shall include proof or circumstantial evidence as described in the two lists mentioned in Article 22(3) and/or relevant elements from the person's statements, enabling the authorities of the requested Member State to check whether it is responsible on the basis of the criteria laid down in this Regulation.

The Commission shall, by means of implementing acts, establish and review periodically two lists indicating the relevant elements of proof and circumstantial evidence in accordance with the criteria set out in Article 22(3)(a) and (b), and shall adopt uniform conditions for the preparation and submission of take back requests. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2).

Article 25

Replying to a take back request

1. The requested Member State shall make the necessary checks and shall give a decision on the request to take back the person concerned as quickly as possible and in any event no later than one month from the date on which the request was received. When the request is based on data obtained from the Eurodac system, that time limit shall be reduced to two weeks.

2. Failure to act within the one month period or the two weeks period mentioned in paragraph 1 shall be tantamount to accepting the request, and shall entail the obligation to take back the person concerned, including the obligation to provide for proper arrangements for arrival.

SECTION IV

Procedural safeguards

Article 26

Notification of a transfer decision

1. Where the requested Member State accepts to take charge of or to take back an applicant or other person as referred to in Article 18(1)(c) or (d), the requesting Member State shall notify the person concerned of the decision to transfer him or her to the Member State responsible and, where applicable, of not examining his or her application for international protection. If a legal advisor or other counsellor is representing the person concerned, Member States may choose to notify the decision to such legal advisor or counsellor instead of to the person concerned and, where applicable, communicate the decision to the person concerned.

2. The decision referred to in paragraph 1 shall contain information on the legal remedies available, including on the right to apply for suspensive effect, where applicable, and on the time limits applicable for seeking such remedies and for carrying out the transfer, and shall, if necessary, contain information on the place where, and the date on which, the person concerned should appear, if that person is travelling to the Member State responsible by his or her own means.

Member States shall ensure that information on persons or entities that may provide legal assistance to the person concerned is communicated to the person concerned together with the decision referred to in paragraph 1, when that information has not been already communicated.

3. When the person concerned is not assisted or represented by a legal advisor or other counsellor, Member States shall inform him or her of the main elements of the decision, which shall always include information on the legal remedies available and the time limits applicable for seeking such remedies, in a language that the person concerned understands or is reasonably supposed to understand.

Article 27

Remedies

1. The applicant or another person as referred to in Article 18(1)(c) or (d) shall have the right to an effective remedy, in the form of an appeal or a review, in fact and in law, against a transfer decision, before a court or tribunal.

2. Member States shall provide for a reasonable period of time within which the person concerned may exercise his or her right to an effective remedy pursuant to paragraph 1.

([1]) OJ L 348, 24.12.2008, p. 98.

3. For the purposes of appeals against, or reviews of, transfer decisions, Member States shall provide in their national law that:

(a) the appeal or review confers upon the person concerned the right to remain in the Member State concerned pending the outcome of the appeal or review; or

(b) the transfer is automatically suspended and such suspension lapses after a certain reasonable period of time, during which a court or a tribunal, after a close and rigorous scrutiny, shall have taken a decision whether to grant suspensive effect to an appeal or review; or

(c) the person concerned has the opportunity to request within a reasonable period of time a court or tribunal to suspend the implementation of the transfer decision pending the outcome of his or her appeal or review. Member States shall ensure that an effective remedy is in place by suspending the transfer until the decision on the first suspension request is taken. Any decision on whether to suspend the implementation of the transfer decision shall be taken within a reasonable period of time, while permitting a close and rigorous scrutiny of the suspension request. A decision not to suspend the implementation of the transfer decision shall state the reasons on which it is based.

4. Member States may provide that the competent authorities may decide, acting *ex officio*, to suspend the implementation of the transfer decision pending the outcome of the appeal or review.

5. Member States shall ensure that the person concerned has access to legal assistance and, where necessary, to linguistic assistance.

6. Member States shall ensure that legal assistance is granted on request free of charge where the person concerned cannot afford the costs involved. Member States may provide that, as regards fees and other costs, the treatment of applicants shall not be more favourable than the treatment generally accorded to their nationals in matters pertaining to legal assistance.

Without arbitrarily restricting access to legal assistance, Member States may provide that free legal assistance and representation not be granted where the appeal or review is considered by the competent authority or a court or tribunal to have no tangible prospect of success.

Where a decision not to grant free legal assistance and representation pursuant to this paragraph is taken by an authority other than a court or tribunal, Member States shall provide the right to an effective remedy before a court or tribunal to challenge that decision.

In complying with the requirements set out in this paragraph, Member States shall ensure that legal assistance and representation is not arbitrarily restricted and that the applicant's effective access to justice is not hindered.

Legal assistance shall include at least the preparation of the required procedural documents and representation before a court or tribunal and may be restricted to legal advisors or counsellors specifically designated by national law to provide assistance and representation.

Procedures for access to legal assistance shall be laid down in national law.

SECTION V

Detention for the purpose of transfer

Article 28

Detention

1. Member States shall not hold a person in detention for the sole reason that he or she is subject to the procedure established by this Regulation.

2. When there is a significant risk of absconding, Member States may detain the person concerned in order to secure transfer procedures in accordance with this Regulation, on the basis of an individual assessment and only in so far as detention is proportional and other less coercive alternative measures cannot be applied effectively.

3. Detention shall be for as short a period as possible and shall be for no longer than the time reasonably necessary to fulfil the required administrative procedures with due diligence until the transfer under this Regulation is carried out.

Where a person is detained pursuant to this Article, the period for submitting a take charge or take back request shall not exceed one month from the lodging of the application. The Member State carrying out the procedure in accordance with this Regulation shall ask for an urgent reply in such cases. Such reply shall be given within two weeks of receipt of the request. Failure to reply within the two-week period shall be tantamount to accepting the request and shall entail the obligation to take charge or take back the person, including the obligation to provide for proper arrangements for arrival.

Where a person is detained pursuant to this Article, the transfer of that person from the requesting Member State to the Member State responsible shall be carried out as soon as practically possible, and at the latest within six weeks of the implicit or explicit acceptance of the request by another Member State to take charge or to take back the person concerned or of the moment when the appeal or review no longer has a suspensive effect in accordance with Article 27(3).

When the requesting Member State fails to comply with the deadlines for submitting a take charge or take back request or where the transfer does not take place within the period of six weeks referred to in the third subparagraph, the person shall no longer be detained. Articles 21, 23, 24 and 29 shall continue to apply accordingly.

4. As regards the detention conditions and the guarantees applicable to persons detained, in order to secure the transfer procedures to the Member State responsible, Articles 9, 10 and 11 of Directive 2013/33/EU shall apply.

SECTION VI

Transfers

Article 29

Modalities and time limits

1. The transfer of the applicant or of another person as referred to in Article 18(1)(c) or (d) from the requesting Member State to the Member State responsible shall be carried out in accordance with the national law of the requesting Member State, after consultation between the Member States concerned, as soon as practically possible, and at the latest within six months of acceptance of the request by another Member State to take charge or to take back the person concerned or of the final decision on an appeal or review where there is a suspensive effect in accordance with Article 27(3).

If transfers to the Member State responsible are carried out by supervised departure or under escort, Member States shall ensure that they are carried out in a humane manner and with full respect for fundamental rights and human dignity.

If necessary, the applicant shall be supplied by the requesting Member State with a *laissez passer*. The Commission shall, by means of implementing acts, establish the design of the *laissez passer*. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2).

The Member State responsible shall inform the requesting Member State, as appropriate, of the safe arrival of the person concerned or of the fact that he or she did not appear within the set time limit.

2. Where the transfer does not take place within the six months' time limit, the Member State responsible shall be relieved of its obligations to take charge or to take back the person concerned and responsibility shall then be transferred to the requesting Member State. This time limit may be extended up to a maximum of one year if the transfer could not be carried out due to imprisonment of the person concerned or up to a maximum of eighteen months if the person concerned absconds.

3. If a person has been transferred erroneously or a decision to transfer is overturned on appeal or review after the transfer has been carried out, the Member State which carried out the transfer shall promptly accept that person back.

4. The Commission shall, by means of implementing acts, establish uniform conditions for the consultation and exchange of information between Member States, in particular in the event of postponed or delayed transfers, transfers following acceptance by default, transfers of minors or dependent persons, and supervised transfers. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2).

Article 30

Costs of transfer

1. The costs necessary to transfer an applicant or another person as referred to in Article 18(1)(c) or (d) to the Member State responsible shall be met by the transferring Member State.

2. Where the person concerned has to be transferred back to a Member State as a result of an erroneous transfer or of a transfer decision that has been overturned on appeal or review after the transfer has been carried out, the Member State which initially carried out the transfer shall be responsible for the costs of transferring the person concerned back to its territory.

3. Persons to be transferred pursuant to this Regulation shall not be required to meet the costs of such transfers.

Article 31

Exchange of relevant information before a transfer is carried out

1. The Member State carrying out the transfer of an applicant or of another person as referred to in Article 18(1)(c) or (d) shall communicate to the Member State responsible such personal data concerning the person to be transferred as is appropriate, relevant and non-excessive for the sole purposes of ensuring that the competent authorities, in accordance with national law in the Member State responsible, are in a position to provide that person with adequate assistance, including the provision of immediate health care required in order to protect his or her vital interests, and to ensure continuity in the protection and rights afforded by this Regulation and by other relevant asylum legal instruments. Those data shall be communicated to the Member State responsible within a reasonable period of time before a transfer is carried out, in order to ensure that its competent authorities in accordance with national law have sufficient time to take the necessary measures.

2. The transferring Member State shall, in so far as such information is available to the competent authority in accordance with national law, transmit to the Member State responsible any information that is essential in order to safeguard the rights and immediate special needs of the person to be transferred, and in particular:

(a) any immediate measures which the Member State responsible is required to take in order to ensure that the special needs of the person to be transferred are adequately addressed, including any immediate health care that may be required;

(b) contact details of family members, relatives or any other family relations in the receiving Member State, where applicable;

(c) in the case of minors, information on their education;

(d) an assessment of the age of an applicant.

3. The exchange of information under this Article shall only take place between the authorities notified to the Commission in accordance with Article 35 of this Regulation using the 'DubliNet' electronic communication network set-up under Article 18 of Regulation (EC) No 1560/2003. The information exchanged shall only be used for the purposes set out in paragraph 1 of this Article and shall not be further processed.

4. With a view to facilitating the exchange of information between Member States, the Commission shall, by means of implementing acts, draw up a standard form for the transfer of the data required pursuant to this Article. Those implementing acts shall be adopted in accordance with the examination procedure laid down in Article 44(2).

5. The rules laid down in Article 34(8) to (12) shall apply to the exchange of information pursuant to this Article.

Article 32

Exchange of health data before a transfer is carried out

1. For the sole purpose of the provision of medical care or treatment, in particular concerning disabled persons, elderly people, pregnant women, minors and persons who have been subject to torture, rape or other serious forms of psychological, physical and sexual violence, the transferring Member State shall, in so far as it is available to the competent authority in accordance with national law, transmit to the Member State responsible information on any special needs of the person to be transferred, which in specific cases may include information on that person's physical or mental health. That information shall be transferred in a common health certificate with the necessary documents attached. The Member State responsible shall ensure that those special needs are adequately addressed, including in particular any essential medical care that may be required.

The Commission shall, by means of implementing acts, draw up the common health certificate. Those implementing acts shall be adopted in accordance with the examination procedure laid down in Article 44(2).

2. The transferring Member State shall only transmit the information referred to in paragraph 1 to the Member State responsible after having obtained the explicit consent of the applicant and/or of his or her representative or, if the applicant is physically or legally incapable of giving his or her consent, when such transmission is necessary to protect the vital interests of the applicant or of another person. The lack of consent, including a refusal to consent, shall not constitute an obstacle to the transfer.

3. The processing of personal health data referred to in paragraph 1 shall only be carried out by a health professional who is subject, under national law or rules established by national competent bodies, to the obligation of professional secrecy or by another person subject to an equivalent obligation of professional secrecy.

4. The exchange of information under this Article shall only take place between the health professionals or other persons referred to in paragraph 3. The information exchanged shall only be used for the purposes set out in paragraph 1 and shall not be further processed.

5. The Commission shall, by means of implementing acts, adopt uniform conditions and practical arrangements for exchanging the information referred to in paragraph 1 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure laid down in Article 44(2).

6. The rules laid down in Article 34(8) to (12) shall apply to the exchange of information pursuant to this Article.

Article 33

A mechanism for early warning, preparedness and crisis management

1. Where, on the basis of, in particular, the information gathered by EASO pursuant to Regulation (EU) No 439/2010, the Commission establishes that the application of this Regulation may be jeopardised due either to a substantiated risk of particular pressure being placed on a Member State's asylum system and/or to problems in the functioning of the asylum system of a Member State, it shall, in cooperation with EASO, make recommendations to that Member State, inviting it to draw up a preventive action plan.

The Member State concerned shall inform the Council and the Commission whether it intends to present a preventive action plan in order to overcome the pressure and/or problems in the functioning of its asylum system whilst ensuring the protection of the fundamental rights of applicants for international protection.

A Member State may, at its own discretion and initiative, draw up a preventive action plan and subsequent revisions thereof. When drawing up a preventive action plan, the Member State may call for the assistance of the Commission, other Member States, EASO and other relevant Union agencies.

2. Where a preventive action plan is drawn up, the Member State concerned shall submit it and shall regularly report on its implementation to the Council and to the Commission. The Commission shall subsequently inform the European Parliament of the key elements of the preventive action plan. The Commission shall submit reports on its implementation to the Council and transmit reports on its implementation to the European Parliament.

The Member State concerned shall take all appropriate measures to deal with the situation of particular pressure on its asylum system or to ensure that the deficiencies identified are addressed before the situation deteriorates. Where the preventive action plan includes measures aimed at addressing particular pressure on a Member State's asylum system which may jeopardise the application of this Regulation, the Commission shall seek the advice of EASO before reporting to the European Parliament and to the Council.

3. Where the Commission establishes, on the basis of EASO's analysis, that the implementation of the preventive action plan has not remedied the deficiencies identified or where there is a serious risk that the asylum situation in the Member State concerned develops into a crisis which is unlikely to be remedied by a preventive action plan, the Commission, in cooperation with EASO as applicable, may request the Member State concerned to draw up a crisis management action plan and, where necessary, revisions thereof. The crisis management action plan shall ensure, throughout the entire process, compliance with the asylum *acquis* of the Union, in particular with the fundamental rights of applicants for international protection.

Following the request to draw up a crisis management action plan, the Member State concerned shall, in cooperation with the Commission and EASO, do so promptly, and at the latest within three months of the request.

The Member State concerned shall submit its crisis management action plan and shall report, at least every three months, on its implementation to the Commission and other relevant stakeholders, such as EASO, as appropriate.

The Commission shall inform the European Parliament and the Council of the crisis management action plan, possible revisions and the implementation thereof. In those reports, the Member State concerned shall report on data to monitor compliance with the crisis management action plan, such as the length of the procedure, the detention conditions and the reception capacity in relation to the inflow of applicants.

4. Throughout the entire process for early warning, preparedness and crisis management established in this Article, the Council shall closely monitor the situation and may request further information and provide political guidance, in particular as regards the urgency and severity of the situation and thus the need for a Member State to draw up either a preventive action plan or, if necessary, a crisis management action plan. The European Parliament and the Council may, throughout the entire process, discuss and provide guidance on any solidarity measures as they deem appropriate.

CHAPTER VII

ADMINISTRATIVE COOPERATION

Article 34

Information sharing

1. Each Member State shall communicate to any Member State that so requests such personal data concerning the applicant as is appropriate, relevant and non-excessive for:

(a) determining the Member State responsible;

(b) examining the application for international protection;

(c) implementing any obligation arising under this Regulation.

2. The information referred to in paragraph 1 may only cover:

(a) personal details of the applicant, and, where appropriate, his or her family members, relatives or any other family relations (full name and where appropriate, former name; nicknames or pseudonyms; nationality, present and former; date and place of birth);

(b) identity and travel papers (references, validity, date of issue, issuing authority, place of issue, etc.);

(c) other information necessary for establishing the identity of the applicant, including fingerprints processed in accordance with Regulation (EU) No 603/2013;

(d) places of residence and routes travelled;

(e) residence documents or visas issued by a Member State;

(f) the place where the application was lodged;

(g) the date on which any previous application for international protection was lodged, the date on which the present application was lodged, the stage reached in the proceedings and the decision taken, if any.

3. Furthermore, provided it is necessary for the examination of the application for international protection, the Member State responsible may request another Member State to let it know on what grounds the applicant bases his or her application and, where applicable, the grounds for any decisions taken concerning the applicant. The other Member State may refuse to respond to the request submitted to it, if the communication of such information is likely to harm its essential interests or the protection of the liberties and fundamental rights of the person concerned or of others. In any event, communication of the information requested shall be subject to the written approval of the applicant for international protection, obtained by the requesting Member State. In that case, the applicant must know for what specific information he or she is giving his or her approval.

4. Any request for information shall only be sent in the context of an individual application for international protection. It shall set out the grounds on which it is based and, where its purpose is to check whether there is a criterion that is likely to entail the responsibility of the requested Member State, shall state on what evidence, including relevant information from reliable sources on the ways and means by which applicants enter the territories of the Member States, or on what specific and verifiable part of the applicant's statements it is based. It is understood that such relevant information from reliable sources is not in itself sufficient to determine the responsibility and the competence of a Member State under this Regulation, but it may contribute to the evaluation of other indications relating to an individual applicant.

5. The requested Member State shall be obliged to reply within five weeks. Any delays in the reply shall be duly justified. Non-compliance with the five week time limit shall not relieve the requested Member State of the obligation to reply. If the research carried out by the requested Member State which did not respect the maximum time limit withholds information which shows that it is responsible, that Member State may not invoke the expiry of the time limits provided for in Articles 21, 23 and 24 as a reason for refusing to comply with a request to take charge or take back. In that case, the time limits provided for in Articles 21, 23 and 24 for submitting a request to take charge or take back shall be extended by a period of time which shall be equivalent to the delay in the reply by the requested Member State.

6. The exchange of information shall be effected at the request of a Member State and may only take place between authorities whose designation by each Member State has been communicated to the Commission in accordance with Article 35(1).

7. The information exchanged may only be used for the purposes set out in paragraph 1. In each Member State such information may, depending on its type and the powers of the recipient authority, only be communicated to the authorities and courts and tribunals entrusted with:

(a) determining the Member State responsible;

(b) examining the application for international protection;

(c) implementing any obligation arising under this Regulation.

8. The Member State which forwards the information shall ensure that it is accurate and up-to-date. If it transpires that it has forwarded information which is inaccurate or which should not have been forwarded, the recipient Member States shall be informed thereof immediately. They shall be obliged to correct such information or to have it erased.

9. The applicant shall have the right to be informed, on request, of any data that is processed concerning him or her.

If the applicant finds that the data have been processed in breach of this Regulation or of Directive 95/46/EC, in particular because they are incomplete or inaccurate, he or she shall be entitled to have them corrected or erased.

The authority correcting or erasing the data shall inform, as appropriate, the Member State transmitting or receiving the information.

The applicant shall have the right to bring an action or a complaint before the competent authorities or courts or tribunals of the Member State which refused the right of access to or the right of correction or erasure of data relating to him or her.

10. In each Member State concerned, a record shall be kept, in the individual file for the person concerned and/or in a register, of the transmission and receipt of information exchanged.

11. The data exchanged shall be kept for a period not exceeding that which is necessary for the purposes for which they are exchanged.

12. Where the data are not processed automatically or are not contained, or intended to be entered, in a file, each Member State shall take appropriate measures to ensure compliance with this Article through effective checks.

Article 35

Competent authorities and resources

1. Each Member State shall notify the Commission without delay of the specific authorities responsible for fulfilling the obligations arising under this Regulation, and any amendments thereto. The Member States shall ensure that those authorities have the necessary resources for carrying out their tasks and in particular for replying within the prescribed time limits to requests for information, requests to take charge of and requests to take back applicants.

2. The Commission shall publish a consolidated list of the authorities referred to in paragraph 1 in the *Official Journal of the European Union*. Where there are amendments thereto, the Commission shall publish once a year an updated consolidated list.

3. The authorities referred to in paragraph 1 shall receive the necessary training with respect to the application of this Regulation.

4. The Commission shall, by means of implementing acts, establish secure electronic transmission channels between the authorities referred to in paragraph 1 for transmitting requests, replies and all written correspondence and for ensuring that senders automatically receive an electronic proof of delivery. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2).

Article 36

Administrative arrangements

1. Member States may, on a bilateral basis, establish administrative arrangements between themselves concerning the practical details of the implementation of this Regulation, in order to facilitate its application and increase its effectiveness. Such arrangements may relate to:

(a) exchanges of liaison officers;

(b) simplification of the procedures and shortening of the time limits relating to transmission and the examination of requests to take charge of or take back applicants.

2. Member States may also maintain the administrative arrangements concluded under Regulation (EC) No 343/2003. To the extent that such arrangements are not compatible with this Regulation, the Member States concerned shall amend the arrangements in such a way as to eliminate any incompatibilities observed.

3. Before concluding or amending any arrangement referred to in paragraph 1(b), the Member States concerned shall consult the Commission as to the compatibility of the arrangement with this Regulation.

4. If the Commission considers the arrangements referred to in paragraph 1(b) to be incompatible with this Regulation, it shall, within a reasonable period, notify the Member States concerned. The Member States shall take all appropriate steps to amend the arrangement concerned within a reasonable time in such a way as to eliminate any incompatibilities observed.

5. Member States shall notify the Commission of all arrangements referred to in paragraph 1, and of any denunciation thereof, or amendment thereto.

CHAPTER VIII

CONCILIATION

Article 37

Conciliation

1. Where the Member States cannot resolve a dispute on any matter related to the application of this Regulation, they may have recourse to the conciliation procedure provided for in paragraph 2.

2. The conciliation procedure shall be initiated by a request from one of the Member States in dispute to the Chairman of the Committee set up by Article 44. By agreeing to use the conciliation procedure, the Member States concerned undertake to take the utmost account of the solution proposed.

The Chairman of the Committee shall appoint three members of the Committee representing three Member States not connected with the matter. They shall receive the arguments of the parties either in writing or orally and, after deliberation, shall propose a solution within one month, where necessary after a vote.

The Chairman of the Committee, or his or her deputy, shall chair the discussion. He or she may put forward his or her point of view but may not vote.

Whether it is adopted or rejected by the parties, the solution proposed shall be final and irrevocable.

CHAPTER IX

TRANSITIONAL PROVISIONS AND FINAL PROVISIONS

Article 38

Data security and data protection

Member States shall take all appropriate measures to ensure the security of transmitted personal data and in particular to avoid unlawful or unauthorised access or disclosure, alteration or loss of personal data processed.

Each Member State shall provide that the national supervisory authority or authorities designated pursuant to Article 28(1) of Directive 95/46/EC shall monitor independently, in accordance with its respective national law, the lawfulness of the processing, in accordance with this Regulation, of personal data by the Member State in question.

Article 39

Confidentiality

Member States shall ensure that the authorities referred to in Article 35 are bound by the confidentiality rules provided for in national law, in relation to any information they obtain in the course of their work.

Article 40

Penalties

Member States shall take the necessary measures to ensure that any misuse of data processed in accordance with this Regulation is punishable by penalties, including administrative and/or criminal penalties in accordance with national law, that are effective, proportionate and dissuasive.

Article 41

Transitional measures

Where an application has been lodged after the date mentioned in the second paragraph of Article 49, the events that are likely to entail the responsibility of a Member State under this Regulation shall be taken into consideration, even if they precede that date, with the exception of the events mentioned in Article 13(2).

Article 42

Calculation of time limits

Any period of time prescribed in this Regulation shall be calculated as follows:

(a) where a period expressed in days, weeks or months is to be calculated from the moment at which an event occurs or an action takes place, the day during which that event occurs or that action takes place shall not be counted as falling within the period in question;

(b) a period expressed in weeks or months shall end with the expiry of whichever day in the last week or month is the same day of the week or falls on the same date as the day during which the event or action from which the period is to be calculated occurred or took place. If, in a period expressed in months, the day on which it should expire does not occur in the last month, the period shall end with the expiry of the last day of that month;

(c) time limits shall include Saturdays, Sundays and official holidays in any of the Member States concerned.

Article 43

Territorial scope

As far as the French Republic is concerned, this Regulation shall apply only to its European territory.

Article 44

Committee

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.

Article 45

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Articles 8(5) and 16(3) shall be conferred on the Commission for a period of 5 years from the date of entry into force of this Regulation. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the 5-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3. The delegation of power referred to in Articles 8(5) and 16(3) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Articles 8(5) and 16(3) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of four months of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 46

Monitoring and evaluation

By 21 July 2016, the Commission shall report to the European Parliament and to the Council on the application of this Regulation and, where appropriate, shall propose the necessary amendments. Member States shall forward to the Commission all information appropriate for the preparation of that report, at the latest six months before that time limit expires.

After having submitted that report, the Commission shall report to the European Parliament and to the Council on the application of this Regulation at the same time as it submits reports on the implementation of the Eurodac system provided for by Article 40 of Regulation (EU) No 603/2013.

Article 47

Statistics

In accordance with Article 4(4) of Regulation (EC) No 862/2007 of the European Parliament and of the Council of 11 July 2007 on Community statistics on migration and international protection ([1]), Member States shall communicate to the Commission (Eurostat), statistics concerning the application of this Regulation and of Regulation (EC) No 1560/2003.

Article 48

Repeal

Regulation (EC) No 343/2003 is repealed.

Articles 11(1), 13, 14 and 17 of Regulation (EC) No 1560/2003 are repealed.

References to the repealed Regulation or Articles shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex II.

Article 49

Entry into force and applicability

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply to applications for international protection lodged as from the first day of the sixth month following its entry into force and, from that date, it will apply to any request to take charge of or take back applicants, irrespective of the date on which the application was made. The Member State responsible for the examination of an application for international protection submitted before that date shall be determined in accordance with the criteria set out in Regulation (EC) No 343/2003.

References in this Regulation to Regulation (EU) No 603/2013, Directive 2013/32/EU and Directive 2013/33/EU shall be construed, until the dates of their application, as references to Regulation (EC) No 2725/2000 ([2]), Directive 2003/9/EC ([3]) and Directive 2005/85/EC ([4]) respectively.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels, 26 June 2013.

For the European Parliament
The President
M. SCHULZ

For the Council
The President
A. SHATTER

([1]) OJ L 199, 31.7.2007, p. 23.

([2]) Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention (OJ L 316, 15.12.2000, p. 1).

([3]) Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers (OJ L 31, 6.2.2003, p. 18).

([4]) Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures for granting and withdrawing refugee status (OJ L 326, 13.12.2005, p. 13).

ANNEX I

Repealed Regulations (referred to in Article 48)

Council Regulation (EC) No 343/2003

(OJ L 50, 25.2.2003, p. 1)

Commission Regulation (EC) No 1560/2003 only Articles 11(1), 13, 14 and 17

(OJ L 222, 5.9.2003, p. 3)

ANNEX II

Correlation table

Regulation (EC) No 343/2003	This Regulation
Article 1	Article 1
Article 2(a)	Article 2(a)
Article 2(b)	—
Article 2(c)	Article 2(b)
Article 2(d)	Article 2(c)
Article 2(e)	Article 2(d)
Article 2(f)	Article 2(e)
Article 2(g)	Article 2(f)
—	Article 2(h)
—	Article 2(i)
Article 2(h)	Article 2(j)
Article 2(i)	Article 2(g)
—	Article 2(k)
Article 2(j) and (k)	Article 2(l) and (m)
—	Article 2(n)
Article 3(1)	Article 3(1)
Article 3(2)	Article 17(1)
Article 3(3)	Article 3(3)
Article 3(4)	Article 4(1), introductory wording
—	Article 4(1)(a) to (f)
—	Article 4(2) and (3)
Article 4(1) to (5)	Article 20(1) to (5)
—	Article 20(5), third subparagraph
—	Article 5
—	Article 6
Article 5(1)	Article 7(1)
Article 5(2)	Article 7(2)
—	Article 7(3)
Article 6, first paragraph	Article 8(1)
—	Article 8(3)
Article 6, second paragraph	Article 8(4)
Article 7	Article 9

Regulation (EC) No 343/2003	This Regulation
Article 8	Article 10
Article 9	Article 12
Article 10	Article 13
Article 11	Article 14
Article 12	Article 15
—	Article 16
Article 13	Article 3(2)
Article 14	Article 11
Article 15(1)	Article 17(2), first subparagraph
Article 15(2)	Article 16(1)
Article 15(3)	Article 8(2)
Article 15(4)	Article 17(2), fourth subparagraph
Article 15(5)	Articles 8(5) and (6) and Article 16(2)
Article 16(1)(a)	Article 18(1)(a)
Article 16(1)(b)	Article 18(2)
Article 16(1)(c)	Article 18(1)(b)
Article 16(1)(d)	Article 18(1)(c)
Article 16(1)(e)	Article 18(1)(d)
Article 16(2)	Article 19(1)
Article 16(3)	Article 19(2), first subparagraph
—	Article 19(2), second subparagraph
Article 16(4)	Article 19(3)
—	Article 19(3), second subparagraph
Article 17	Article 21
Article 18	Article 22
Article 19(1)	Article 26(1)
Article 19(2)	Article 26(2) and Article 27(1)
—	Article 27(2) to (6)
Article 19(3)	Article 29(1)
Article 19(4)	Article 29(2)
—	Article 29(3)
Article 19(5)	Article 29(4)
Article 20(1), introductory wording	Article 23(1)
—	Article 23(2)
—	Article 23(3)

Regulation (EC) No 343/2003	This Regulation
—	Article 23(4)
Article 20(1)(a)	Article 23(5), first subparagraph
—	Article 24
Article 20(1)(b)	Article 25(1)
Article 20(1)(c)	Article 25(2)
Article 20(1)(d)	Article 29(1), first subparagraph
Article 20(1)(e)	Article 26(1), (2), Article 27(1), Article 29(1), second and third subparagraphs
Article 20(2)	Article 29(2)
Article 20(3)	Article 23(5), second subparagraph
Article 20(4)	Article 29(4)
—	Article 28
—	Article 30
—	Article 31
—	Article 32
—	Article 33
Article 21(1) to (9)	Article 34(1) to (9), first to third subparagraphs
—	Article 34(9), fourth subparagraph
Article 21(10) to (12)	Article 34(10) to (12)
Article 22(1)	Article 35(1)
—	Article 35(2)
—	Article 35(3)
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Regulation (EC) No 343/2003	This Regulation
Article 27(1), (2)	Article 44(1), (2)
Article 27(3)	—
—	Article 45
Article 28	Article 46
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—	Article 48
Article 29	Article 49

Regulation (EC) No 1560/2003	This Regulation
Article 11(1)	—
Article 13(1)	Article 17(2), first subparagraph
Article 13(2)	Article 17(2), second subparagraph
Article 13(3)	Article 17(2), third subparagraph
Article 13(4)	Article 17(2), first subparagraph
Article 14	Article 37
Article 17(1)	Articles 9, 10, 17(2), first subparagraph
Article 17(2)	Article 34(3)

STATEMENT BY THE COUNCIL, THE EUROPEAN PARLIAMENT AND THE COMMISSION

The Council and the European Parliament invite the Commission to consider, without prejudice to its right of initiative, a revision of Article 8(4) of the Recast of the Dublin Regulation once the Court of Justice rules on case C-648/11 MA and Others vs. Secretary of State for the Home Department and at the latest by the time limits set in Article 46 of the Dublin Regulation. The European Parliament and the Council will then both exercise their legislative competences, taking into account the best interests of the child.

The Commission, in a spirit of compromise and in order to ensure the immediate adoption of the proposal, accepts to consider this invitation, which it understands as being limited to these specific circumstances and not creating a precedent.

EUROPEAN
COMMISSION

Brussels, 23.9.2020
COM(2020) 609 final

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS

on a New Pact on Migration and Asylum

'We will take a human and humane approach. Saving lives at sea is not optional. And those countries who fulfil their legal and moral duties or are more exposed than others, must be able to rely on the solidarity of our whole European Union… Everybody has to step up here and take responsibility.'

President von der Leyen, State of the Union Address 2020

1. INTRODUCTION: A NEW PACT ON MIGRATION AND ASYLUM

Migration has been a constant feature of human history with a profound impact on European society, its economy and its culture. With a well-managed system, migration can contribute to growth, innovation and social dynamism. Key societal challenges faced by the world today – demography, climate change, security, the global race for talent, and inequality – all have an impact on migration. Policy imperatives such as free movement in the Schengen area, safeguarding fundamental rights, ensuring security, and filling skills gaps, all call for an effective migration policy. The task facing the EU and its Member States, while continuing to address urgent needs, is to build a system that manages and normalises migration for the long term and which is fully grounded in European values and international law.

The **New Pact on Migration and Asylum** offers a fresh start to address this task. The refugee crisis of 2015-2016 revealed major shortcomings, as well as the complexity of managing a situation which affects different Member States in different ways. It unearthed genuine concerns, and brought to the surface differences which need to be acknowledged and overcome. Above all, it highlighted a fundamental truth inherent in the nature of the EU: that **every action has implications for others**. While some Member States continue to face the challenge of external border management, others must cope with large-scale arrivals by land or sea, or overpopulated reception centres, and others still face high numbers of unauthorised movements of migrants. A new, durable **European framework** is needed, to manage the interdependence between Member States' policies and decisions and to offer a proper response to the opportunities and challenges in normal times, in situations of pressure and in crisis situations: one that can provide certainty, clarity and decent conditions for the men, women and children arriving in the EU, and that can also allow Europeans to trust that migration is managed in an effective and humane way, fully in line with our values.

- 20.9 million non-EU nationals were **legally resident** in EU Member States in 2019, some 4.7% of the EU total population.
- EU Member States issued around 3.0 million **first residence permits** to non-EU nationals in 2019, including around 1.8 million for a duration of at least 12 months.
- 1.82 million **illegal border crossings** were recorded at the EU external border at the peak of the refugee crisis in 2015. By 2019 this had decreased to 142 000.
- The number of **asylum applications** peaked at 1.28 million in 2015 and was 698 000 in 2019.
- On average every year around 370,000 applications for international protection are rejected but only around a third of these persons are **returned** home.
- The EU hosted some 2.6 million **refugees** at the end of 2019, equivalent to 0.6% of the EU population.

The New Pact recognises that **no Member State should shoulder a disproportionate responsibility** and that all Member States should **contribute to solidarity** on a constant basis.

It provides a comprehensive approach, bringing together policy in the areas of **migration, asylum, integration and border management**, recognising that the overall effectiveness depends on progress on all fronts. It creates faster, seamless **migration processes** and **stronger governance** of migration and borders policies, supported by modern IT systems and more effective agencies. It aims to reduce unsafe and irregular routes and promote sustainable and safe legal pathways for those in need of protection. It reflects the reality that most migrants come to the EU through legal channels, which should be better matched to EU labour market needs. And it will foster trust in EU policies by closing the existing **implementation gap.**

This common response needs to include **the EU's relationships with third countries**, as the internal and external dimensions of migration are inextricably linked: working closely with partners has a direct impact on the effectiveness of policies inside the EU. Addressing the root causes of irregular migration, combatting migrant smuggling, helping refugees residing in third countries and supporting well-managed legal migration are valuable objectives for both the EU and our partners to pursue through comprehensive, balanced and tailor-made partnerships.

In designing the New Pact, the Commission undertook dedicated high-level and technical consultations with the European Parliament, all Member States, and a wide variety of stakeholders from civil society, social partners and business. The New Pact has been shaped by the lessons of the inter-institutional debates since the Commission proposals of 2016 to reform the Common European Asylum System. It will preserve the compromises already reached on the existing proposals and add new elements to ensure the balance needed in a common framework, bringing together all aspects of asylum and migration policy. It will close gaps between the various realities faced by different Member States and promote mutual trust by delivering results through effective implementation. Common rules are essential, but they are not enough. The interdependency of Member States also makes it indispensable to ensure full, transparent and consistent implementation on the ground.

The New Pact on Migration and Asylum:

- robust and fair management of external borders, including identity, health and security checks;
- fair and efficient asylum rules, streamlining procedures on asylum and return;
- a new solidarity mechanism for situations of search and rescue, pressure and crisis;
- stronger foresight, crisis preparedness and response;
- an effective return policy and an EU-coordinated approach to returns;
- comprehensive governance at EU level for better management and implementation of asylum and migration policies;
- mutually beneficial partnerships with key third countries of origin and transit;
- developing sustainable legal pathways for those in need of protection and to attract talent to the EU; and
- supporting effective integration policies.

2. A COMMON EUROPEAN FRAMEWORK FOR MIGRATION AND ASYLUM MANAGEMENT

Since the refugee crisis of 2015-2016, the challenges have changed. Mixed flows of refugees and migrants have meant increased complexity and an intensified need for coordination and solidarity mechanisms. The EU and the Member States have significantly stepped up cooperation on migration and asylum policy. Member States' responses to the recent situation in the Moria reception centre have shown responsibility-sharing and solidarity in action. The plan of the Commission to work with national authorities on a joint pilot for a new reception centre shows how cooperation can work in the most operational of ways. To support the implementation of this joint pilot, the Commission will set up an integrated task force together with Member States and EU Agencies. However, *ad hoc* responses cannot provide a sustainable answer and major structural weaknesses remain, both in design and implementation. Inconsistencies between national asylum and return systems, as well as shortcomings in implementation, have exposed inefficiencies and raised concerns about fairness. And at the same time, the proper functioning of migration and asylum policy inside the EU also needs reinforced cooperation on migration with partners outside the EU.

A comprehensive approach is therefore needed which acknowledges collective responsibilities, addresses the most fundamental concerns expressed in the negotiations since 2016 – in particular in relation to solidarity – and tackles the implementation gap. This approach will build on progress made since 2016 but will also introduce a common European framework and better governance of migration and asylum management, as well as a new solidarity mechanism. It will also make procedures at the border more consistent and more efficient, as well as ensuring a consistent standard of reception conditions.

Building on the progress made since 2016

The Commission's previous proposals to reform the **Common European Asylum System** aimed to create a fair and swift process guaranteeing access to the asylum procedure, as well as equal treatment, clarity and legal certainty for asylum seekers, and addressing shortcomings on return. These goals remain valid and the New Pact has sought to maintain as much as possible the progress made and the compromises reached between the European Parliament and the Council.

The Commission supports the provisional political agreements already reached on the Qualification Regulation and the Reception Conditions Directive. These proposals should be agreed as soon as possible. The **Qualification Regulation** would further harmonise the criteria for granting international protection, as well as clarifying the rights and obligations of beneficiaries and setting out when protection should end, in particular if the beneficiary has become a public security threat or committed a serious crime. The recast of the **Reception Conditions Directive** would bring more harmonised rules and improved reception conditions for asylum applicants, including earlier access to the labour market and better access to education for child migrants. It would also make clear that reception conditions are only to be provided in the responsible Member State, disincentivising unauthorised movements, and rules on detention would be clarified. The regulation to set up a fully-fledged **European Union Agency for Asylum** is another essential building block in a coherent and operational system whose swift adoption would bring immediate benefits. The proposal for a **Union Resettlement and Humanitarian Admission Framework Regulation** would provide a stable EU framework for the EU contribution to global resettlement efforts. The Commission's 2018 proposal amending the **Return Directive** also remains a key priority, to close loopholes and streamline procedures so that asylum and return work as part of a single system[1].

[1] See section 2.5.

2.1 New procedures to establish status swiftly on arrival

The external border is where the EU needs to close the gaps between external border controls and asylum and return procedures. This process should be swift, with clear and fair rules for authorisation to enter and access to the appropriate procedure. The Commission is proposing to establish a seamless procedure at the border applicable to all non-EU citizens crossing without authorisation, comprising pre-entry screening, an asylum procedure and where applicable a swift return procedure – thereby integrating processes which are currently separate.

The first step should be a **pre-entry screening**[2] applicable to all third-country nationals who cross the external border without authorisation. This screening will include identification, health and security checks, fingerprinting and registration in the Eurodac database. It will act as a first step in the overall asylum and return system, increase transparency for the people concerned at an early stage and build trust in the system. It will foster closer cooperation between all relevant authorities, with support from EU Agencies. The screening will accelerate the process of determining the status of a person and what type of procedure should apply. To ensure that the same checks are conducted for all irregular arrivals before legal entry to the territory of a Member State, Member States will also need to carry out the screening if a person eludes border controls but is later identified within the territory of a Member State.

The Commission is also proposing a targeted amendment of its 2016 proposal for a new Asylum Procedures Regulation[3] to allow for more effective while flexible use of border procedures as a second stage in the process. The rules on the asylum and return **border procedures** would come together in a single legislative instrument. Border procedures allow for the fast-tracking of the treatment of an application, much like acceleration grounds such as the concepts of safe countries of origin or safe third countries. Asylum claims with low chances of being accepted should be examined rapidly without requiring legal entry to the Member State's territory. This would apply to claims presented by applicants misleading the authorities, originating from countries with low recognition rates likely not to be in need of protection, or posing a threat to national security. Whilst asylum applications made at the EU's external borders must be assessed as part of EU asylum procedures, they do not constitute an automatic right to enter the EU. The normal asylum procedure would continue to apply to other asylum claims and become more efficient, bringing clarity for those with well-founded claims. In addition, it should be possible to relocate applicants during the border procedure, allowing for procedures to be continued in another Member State.

For those whose claims have been rejected in the asylum border procedure, an EU return border procedure would apply immediately. This would eliminate the risks of unauthorised movements and send a clear signal to smugglers. It would be a particularly important tool on routes where there is a large proportion of asylum applicants from countries with a low recognition rate.

All necessary guarantees will be put in place to ensure that every person would have an individual assessment and essential guarantees remain in full, with full respect for the principle of *non-refoulement* and fundamental rights. Special attention to the needs of the most vulnerable would include a general exemption from the border procedures where the necessary guarantees cannot be secured. To guarantee effective access to asylum procedures

[2] Proposal for a Regulation introducing a screening of third country nationals at the external borders, COM(2020) 612 of 23 September 2020.

[3] Amended proposal for a Regulation establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU, COM(2020) 611 of 23 September 2020.

and respect for fundamental rights, Member States, working closely with the Fundamental Rights Agency, will put in place an effective monitoring mechanism, already at the stage of the screening as an additional safeguard.

The new procedures will allow asylum and migration authorities to more efficiently assess well-founded claims, deliver faster decisions and thereby contribute to a better and more credible functioning of asylum and return policies. This will be of benefit both to Member States, and to the EU as a whole: the work should be supported by resources and expertise from EU agencies as well as EU funds.

The Asylum Procedures Regulation would also establish an accessible, effective and timely decision-making process, based on simpler, clearer and shorter procedures, adequate procedural safeguards for asylum seekers, and tools to prevent restrictions being circumvented. A greater degree of harmonisation of the safe country of origin and safe third country concepts through EU lists, identifying countries such as those in the Western Balkans, will be particularly important in the continued negotiations, building on earlier inter-institutional discussions.

2.2 A common framework for solidarity and responsibility sharing

Drawing on the experience of the negotiations on the 2016 proposals to reform the Common European Asylum System, it is clear that an approach that goes beyond the limitations of the current Dublin Regulation is required. Rules for determining the Member State responsible for an asylum claim should be part of a common framework, and offer smarter and more flexible tools to help Member States facing the greatest challenges. The Commission will therefore withdraw its 2016 proposal amending the Dublin Regulation to be replaced by a new, broader instrument for a common framework for asylum and migration management – **the Asylum and Migration Management Regulation**[4]. This reform is urgent and a political agreement on the core principles should be reached by the end of 2020.

This new common framework will set out the principles and structures needed for an integrated approach for migration and asylum policy, which ensures a fair sharing of responsibility and addresses effectively mixed arrivals of persons in need of international protection and those who are not. This includes a new **solidarity mechanism** to embed fairness into the EU asylum system, reflecting the different challenges created by different geographical locations, and ensuring that all contribute through solidarity so that the real needs created by the irregular arrivals of migrants and asylum seekers are not handled by individual Member States alone, but by the EU as a whole. Solidarity implies that all Member States should contribute, as clarified by the European Court of Justice[5].

The new solidarity mechanism will primarily focus on relocation or return sponsorship. Under return sponsorship, Member States would provide all necessary support to the Member State under pressure to swiftly return those who have no right to stay, with the supporting Member State taking full responsibility if return is not carried out within a set period. Member States can focus on nationalities where they see a better chance of effecting returns. While each Member State would have to contribute to relocation and/or return sponsorships and a distribution key would be applied, Member States will have the flexibility to decide whether and to what extent to share their effort between persons to be relocated and those to whom return sponsorship would apply. There would also be the possibility to contribute through other forms of solidarity such as capacity building,

[4] Proposal for a Regulation on asylum and migration management, COM(2020) 610 of 23 September 2020.

[5] Judgment in Joined Cases C-715/17, C-718/17 and C-719/17 Commission v Poland, Hungary and the Czech Republic.

operational support, technical and operational expertise, as well as support on the external aspects of migration. Whilst always leaving Member States with viable alternatives to relocation, a safety net will ensure that the pressure on a Member State is effectively alleviated by relocation or return sponsorship. The specific situation of search and rescue cases and particularly vulnerable groups should also be acknowledged, and the Commission will draw up a pool of projected solidarity measures, consisting mainly of relocations, indicated by Member States per year, based on the Commission's short-term projections for anticipated disembarkations on all routes as well as vulnerable groups projected to need relocation.

Current rules on the shift of **responsibility** for examining an application for international protection between Member States can act as an incentive for unauthorised movement, in particular when the shift of responsibility results from the behaviour of the applicant (for example, when an applicant absconds). The system therefore needs to be strengthened and loopholes closed. While the current criteria for determining responsibility will continue to apply, the rules on responsibility for examining an application for international protection should be refined to make the system more efficient, discourage abuses and prevent unauthorised movements. There should also be clear obligations for the applicant, and defined consequences if they do not comply. An additional step will be to amend the Long-term Residents Directive so that beneficiaries of international protection would have an incentive to remain in the Member State which granted international protection, with the prospect of long-term resident status after three years of legal and continuous residence in that Member State. This would also help their integration into local communities.

2.3 Mutual trust through robust governance and implementation monitoring

To be effective, border management, asylum and return policies must work well at the national level, and in the case of the integration of migrants at the local level. National policies therefore need to be coherent with the overall European approach. The new Asylum and Migration Management Regulation will seek to achieve this through closer European cooperation. It will improve planning, preparedness and monitoring at both national and EU level. A structured process would offer EU help so that Member States could assist one another in building a resilient, effective, and flexible system, with **national strategies** integrating asylum and return policies at national level. A **European strategy** would guide and support the Member States. The Commission will also prepare a report on preparedness and contingency, based on Member State reporting on an annual basis. This would bring a forward-looking perspective on addressing the risks and opportunities of migration management, to improve both the ability and the readiness to respond.

Key to trust in EU and national policies is consistency in implementation, requiring enhanced monitoring and operational support by EU Agencies. This includes more systematic Commission monitoring of both existing and new rules, including through infringement procedures.

Systems of quality control related to management of migration, such as the Schengen evaluation mechanism and the European Border and Coast Guard Agency (Frontex) vulnerability assessments, will play a key role. Another important step will be the future monitoring of the asylum systems included in the latest compromise on the proposal for a new **European Union Agency for Asylum**. The new mandate would respond to Member States' growing need for operational support and guidance on the implementation of the common rules on asylum, as well as bringing greater convergence. It would boost mutual trust through new monitoring of Member States' asylum and reception systems and through the ability for the Commission to issue recommendations with assistance measures. This legislation should be adopted still this year to allow this practical support to be quickly

available, while acknowledging that new structures such as the monitoring may need some time to be put in place.

2.4 Supporting children and the vulnerable

The EU asylum and migration management system needs to provide for the special needs of vulnerable groups, including through resettlement. This Commission has identified the needs of children as a priority, as boys and girls in migration are particularly vulnerable[6]. This will be taken fully into account in broader initiatives to promote the rights and interests of children, such as the Strategy on the Rights of the Child, in line both with international law on rights of refugees and children and with the EU Charter of Fundamental Rights[7].

The reform of EU rules on asylum and return is an opportunity to **strengthen safeguards and protection standards** under EU law for migrant children. The new rules will ensure that the best interests of the child are the primary consideration in all decisions concerning migrant children and that the right for the child to be heard is respected. Representatives for unaccompanied minors should be appointed more quickly and given sufficient resources. The European Network on Guardianship[8] should be strengthened and play a stronger role in coordination, cooperation and capacity building for guardians. Unaccompanied children and children under twelve years of age together with their families should be exempt from the border procedure unless there are security concerns. In all other relevant asylum procedures, child-specific procedural guarantees and additional support should be effectively provided. The system needs to be geared to reflect the particular needs of children at every stage, providing effective alternatives to detention, promoting swift family reunification, and ensuring that the voice of child protection authorities is heard. Children should be offered adequate accommodation and assistance, including legal assistance, throughout the status determination procedures. Finally, they should also have prompt and non-discriminatory access to education, and early access to integration services.

The risks of trafficking along migration routes are high, notably the risk for women and girls of becoming victims of trafficking for sexual exploitation or other forms of gender-based violence. Trafficking networks abuse asylum procedures, and use reception centres to identify potential victims[9]. The early identification of potential non-EU victims will be a specific theme of the Commission's forthcoming approach towards the eradication of trafficking in human beings, as set out in the recent Security Union Strategy[10].

2.5 An effective and common EU system for returns

EU migration rules can be credible only if those who do not have the right to stay in the EU are effectively returned. Currently, only about a third of people ordered to return from Member States actually leave. This erodes citizens' trust in the whole system of asylum and migration management and acts as an incentive for irregular migration. It also exposes those staying illegally to precarious conditions and exploitation by criminal networks. The effectiveness of returns today varies from Member State to Member State, depending to a

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6 Communication on the protection of children in migration, COM(2017) 211 of 12 April 2017, recommending a comprehensive set of measures to strengthen their protection at every step of the migratory process.

7 The EU Child Guarantee will also take into account the special needs of children in migration, as well as the Action Plan on integration and inclusion (see section 8 below).

8 The Network was announced in the 2017 Communication (see footnote 6). It brings together guardianship authorities and agencies, (local) authorities and international and non-governmental organisations in order to promote good guardianship services for unaccompanied and separated children in the EU.

9 Europol 2020, European Migrant Smuggling Centre 4th Annual report – 2019.

10 EU Security Union Strategy, COM(2020) 605 of 24 July 2020.

large extent on national rules and capacities, as well as on relations with particular third countries. A **common EU system for returns** is needed which combines stronger structures inside the EU with more effective cooperation with third countries on return and readmission. It should be developed building on the recast of the Return Directive and effective operational support including through Frontex. This approach would benefit from the process proposed under the Asylum and Migration Management Regulation to identify measures if required to incentivise cooperation with third countries[11]. The common EU system for returns should integrate return sponsorship and serve to support its successful implementation.

The main building block to achieve an effective EU return system is the 2018 proposal to recast the Return Directive. This would bring key improvements in the management of return policy. It would help prevent and reduce absconding and unauthorised movements, with common criteria to assess each case and the possibility to use detention for public order and security concerns. It would boost assisted voluntary return programmes, as the most efficient and sustainable way to enhance return. It would also improve delivery, with tailor-made IT tools and a clear obligation for those in the procedure to cooperate, as well as accelerating procedures. It is important that the European Parliament and the Council find agreement on provisions on common assessment criteria and detention. The Commission is ready to work closely with the other institutions to find swift agreement on a revised Directive that brings these improvements: this also would be helped by bringing together the rules on the asylum and return border procedures in the new Asylum Procedures Regulation, closing existing loopholes and further reducing the possibilities to circumvent the asylum system.

National return efforts also need **operational support**. Work on return is often hampered by scarce financial and human resources in Member States. Embedding return in national strategies under the common framework should result in better planning, resourcing and infrastructure for return and readmission operations.

Frontex must play a leading role in the common EU system for returns, making returns work well in practice. It should be a priority for Frontex to become the operational arm of EU return policy, with the appointment of a dedicated Deputy Executive Director and integrating more return expertise into the Management Board[12]. The deployment of the new standing corps will also assist return. Frontex will also support the introduction of a return case management system at EU and national level, covering all steps of the procedure from the detection of an irregular stay to readmission and reintegration in third countries. In this way the Agency can realise its full potential to support return, linking up operational cooperation with Member States and effective readmission cooperation with third countries.

An effective system to ensure return is a common responsibility and it will need strong governance structures to ensure a more coherent and effective approach. To this end, the Commission will appoint a **Return Coordinator**, supported by a new **High Level Network for Return**. The Coordinator will provide technical support to bring together the strands of EU return policy, building on positive experiences of Member States in managing returns and facilitating a seamless and interlinked implementation of the return process. A strategic focus will be provided by an operational strategy on returns.

Return is more effective when carried out voluntarily and accompanied with strong reintegration measures. Promoting voluntary return is a key strategic objective, reflected in

[11] Return policy needs to be fully integrated with the readmission policy set out in section 6.5.

[12] The EBCG Regulation requires that one of the three deputy executive directors should be assigned a specific role and responsibilities in overseeing the Agency's tasks regarding returns.

the Commission's 2018 proposal on the Return Directive as well as in a forthcoming Strategy on voluntary return and reintegration. This strategy will set out new approaches to the design, promotion and implementation of assisted voluntary return and reintegration schemes[13], setting common objectives and promoting coherence both between EU and national initiatives and between national schemes. This work can also draw on the reinforced mandate on return of the European Border and Coast Guard.

2.6 A new common asylum and migration database

A seamless migration and asylum process needs proper management of the necessary information. For this purpose, **Eurodac** should be further developed to support the common framework[14]. The 2016 Commission proposal, on which a provisional political agreement was reached by the European Parliament and the Council, would already enlarge the scope of Eurodac. An upgraded Eurodac would help to track unauthorised movements, tackle irregular migration and improve return. The data stored would be extended to address specific needs, with the necessary safeguards: for example, the European Parliament and the Council had already agreed to extend its scope to resettled persons.

These changes should now be complemented to allow an **upgraded database** to count individual applicants (rather than applications), to help apply new provisions on shifting responsibility within the EU, to facilitate relocation, and to ensure better monitoring of returnees. The new system would help create the necessary link between asylum and return procedures and provide additional support to national authorities dealing with asylum applicants whose application has already been rejected in another Member State. It could also track support for voluntary departure and reintegration. The new Eurodac would be fully interoperable with the border management databases, as part of an all-encompassing and integrated migration and border management system.

Key actions

The Commission:

- Proposes an Asylum and Migration Management Regulation, including a new solidarity mechanism;
- Proposes new legislation to establish a screening procedure at the external border;
- Amends the proposal for a new Asylum Procedures Regulation to include a new border procedure and make asylum procedures more effective;
- Amends the Eurodac Regulation proposal to meet the data needs of the new framework for EU asylum and migration management;
- Will appoint a Return Coordinator within the Commission, supported by a new High Level Network for Returns and a new operational strategy; and
- Will set out a new Strategy on voluntary returns and reintegration.

The European Border and Coast Guard Agency (Frontex) should:

- Fully operationalise the reinforced mandate on return and provide full support to Member States at national level; and
- Appoint a Deputy Executive Director for Return,

The European Parliament and the Council should:

[13] See section 6.5.

[14] Amended proposal for a Regulation on the establishment of 'Eurodac', COM(2020) 614 of 23 September 2020.

- Adopt the Asylum and Migration Management Regulation, as well as the Screening Regulation and the revised Asylum Procedures Regulation, by June 2021;
- Give immediate priority to adoption of the Regulation on the EU Asylum Agency by the end of the year to allow effective European support on the ground;
- Ensure adoption of the revised Eurodac Regulation this year;
- Ensure quick adoption of the revised Reception Conditions Directive and the Qualification Regulation; and
- Ensure the swift conclusion of the negotiations on the revised Return Directive.

3. A ROBUST CRISIS PREPAREDNESS AND RESPONSE SYSTEM

The New Pact's goal of putting in place a comprehensive and robust migration and asylum policy is the best protection against the risk of crisis situations. The EU is already better prepared today than it was in 2015, and the common framework for asylum and migration management will already put the EU on a stronger footing, reinforcing preparedness and making solidarity a permanent feature. Yet the EU will always need to be ready for the unexpected.

The EU must be ready to address **situations of crisis and force majeure** with resilience and flexibility – in the knowledge that different types of crises require varied responses. The effectiveness of response can be improved through preparation and foresight. This needs an evidence-based approach, to increase anticipation and help to prepare EU responses to key trends[15]. A new **Migration Preparedness and Crisis Blueprint**[16] will be issued to help move from a reactive mode to one based on readiness and anticipation. It will bring together all existing crisis management tools and set out the key institutional, operational and financial measures and protocols which must be in place to ensure preparedness both at EU and national level.

The Blueprint entails continuous anticipation and monitoring of Member States' capacities, and provides a framework for building resilience and organising a coordinated response to a crisis. At the request of a Member State, operational support would be deployed, both from EU agencies and by other Member States. This would build on the hotspot approach and draw on recent experience of crisis response and civil protection. The Blueprint will be immediately effective, but will also act as important operational support to the EU's ability to respond under the future arrangements. It will set out the array of measures that can be used to address crises related to a large number of irregular arrivals. Experience, however, tells us that we also need to add a new element to the toolbox.

A new legislative instrument would provide for **temporary and extraordinary measures needed in the face of crisis**[17]. The objectives of this instrument will be twofold: firstly to provide flexibility to Member States to react to crisis and force majeure situations and grant immediate protection status in crisis situations, and secondly, to ensure that the system of solidarity established in the new Asylum and Migration Management Regulation is well adapted to a crisis characterised by a large number of irregular arrivals. The circumstances of crisis demand urgency and therefore the solidarity mechanism needs to be stronger, and

[15] This work stream will be supported through the Knowledge Centre on Migration and Demography in the Commission's Joint Research Centre.

[16] Commission Recommendation on an EU mechanism for Preparedness and Management of Crises related to Migration (Migration Preparedness and Crisis Blueprint), C(2020) 6469 of 23 September 2020.

[17] Proposal for a Regulation addressing situations of crisis and force majeure in the field of migration and asylum, COM(2020) 613 of 23 September 2020.

the timeframes governing that mechanism should be reduced[18]. It would also widen the scope of compulsory relocation, for example to applicants for and beneficiaries of immediate protection, and return sponsorship.

In situations of crisis that are of such a magnitude that they risk to overwhelm Member States' asylum and migration systems, the practical difficulties faced by Member States would be recognised through some limited margin to temporarily derogate from the normal procedures and timelines, while ensuring respect for fundamental rights and the principle of *non-refoulement*[19].

Protection, equivalent to subsidiary protection, could also be immediately granted to a pre-defined group of people, notably to people who face an exceptionally high risk of indiscriminate violence due to armed conflict in their country of origin. Given the development of the concepts and rules of qualification for international protection, and in view of the fact that the new legislation would lay down rules for granting immediate protection status in crisis situations, the Temporary Protection Directive would be repealed[20].

Key actions

The Commission:

- Presents a Migration Preparedness and Crisis Blueprint; and
- Proposes legislation to address situations of crisis and force majeure and repealing the Temporary Protection Directive.

The European Parliament and the Council should:

- Prioritise work on the new crisis instrument.

The Member States, the Council and the Commission should:

- Start implementation of the Migration Preparedness and Crisis Blueprint.

4. INTEGRATED BORDER MANAGEMENT

Integrated border management is an indispensable policy instrument for the EU to protect the EU external borders and safeguard the integrity and functioning of a Schengen area without internal border controls. It is also an essential component of a comprehensive migration policy: well-managed EU external borders are an essential component in working together on integrated policies on asylum and return.

4.1 Stepping up the effectiveness of EU external borders

The management of EU external borders is a shared responsibility of all Member States and Schengen Associated Countries, and of the EU and its agencies. This also means that where there are shortcomings, the impact is twofold, both an extra challenge for the Member State in question, and consequences such as unauthorised movements which affect the credibility

[18] Advancing the obligation to relocate an irregular migrant to the territory of the sponsoring Member State.

[19] Under international human rights law, the principle of non-refoulement guarantees that no one should be returned to a country where they would face torture, cruel, inhuman or degrading treatment or punishment and other irreparable harm.

[20] Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States.

of the entire EU system. Effective management of EU external borders is a key element for a Schengen area without internal border controls.

European Integrated Border Management is implemented by the European Border and Coast Guard, composed of the Member States' border and coastguard authorities and Frontex. It is designed to prevent fragmentation and ensure coherence between different EU policies.

The Commission will launch the preparatory process in view of submitting the policy document for the **multiannual strategic policy and implementation cycle** in the first half of 2021. This cycle will ensure a unified framework to provide strategic guidelines to all relevant actors at the European and national level in the area of border management and return, through linked strategies: an EU technical and operational strategy set out by Frontex, and national strategies by Member States. This will allow all the relevant legal, financial and operational instruments and tools to be coherent, both within the EU and with our external partners. It will be discussed with the European Parliament and the Council.

The EU must be able to support Member States at the external border with speed, scale and flexibility. The swift and full implementation of the new **European Border and Coast Guard** Regulation is a critical step forward. It strengthens day-to-day cooperation and improves the EU's reaction capacity. Developing common capabilities and linked planning in areas like training and procurement will mean more consistency and more effectiveness. Frontex's yearly vulnerability assessments are particularly important, assessing the readiness of Member States to face threats and challenges at the external borders and recommending specific remedial action to mitigate vulnerabilities. They complement the evaluations under the Schengen evaluation mechanism, carried out jointly by the Commission and the Member States. The vulnerability assessments will also help to target the Agency's operational support to the Member States to best effect.

The new Regulation sets up a standing corps of operational staff, bringing together personnel from the Agency as well as from Member States, and exercising executive powers: a major reinforcement of the EU's ability to respond to different situations at the external borders. A **standing corps with a capacity of 10 000 staff** remains essential for the necessary capability to react quickly and sufficiently. The first deployment of the standing corps should be ready for 1 January 2021.

4.2 Reaching full interoperability of IT systems

Strong external borders also require up-to-date and **interoperable IT systems** to keep track of arrivals and asylum applicants. Once operational, different systems will form an integrated IT border management platform checking and keeping track of the right to stay of all third country nationals, whether visa-free or visa holders, arriving in a legal manner on EU territory, helping the work of identifying cases of overstaying[21].

Interoperability will connect all European systems for borders, migration, security and justice, and will ensure that all these systems 'talk' to each other, that no check gets missed because of disconnected information, and that national authorities have the complete, reliable and accurate information needed. It will bring a major boost to the fight against identity fraud. Each system will keep its established safeguards. It is essential that these new and upgraded information systems are **operational and fully interoperable by the end of**

[21] The systems participating in interoperability are: the Entry/Exit System, the European Travel Information and Authorisation System, the Visa Information System, the European Criminal Records Information System for third-country nationals, Eurodac, and the Schengen Information System.

2023, as well as the upgrade of the Schengen Information System. The Commission will also table the necessary amendments in the proposed revision of the **Eurodac** Regulation to integrate it into this approach, so that Eurodac also plays a full part in controlling irregular migration and detecting unauthorised movements within the EU. Trust in the Schengen area will be further reinforced by **making the visa procedure fully digitalised by 2025**, with a digital visa and the ability to submit visa applications online.

The tight schedule for delivering the new architecture of EU information systems requires both monitoring and support for preparations in the Member States and in the agencies. The Commission's **rapid alert process for IT systems** will enable early warning and, if needed, fast and targeted corrective action. This will inform a bi-annual **High-Level Implementation Forum** of top coordinators from Member States, the Commission and the agencies.

4.3 A common European approach to search and rescue

Since 2014, attempts to reach Europe on unseaworthy vessels have increased, with many lives lost at sea. This has prompted the EU, Member States, and private actors to significantly step up maritime search and rescue capacity in the Mediterranean. The EU joint naval operation EUNAVFOR MED Sophia and Frontex-coordinated operations – such as Themis, Poseidon and Indalo – have contributed to over 600 000 rescues since 2015.

Assisting those in distress at sea is a moral duty and an obligation under international law. While national authorities remain ultimately responsible for implementing the relevant rules under international law, search and rescue is also a key element of the European integrated border management, implemented as a shared responsibility by Frontex[22] and national authorities, making the boosting of Frontex's access to naval and aerial capacity essential.

Dangerous attempts to cross the Mediterranean continue to bring great risk and fuelling criminal networks. The disembarkation of migrants has a significant impact on asylum, migration and border management, in particular on coastal Member States. Developing a more coordinated EU approach to the evolving search and rescue practice, grounded in solidarity, is crucial. Key elements should include:

- Recognising the **specificities of search and rescue in the EU legal framework for migration and asylum**. Since January 2019, at the request of Member States, the Commission has coordinated the relocation of more than 1 800 disembarked persons following rescue operations by private vessels. While the Commission will continue to provide operational support and proactive coordination, a more predictable solidarity mechanism for disembarkation is needed. The new Asylum and Migration Management Regulation will cater for help through relocation following disembarkations after search and rescue operations. This should help to ensure the continuity of support and to avoid the need for *ad hoc* solutions.
- **Frontex should provide increased operational and technical support** within EU competence, as well as deployment of maritime assets to Member States, to improve their capabilities and thus contribute to saving lives at sea.
- **Cooperation and coordination among Member States** needs to be significantly stepped up, particularly in view of the search and rescue activities that have developed over the past years with the regular involvement of private actors. The Commission is

[22] Regulation (EU) 656/2014 sets out a specific set of rules for external sea borders surveillance in the context of the operational cooperation coordinated by Frontex, which covers search and rescue incidents arising during Frontex joint operations.

issuing a Recommendation on cooperation between Member States in the context of operations carried out by vessels owned or operated by private entities for the purpose of performing regular rescue activities, with a view to maintaining safety of navigation and ensuring effective migration management[23]. This cooperation should also be channelled through an expert group on search and rescue established by the Commission to encourage cooperation and the exchange of best practices.

- The Commission is also providing Guidance on the effective implementation of **EU rules on definition and prevention of the facilitation of unauthorised entry, transit and residence**[24], and how to prevent the criminalisation of humanitarian actors[25].
- The **EU will strengthen cooperation with countries of origin and transit** to prevent dangerous journeys and irregular crossings, including through tailor-made Counter Migrant Smuggling Partnerships with third countries[26].

4.4 A well-functioning Schengen area

The Schengen area is one of the major achievements of European integration. But it has been put under strain by difficulties in responding to changing situations at the Union's border, by gaps and loopholes, and by diverging national asylum, reception and return systems. These elements increase unauthorised movements, both of asylum seekers and of migrants who should be returned. Measures already agreed and which now need to be adopted by the European Parliament and the Council will help to bring more consistency in standards in asylum and migration systems. Further steps under the New Pact – on screening and border procedures, on reinforced external borders, on more consistent asylum and return procedures under the more integrated approach of the common framework – also add up to a major reinforcement of Schengen.

Concerns about existing shortcomings have contributed to the triggering of **temporary internal border controls**. The longer these controls continue, the more questions are raised about their temporary nature, and their proportionality. Temporary controls may only be used in exceptional circumstances to provide a response to situations seriously affecting public policy or internal security. As a last resort measure, they should last only as long as the extraordinary circumstances persist: for example, in the recent emergency circumstances of the COVID-19 pandemic, internal border control measures were introduced but most of them have now been lifted.

Building on experience from the multiple crises of the last five years, the Commission will present a **Strategy on the future of Schengen**, which will include initiatives for a stronger and more complete Schengen. This will include a fresh way forward on the Schengen Borders Code, with conclusions to be drawn on the state of play of the negotiations on the Commission's proposal of 2017. It will also cover how to improve the Schengen evaluation mechanism to become a fully effective tool for evaluating the functioning of Schengen and for ensuring that improvements are effectively implemented. An efficient **Schengen evaluation mechanism** is an essential tool for an effective Schengen area, building trust through verifying how Member States implement the Schengen rules. It is important that

[23] Commission Recommendation on cooperation among Member States concerning operations carried out by vessels owned or operated by private entities for the purpose of search and rescue activities, C(2020) 6468 of 23 September 2020.

[24] Commission Guidance on the implementation of EU rules on definition and prevention of the facilitation of unauthorised entry, transit and residence, C(2020) 6470 of 23 September 2020.

[25] See section 5.

[26] See section 5.

Member States remedy deficiencies identified during the evaluations. Where Member States persistently fail to do so, or where controls at internal borders are kept in place beyond what is necessary, the Commission will more systematically consider the launching of infringement procedures.

There are also alternatives to internal border controls – for example, police checks can be highly effective, and new technology and smart use of IT interoperability can help make controls less intrusive. At the moment, readmission agreements also remain between Member States which could also be implemented more effectively.

Building on the work already in place to promote these measures[27], the Commission will put in place a **programme of support and cooperation** to help Member States to maximise the potential of these measures. The Commission will establish a dedicated **Schengen Forum,** involving the relevant national authorities such as Ministries of Interior and (border) police at national and regional level in order to stimulate more concrete cooperation and more trust. Once a year, a discussion in the Forum should be organised at political level to allow national Ministers, Members of the European Parliament and other stakeholders to bring political momentum to this process.

Key actions

The Commission:

- Adopts a Recommendation on cooperation between Member States concerning private entities' rescue activities;
- Presents guidance to Member States to make clear that rescues at sea cannot be criminalised;
- Will adopt a Strategy on the future of Schengen which reinforces the Schengen Borders Code and the Schengen evaluation mechanism;
- Will establish a Schengen Forum to foster concrete cooperation and ways to deepen Schengen through a programme of support and cooperation to help end internal border controls; and
- Will launch a new European group of experts on search and rescue.

The Commission, the Member States and Frontex should:

- Ensure the swift and full implementation of the new European Border and Coast Guard Regulation; and
- Ensure the implementation and interoperability of all large scale IT systems by 2023.

5. REINFORCING THE FIGHT AGAINST MIGRANT SMUGGLING

Smuggling involves the organised exploitation of migrants, showing scant respect for human life in the pursuit of profit. This criminal activity therefore damages both the humanitarian and the migration management objectives of the EU. The new 2021-2025 **EU Action Plan against migrant smuggling** will focus on combatting criminal networks, and in line with the EU's Security Union Strategy, it will boost cooperation and support the work of law enforcement to tackle migrant smuggling, often also linked to trafficking in human beings. The Action Plan will build on the work of Europol and its European Migrant Smuggling Centre, Frontex, Eurojust and the EU Agency for Law Enforcement Training. New measures and strengthened inter-agency cooperation will address challenges in the areas of financial

[27] C(2017) 3349 final of 12 May 2017 and C(2017) 6560 final of 27 September 2017.

investigations, asset recovery and document fraud, and new phenomena such as digital smuggling[28].

Existing rules to clamp down on migrant smuggling[29] have proven an effective legal framework to combat those who facilitate unauthorised entry, transit and residence. Reflection is ongoing on how to modernise these rules[30]. The Commission will bring clarity to the issue of criminalisation for private actors through **guidance on the implementation** of the counter-smuggling rules, and make clear that carrying out the legal obligation to rescue people in distress at sea cannot be criminalised.

Finding employment in the EU without the required legal status is one of the drivers for smuggling to the EU. The Commission will assess how to strengthen the effectiveness of the **Employers Sanctions Directive** and evaluate the need for further action. The Commission will also work with the European Labour Authority to coordinate the efforts of the national authorities and ensure the efficient implementation of the Directive, which is indispensable to deter irregular migration by ensuring effective prohibition of the employment of irregularly staying third-country nationals.

Combatting smuggling is a common challenge requiring international cooperation and coordination as well as effective border management. The July 2020 Ministerial Conference between the EU and African partners confirmed the mutual determination to address this problem[31]. The new EU Action Plan against migrant smuggling will stimulate cooperation between the EU and third countries, through targeted **counter migrant smuggling** partnerships, as part of broader partnerships with key third countries. This will include support to countries of origin and transit in capacity-building both in terms of law enforcement frameworks and operational capacity, encouraging effective action by police and judicial authorities. The EU will also improve information exchange with third countries and action on the ground, through support to common operations and joint investigative teams, as well as information campaigns on the risks of irregular migration and on legal alternatives. EU agencies should also work more intensively with partner countries. Europol will strengthen cooperation with the Western Balkans and the Commission and Europol will work towards similar agreements with Turkey and others in the neighbourhood. The Commission will also include this in its cooperation with the African Union (AU).

Common Security and Defence Policy operations and missions will continue making an important contribution, where the fight against irregular migration or migrant smuggling is part of their mandates. Complementing existing missions, such as EUCAP Sahel Niger and EUBAM Libya, Operation EUNAVFOR MED IRINI is now under way in the Central Mediterranean and helps to disrupt smuggling networks.

Immigration Liaison Officers provide a valuable connection in the fight against irregular migration and migrant smuggling. The full implementation of the Regulation on the European network of immigration liaison officers[32] will further consolidate this network and enhance the fight against smuggling.

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[28] The use, in particular by organised criminal groups, of modern information and communication technology to facilitate migrant smuggling, including advertising, organising, collecting payments, etc.

[29] The 'Facilitators' Package' of Directive 2002/90/EC and the Accompanying Council Framework Decision on facilitation of unauthorised entry, transit and residence Directive.

[30] Directive 2002/90/EC and Council Framework Decision 2002/946/JHA.

[31] The Ministerial Conference took place on 13 July 2020 and brought together Ministers of the Interior of Algeria, Libya, Mauritania, Morocco and Tunisia with their counterparts from Italy (chair), France, Germany (participating as the Council Presidency), Malta and Spain, as well as the Commission.

[32] Regulation 2019/1240.

Key actions

The Commission will:

- Present a new EU Action Plan against Migrant Smuggling for 2021-2025;
- Assess how to strengthen the effectiveness of the Employers Sanctions Directive; and
- Build action against migrant smuggling into partnerships with third countries.

6. WORKING WITH OUR INTERNATIONAL PARTNERS

The majority of migrants undertake their journeys in a regular and safe manner, and well-managed migration, based on partnership and responsibility-sharing, can have positive impacts for countries of origin, transit and destination alike. In 2019, there were over 272 million international migrants[33], with most migration taking place between developing countries. Demographic and economic trends, political instability and conflict, as well as climate change, all suggest that migration will remain a major phenomenon and global challenge for the years to come. Migration policies that work well are in the interest of partner countries, the EU, and refugees and migrants themselves.

The prerequisite in addressing this is cooperation with our partners, first and foremost based on bilateral engagement, combined with regional and multilateral commitment. **Migration is central to the EU's overall relationships with key partner countries of origin and transit.** Both the EU and its partners have their own interests and tools to act. Comprehensive, balanced and tailor-made partnerships, can deliver mutual benefits, in the economy, sustainable development, education and skills, stability and security, and relations with diasporas. Working with partners also helps the EU to fulfil its obligations to provide protection to those in need, and to carry out its role as the world's major development donor. Under the New Pact, engagement with partner countries will be stepped up across all areas of cooperation. The Commission and the High Representative will immediately start work, together with Member States, to put this approach into practice through dialogue and cooperation with our partners.

6.1 Maximising the impact of our international partnerships

The EU needs a fresh look at its priorities, first in terms of the place of migration in its external relations and other policies, and then in terms of what this means for our overall relations with specific partners. In comprehensive partnerships, **migration should be built in as a core issue, based on an assessment of the interests of the EU and partner countries**. It is important to address the complex challenges of migration and its root causes to the benefit of the EU and its citizens, partner countries, migrants and refugees themselves. By working together, the EU and its partners can improve migration governance, deepen the common efforts to address shared challenges and benefit from opportunities.

The approach needs to deploy a wide range of policy tools, and have the flexibility to be both tailor-made and able to adjust over time. Different policies such as development cooperation, security, visa, trade, agriculture, investment and employment, energy, environment and climate change, and education, should not be dealt with in isolation. They are best handled as part of a tailor-made approach, at the core of a real **mutually beneficial partnership**. It is also important to bear in mind that migration issues such as border management or more effective implementation of return and readmission can be politically sensitive for partners. Tackling the issues we see today – the loss of life first and foremost,

[33] World Migration Report 2020, International Organisation for Migration, 2019, p.2.

but also shortcomings in migration management – means working together so that everyone assumes their responsibilities.

EU level engagement alone is not sufficient: effective coordination between **the EU level and Member States** is essential at all levels: bilateral, regional and multilateral. Consistent messaging between the EU and Member States on migration and joint outreach to partners have proven to be critical to showing the EU's common commitment. The EU should in particular draw on the experience and privileged relationships of some Member States with key partners – experience has shown that the full involvement of Member States in the EU migration partnerships, including through the pooling of funds and expertise via the various EU Trust Funds, is key to success.

The EU has credibility and strength through its role in the **international and multilateral** context, including through its active engagement in the United Nations (UN) and close cooperation with its agencies. The EU should build on the important progress made at the **regional** level, through dedicated dialogues and frameworks[34] and through partnerships with organisations such as the African Union. Further innovative partnerships could building on the positive example of the AU-EU-UN Taskforce on Libya. The specific context of the post-Cotonou framework with States in Africa, the Caribbean and the Pacific is of particular importance in framing and effectively operationalising migration cooperation.

Dialogue has deepened with a range of key partners in recent years[35]. The EU's **neighbours** are a particular priority. Economic opportunity, particularly for young people, is often the best way to reduce the pressure for irregular migration. The ongoing work to address migrant smuggling is one example of the critical importance of relations with the countries of **North Africa**. The **Western Balkans** require a tailor-made approach, both due to their geographical location and to their future as an integral part of the EU: coordination can help to ensure they are well equipped as future Member States to respond constructively to shared challenges, developing their capacities and border procedures to bring them closer to the EU given their enlargement perspective. The 2016 EU-Turkey Statement reflected a deeper engagement and dialogue with **Turkey**, including helping its efforts to host around 4 million refugees[36]. The Facility for Refugees in Turkey continues to respond to essential needs of millions of refugees, and continued and sustained EU funding in some form will be essential[37].

Migration is an integral part of the approach under the Joint Communication towards a Comprehensive **Strategy with Africa** to deepen economic and political ties in a mature and wide-ranging relationship[38] and give practical support. The reality of multiple migration routes also underlines the need to work with partner countries in **Asia**[39] and **Latin America**.

With all these partners, we need to recognise that the COVID-19 pandemic is already causing massive disruption. This must be a key part of a vision of cooperation based on

[34] Including the Valletta process between the EU and African countries. Other key regional processes include the Budapest, Prague, Rabat and Khartoum processes.

[35] Progress report on the Implementation of the European Agenda on Migration, COM(2019) 481, 16 October 2019.

[36] The Facility for Refugees in Turkey has mobilised €6 billion.

[37] For example, in July 2020 the EU agreed a €485 million extension to humanitarian support under the Facility, to allow the extension to the end of 2021 of programmes helping over 1.7 million refugees to meet their basic needs and over 600,000 children to attend school.

[38] Joint Communication "Towards a comprehensive Strategy with Africa", JOIN(2020) 4 final of 9 March 2020.

[39] Notably with the Silk Road countries: Afghanistan, Bangladesh, Iran, Iraq, and Pakistan.

mutual interests, helping to build strengthened, resilient economies delivering growth and jobs for local people and at the same time reducing the pressure for irregular migration.

EU funding for refugees and migration issues outside the EU, amounting to over €9 billion since 2015, has proven to be indispensable to the delivery of the EU's migration objectives. In July 2020 the European Council underlined that this must be developed further and in a more coordinated manner in programmes across the relevant headings of the EU budget[40]. Strategic, policy-driven programming of the EU's external funding will be essential to implement this new comprehensive approach to migration. The 10% target for migration-related actions proposed in the Neighbourhood, Development and International Cooperation Instrument recognises that resources need to match the needs of the EU's increased international engagement, as well as being sufficiently flexible to adjust to circumstances. The proposed architecture of the EU's external financial instruments also provides for additional flexibilities to respond to unforeseen circumstances or crises.

6.2 Protecting those in need and supporting host countries

The EU's work to address emergency and humanitarian needs is based on principles of humanity, impartiality, neutrality and independence. Over 70 million people, men, women and children are estimated to have been forcibly displaced worldwide, with almost 30 million refugees and asylum seekers[41]. The vast majority of these are hosted in developing countries and the EU will maintain its commitment to help.

The EU can build on a track record of cooperation with a wide range of partners in delivering this support. The humanitarian evacuation of people from Libya to Emergency Transit Mechanisms in Niger and Rwanda for onward resettlement helped the most vulnerable to escape from desperate circumstances. Assisting refugees affected by the Syrian crisis and their hosting countries will continue to be essential. Millions of refugees and their host communities in Turkey, Lebanon, Jordan or Iraq are benefitting from daily support, through dedicated instruments such as the EU's Facility for Refugees in Turkey and the EU Regional Trust Fund in Response to the Syrian crisis.

As reiterated in December 2019 at the Global Refugee Forum, the EU is determined to maintain its strong commitment to providing life-saving **support to millions of refugees and displaced people**, as well as fostering sustainable development-oriented solutions[42].

6.3 Building economic opportunity and addressing root causes of irregular migration

The **root causes** of irregular migration and forced displacement, as well as the immediate factors leading people to migrate, are complex[43].

The EU is the world's largest provider of **development assistance**. This will continue to be a key feature in EU engagement with countries, including on migration issues. Work to build stable and cohesive societies, to reduce poverty and inequality and promote human development, jobs and economic opportunity, to promote democracy, good governance,

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[40] European Council conclusions of 21 July 2020, paragraphs 19, 103, 105, 111 and 117.

[41] The United Nations High Commissioner for Refugees reports that in 2018 almost 71 million persons were forcibly displaced persons, including almost 26 million refugees and 3.5 million asylum seekers (UNHCR Global Trends – Forced Displacement in 2018, https://www.unhcr.org/5d08d7ee7.pdf).

[42] In recent years most of the EU humanitarian budget (80% of €1.2 billion in 2018 and of €1.6 billion in 2019) went to projects helping the immediate needs of the forcibly displaced and their host communities to meet their immediate, basic needs in conflict, crisis and protracted displacement.

[43] See the work produced and supported by the Joint Research Centre Knowledge Centre on Migration and Demography on International Migration Drivers (2018) and the Atlas of Migration (2019).

peace and security, and to address the challenges of climate change can all help people feel that their future lies at home. In the Commission proposals for the next generation of external policy instruments, migration is systematically factored in as a priority in the programming. Assistance will be targeted as needed to those countries with a significant migration dimension. Flexibility has been built into the proposals for the instruments since experience of recent years has shown that the flexibility of instruments such as Trust Funds is key to rapid delivery when required, compared to funding predetermined for specific countries or programmes.

Many other policies can be harnessed to help build stability and prosperity in partner countries[44]. Conflict prevention and resolution, as well as peace, security and governance, are often the cornerstone of these efforts. Trade and investment policies already contribute to addressing root causes by creating jobs and perspectives for millions of workers and farmers worldwide. Boosting investment through vehicles such as the External Investment Plan can make a significant contribution to economic development, growth and employment. Better exploiting the potential of remittances can also help economic development. Cooperation in education, skills and research, as well as in policies such as digital, energy or transport, also helps to deepen economic development. The EU will use these policies wherever relevant in the engagement with partner countries under the New Pact.

6.4 Partnerships to strengthen migration governance and management

Supporting the EU's partners in developing effective **migration governance and management** capacity will be a key element in the mutually beneficial partnerships the EU seeks to develop. The EU can support capacity building in line with partners' needs. This will help partner countries manage irregular migration, forced displacement and combat migrant smuggling networks[45]. Tools such as strategic communication will be further deployed, providing information on legal migration opportunities and explaining the risks of irregular migration, as well as countering disinformation. In addition, depending on the contexts and situations, the EU can assist partner countries in strengthening capacities for border management, including by reinforcing their search and rescue capacities at sea or on land, through well-functioning asylum and reception systems, or by facilitating voluntary returns to third countries or the integration of migrants[46].

EU cooperation with partner countries in the area of migration governance will continue to ensure the protection of the rights of migrants and refugees, combat discrimination and labour exploitation, and ensure that their basic needs are met through the provision of key services. Support may also be targeted at maximising the positive impact of migration and reducing the negative consequences for partner countries, for example by reducing the transfer costs of remittances, reducing "brain drain", or facilitating circular migration.

Member States have a key role to play in providing such practical support, as demonstrated by the fruitful cooperation in the fight against migrant smuggling, where joint investigation teams benefit from the hands-on expertise of national administrations.

The EU should use all the tools at its disposal to bring operational support to the new partnerships, including through a much deeper involvement of **EU agencies**. Frontex's

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[44] This broad-based approach is fully acknowledged in the EU-Africa Alliance (A new Africa–Europe Alliance for Sustainable Investment and Jobs, COM(2018) 643 of 12 September 2018).

[45] See Section 5.

[46] Including through the posting of European Migration Liaison Officers, currently stationed in 10 third countries, with another four ready to be posted as soon as the COVID-19 situation allows.

enhanced scope of action should now be used to make cooperation with partners operational. Cooperation with the Western Balkans, including through EU status agreements with the Western Balkan partners, will enable Frontex border guards to work together with national border guards on the territory of a partner country. Frontex can also now provide practical support to develop partners' border management capacity and to cooperate with partners to optimise voluntary return. The Commission will continue encouraging agreements with its neighbours[47]. As for asylum, the possibilities today to work with third countries are limited, but well-functioning migration management on key routes is essential both to protection and to asylum and return procedures. The new EU Asylum Agency would be able to work on capacity building and operational support to third countries, and support EU and Member State resettlement schemes, building on the existing cooperation with UN agencies such as the UN Refugee Agency UNHCR and the International Organisation for Migration.

6.5 Fostering cooperation on readmission and reintegration

Strands of work such as creating economic opportunity, increasing stability or tackling migrant smuggling can reduce the number of irregular arrivals to the EU and the numbers of those in the EU with no right to stay. Nevertheless, for those with no right to stay, an effective system of returns needs to be in place. Some of them may take up voluntary return options, and this should be proactively supported. Currently, one of the key gaps in European migration management is the difficulty to effectively return those who do not take up this option. Working closely with countries of origin and transit is a prerequisite for a well-functioning system of returns, readmission and reintegration.

Action taken by Member States[48] in the field of returns needs to go hand in hand with a new drive to improve cooperation on readmission with third countries, complemented by cooperation on reintegration, to ensure the sustainability of returns. This first and foremost requires the full and effective implementation of the twenty-four existing **EU agreements and arrangements** on readmission with third countries, the completion of ongoing readmission negotiations and as appropriate the launch of new negotiations, as well as practical cooperative solutions to increase the number of effective returns.

These discussions should be seen in the context of the full range of the EU's and Member States' policies, tools and instruments, which can be pulled together in a strategic way. A first step was made by introducing a link between cooperation on readmission and visa issuance in the Visa Code[49]. Based on information provided by Member States, the Commission will assess at least once a year **the level of cooperation of third countries on readmission,** and report to the Council. Any Member State can also notify the Commission if it is confronted with substantial and persistent practical problems in the cooperation with a third country on readmission, triggering an *ad hoc* assessment. Following an assessment, the Commission can propose to apply restrictive visa measures, or in case of good cooperation, propose favourable visa measures.

Visa policy can also be used to curb **unfounded asylum applications** from visa-free countries, keeping in mind that almost a quarter of asylum applications received by Member States were lodged by applicants who can enter the Schengen+ area visa-free. More cooperation and exchange of information would help to detect visa abuse. The **Visa**

[47] Status agreements were successfully negotiated with all Western Balkans countries (not including Kosovo). The status agreements with Albania, Montenegro and Serbia have already been signed and have entered into force, whereas signature of agreements with North Macedonia and Bosnia and Herzegovina is still pending.

[48] See section 2.5 above.

[49] Regulation (EC) No 810/2009 as amended.

Suspension Mechanism provides for the systematic assessment of visa-free countries against criteria including irregular migration risks and abusive asylum applications. This can ultimately result in the removal of third countries from the visa-free list.

To deliver on the goal set out by the European Council[50] to **mobilise relevant policies and tools**, joint efforts need to be taken a step further. This is why the proposed Asylum and Migration Management Regulation includes the possibility that the Commission, when reporting to the Council on the state of play of the cooperation on readmission, could identify further effective measures to incentivise and improve cooperation to facilitate return and readmission, including in other policy areas of interest to the third countries[51], while taking into account the Union's overall interests and relations with the third country. In this respect, close cooperation with the High Representative will be important. The Commission, the High Representative and the Member States should ensure that progress on readmission accompanies progress in other areas under the partnerships. This would require more coordination, and flexibility in legislative, policy and funding instruments, bringing together action at both EU and Member State level.

An important component of the future **Voluntary Return and Reintegration Strategy** will consist in setting out new approaches in third countries and include better linkages with other development initiatives and national strategies, to build third countries' capacity and ownership. The effective implementation of the Strategy will require close cooperation with Frontex under its reinforced mandate on return and as part of the common EU system for returns.

6.6 Developing legal pathways to Europe

Safe channels to offer protection to those in need remove the incentive to embark on dangerous journeys to reach Europe, as well as demonstrating solidarity with third countries hosting refugees. Legal migration can bring benefit to our society and the economy. While Member States retain the right to determine volumes of admission for people coming from third countries to seek work, the EU's common migration policy needs to reflect the integration of the EU economy and the interdependence of Member States' labour markets. This is why EU policies need to foster a level playing field between national labour markets as migration destinations. They should also help Member States use their membership of the EU as an asset in attracting talent.

Resettlement is a tried and tested way to provide protection to the most vulnerable refugees. Recent years have already seen a major increase in resettlement to the EU, and this work should be further scaled up. The Commission is recommending to formalise the *ad hoc* scheme of approximately 29 500 resettlement places already being implemented by Member States, and to cover a two-year period, 2020-2021[52] (due to the COVID-19 pandemic, it will not be possible to fulfil all resettlement pledges during 2020). To ensure a seamless continuation of EU resettlement efforts beyond 2021 and to confirm the EU's global lead on resettlement, the Commission will invite Member States to make pledges from 2022 onwards. This will be supported by the EU budget and include complementary pathways to protection, such as humanitarian admission schemes and measures such as study or work-related schemes. The EU will also support Member States wishing to establish **community**

[50] European Council conclusions of 18 October 2018.

[51] The EU's humanitarian assistance is provided in line with the principles of humanity, impartiality, neutrality, and independence.

[52] Commission Recommendation on legal pathways to protection in the EU: promoting resettlement, humanitarian admission and other complementary pathways, C(2020) 6467 of 23 September 2020.

or private sponsorship schemes through funding, capacity building and knowledge-sharing, in cooperation with civil society, with the aim of developing a European model of community sponsorship, which can lead to better integration outcomes in the longer term.

The EU also works with its partner countries on legal pathways to Europe as part of migration partnerships, opening the way for cooperation on schemes to match people, skills and labour market needs through legal migration. At the same time, developing legal pathways should contribute to the reduction of irregular migration, which often leads to undeclared work and labour exploitation in the EU. The Commission will reinforce support to Member States to scale up legal migration together with partner countries as a positive incentive and in line with the EU's skills and labour market needs, while fully respecting Member States' competencies.

The EU has a strong track record in labour mobility schemes. Legal migration pilot projects[53] have shown that by providing targeted support, the EU can help Member States implement schemes that meet the needs of employers. The EU has also opened Erasmus+ and vocational training to third country nationals and offered support grants for the mobilisation of the diaspora. However, the scope and ambition of existing schemes remains limited.

A reinforced and more comprehensive approach[54], would offer cooperation with partner countries and help boost mutually-beneficial international mobility. The Commission will therefore launch **Talent Partnerships** in the form of an enhanced commitment to support legal migration and mobility with key partners. They should be launched first in the EU's Neighbourhood, the Western Balkans, and in Africa, with a view to expanding to other regions. These will provide a comprehensive EU policy framework as well as funding support for cooperation with third countries, to better match labour and skills needs in the EU, as well as being part of the EU's toolbox for engaging partner countries strategically on migration. Strong engagement of Member States will be essential, as will involvement of the private sector and the social partners, and ownership from partner countries. The Commission will organise a high-level conference with Member States and key EU stakeholders to launch the Talent Partnerships.

The Talent Partnerships should be inclusive, building strong cooperation between concerned institutions (such as Ministries of Labour and Education, employers and social partners, education and training providers, and diaspora associations). The Commission will stimulate this cooperation through dedicated outreach and build a network of involved enterprises.

The Talent Partnerships will provide a single framework to mobilise EU and Member States' tools. EU funding streams in the area of external relations, home affairs, research, and education (Erasmus+) could all contribute. The Partnerships would combine direct support for mobility schemes for work or training with capacity building in areas such as labour market or skills intelligence, vocational education and training, integration of returning migrants, and diaspora mobilisation. Greater focus on education would help to support and reinforce investment in local skills.

As part of the comprehensive approach to migration and mobility, visa measures can act as a positive incentive in the engagement with third countries. Full implementation of the

[53] Eight Member States are currently involved in six such projects with Egypt, Morocco, Tunisia, Nigeria and Senegal. Key themes include mobility for ICT experts, opportunities for study and traineeships in Europe, and boosting the capacity of third countries to manage migration and support reintegration.

[54] This would be in line with the Global Skills Partnerships, bilateral agreements through which a country of destination gets directly involved in creating human capital among potential migrants in the country of origin prior to migration.

recently revised **Visa Code**[55] and additional efforts on visa facilitation with third countries will bring more consistency and should encourage *bona fide* short-term mobility, including student exchanges. Short-term mobility could complement other legal pathways to improve upstream cooperation with third countries (for example, in stemming irregular migratory flows).

Key actions

The Commission, where relevant in close cooperation with the High Representative and Member States, will:

- Launch work immediately to develop and deepen tailor-made comprehensive and balanced migration dialogues and partnerships with countries of origin and transit, complemented by engagement at the regional and global level;
- Scale up support to help those in need and their host communities;
- Increase support for economic opportunity and addressing the root causes of irregular migration;
- Step up the place of migration in the programming of the new instruments in the next Multiannual Financial Framework;
- Ensure full and effective implementation of existing EU readmission agreements and arrangements and examine options for new ones;
- Make use of the Visa Code to incentivise and improve cooperation to facilitate return and readmission, as well as working through the Asylum and Migration management Regulation when in place;
- Take forward the recommendation on legal pathways to protection in the EU, including resettlement; and
- Develop EU Talent Partnerships with key partner countries to facilitate legal migration and mobility.

The European Parliament and the Council should:

- Conclude swiftly negotiations on the Framework Regulation on Resettlement and Humanitarian Admission.

7. ATTRACTING SKILLS AND TALENT TO THE EU

Working with third countries on legal pathways is fully in line with the EU's interests. Europe has an ageing and shrinking population[56]. The structural pressure this is expected to create on the labour market is complemented by specific skills shortages in different localities and sectors such as health, medical care, and agriculture. The contribution of legally staying migrants to reducing skills gaps and increasing the dynamism of the EU labour market was recognised in the recently updated **Skills Agenda for Europe**[57].

Activating and upskilling the domestic workforce is necessary but not sufficient to address all existing and forecasted labour and skills shortages. This is already happening: in 2018, Member States issued over 775,000 first residence permits to third country nationals for employment purposes[58]. Workers from third countries are filling key shortages in a number

[55] Regulation (EC) No 810/2009 as amended.
[56] Report on the Impact of Demographic Change, COM(2020) 241 of 17 June 2020.
[57] European Skills Agenda for sustainable competitiveness, social fairness and resilience, COM(2020) 274 of 1 July 2020.
[58] Eurostat (online data code: migr_pop1ctz). This figure does not include UK data.

of occupations across Member States[59], including in occupations that were key to the COVID-19 response[60]. In a joint statement with the Commission, the European Social and Economic Partners have highlighted the potential of migrant workers to contribute to the green and digital transitions by providing the European labour market with the skills it needs[61]. Nevertheless, the EU is currently losing the global race for talent[62]. While Member States are responsible for deciding on the number of persons they admit for labour purposes, an improved framework at EU level would put Member States and businesses in the best possible position to attract the talents they need.

In addition to launching Talent Partnerships, it is important to complete the unfinished work of reforming the **EU Blue Card Directive,** to attract highly skilled talent[63]. The Commission acknowledges the diversity of labour market situations across Member States and their wish for flexibility through retaining national schemes tailored to specific labour market needs. At the same time, the reform must bring real EU added value in attracting skills through an effective and flexible EU-wide instrument. This requires more inclusive admission conditions, improved rights, swift and flexible procedures, improved possibilities to move and work in different Member States, and a level playing field between national and EU systems. The new EU-wide scheme should be open to recognising high-level professional skills and relevant experience. It should also be inclusive, covering categories such as highly skilled beneficiaries of international protection, to benefit from their skills and foster their integration into EU societies. The Commission calls on the European Parliament and the Council to finalise negotiations swiftly, and is ready to work towards a compromise along these lines.

The international mobility of students and researchers can increase the pool of expertise available to European universities and research institutions, boosting our efforts to manage the transition towards a green and digital economy. Full implementation of the recently revised **Directive on Students and Researchers**[64] is essential to make it easier and more attractive to come to the EU, and to promote the circulation of knowledge by moving between Member States. Talent Partnerships may also directly support schemes facilitating the mobility of students and researchers.

More could be done to increase the impact of the EU legal migration framework on Europe's demographic and migration challenges[65]. There are a number of inherent shortcomings in the EU legal migration system (such as fragmentation, limited coverage of EU rules, inconsistencies between different Directives, and complex procedures) that could be addressed through measures ranging from better enforcement to new legislation. The Commission will first ensure that the current framework is implemented fully and effectively, by intensifying cooperation and dialogue with Member States.

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[59] OECD (2018), "The contribution of migration to the dynamics of the labour force in OECD countries: 2005-2015", OECD Social, Employment and Migration Working Papers, No. 203, OECD Publishing, Paris.

[60] For instance, non-EU immigrants represented in 2018 around 6% of health professionals in the EU, 14% of personal care workers, 10% of refuse workers, 16% of agricultural labourers (without counting in seasonal workers), 25% of cleaners and helpers and 27% of food preparation assistants.

[61] https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/legal-migration-policy/joint-statement-commission-economic-social-partners-renewal-european-partnership-integration.pdf

[62] See for example: Recruiting immigrant workers: Europe, OECD and EU (2016), OECD Publishing, Paris.

[63] COM(2016) 378 of 7 June 2016.

[64] Directive (EU) 2016/801.

[65] See Fitness check on EU legal migration legislation (SWD(2019) 1055 of 29 March 2019). On demographic issues, see also: Demographic Scenarios for the EU – Migration, Population and Education (Commission, 2019).

The Commission will also address the main shortcomings in three new sets of measures, responding to the overall objective of attracting the talent the EU needs. Admission of workers of different skills levels to the EU, and intra-EU mobility of third-country workers already in the EU, would both be facilitated.

- A revision of the **Directive on long-term residents**[66], which is currently under-used and does not provide an effective right to intra-EU mobility. The objective would be to create a true EU long-term residence status, in particular by strengthening the right of long-term residents to move and work in other Member States.
- A review of the **Single Permit Directive**[67], which has not fully achieved its objective to simplify the admission procedures for all third-country workers. This would look at ways to simplify and clarify the scope of the legislation, including admission and residence conditions for low and medium skilled workers.
- Further explore an **EU Talent Pool** for third-country skilled workers which could operate as an EU-wide platform for international recruitment, through which skilled third-country nationals could express their interest in migrating to the EU, and could be identified by EU migration authorities and employers based on their needs[68].

The Commission has also launched a **public consultation on attracting skills and talent**. This aims to identify additional areas where the EU framework could be improved, including through possible new legislation. It also invites new ideas to boost the EU's attractiveness, facilitate skills matching, and better protect labour migrants from exploitation. As part of the consultation, the Commission will pursue its dialogue with social and economic partners on all these initiatives. The results will inform the development of an EU Talent Pool and help the Commission to decide what other initiatives are needed to address the long-term challenges in this area.

Key actions

The Commission will:

- Launch a debate on the next steps on legal migration, with a public consultation; and
- Propose a Skills and Talent package including a revision of the Long-term Residents Directive and a review of the Single Permit Directive, as well as setting out the options for developing an EU Talent Pool.

The European Parliament and the Council should:

- Conclude negotiations on the EU Blue Card Directive.

8. SUPPORTING INTEGRATION FOR MORE INCLUSIVE SOCIETIES

Part of a healthy and fair system of migration management is to ensure that everyone who is legally in the EU can participate in and contribute to the well-being, prosperity and cohesion of European societies. In 2019, almost 21 million non-EU nationals were legally resident in the EU[69]. Successful integration benefits both the individuals concerned, and the local communities into which they integrate. It fosters social cohesion and economic dynamism. It

[66] Directive 2003/109/EC.
[67] Directive 2011/98/EU.
[68] See the work carried out by the OECD: Building an EU Talent Pool - A New Approach to Migration Management for Europe, 2019.
[69] Source of statistics in this paragraph: Eurostat. UK figures not included.

sets positive examples for how Europe can manage the impacts of migration and diversity by building open and resilient societies. But despite numerous success stories, too many migrants and households with migrant backgrounds still face challenges in terms of unemployment, lack of educational or training opportunities and limited social interaction. For example, in 2019, there was still a significant shortfall in the employment prospects of non-EU nationals – at around 60% of 20-64 year olds, compared to around 74% for host-country nationals. This creates concern amongst citizens on the pace and depth of integration – and a legitimate public policy reason to make this work.

The integration of migrants and their families is therefore a key part of the broader EU agenda to promote social inclusion. While integration policy is primarily a Member State responsibility, the EU has stepped up its support to Member States and other relevant stakeholders since the adoption of the 2016 Action Plan[70]. The European Integration Network works to boost cooperation and mutual learning between the national authorities responsible for integration. The EU has also strengthened cooperation with local and regional authorities and civil society and has created new partnerships with employers and social and economic partners[71]. The Commission has recently renewed the European Partnership for Integration with social and economic partners to offer opportunities for refugees to integrate into the European labour market[72]. This should lead to further dialogue and future cooperation to attract the skills our economy needs.

This work now needs to be deepened, to ensure that meaningful opportunities are provided for all to participate to our economy and society. As part of the priority on promoting our European way of life, the Commission will adopt an **Action Plan on integration and inclusion for 2021-2024.** The integration of migrants and their families will be a key aspect of this. This work will provide strategic guidance and set out concrete actions to foster inclusion of migrants and broader social cohesion, bringing together relevant stakeholders and recognising that regional and local actors have a key part to play. It will draw on all relevant policies and tools in key areas such as social inclusion, employment, education, health, equality, culture and sport, setting out how migrant integration should be part of efforts to achieve the EU's goals on each. Ensuring migrants fully benefit from the European Pillar of Social Rights will be a key objective. It will recognise that people with a migrant background (e.g. foreign born or second generation migrants) often face similar integration challenges to third-country nationals. The actions will include direct support to those active 'on the ground' and cover the full range of measures needed to accompany migrants and their families along the path to successful integration and social inclusion. The Commission is now consulting to seek the views of stakeholders, citizens and migrants on possible actions to promote the integration and social inclusion of migrants and EU citizens with a migrant background.

To ensure that migrants are actively involved in the development of EU migration policies, the Commission is creating an informal expert group on the views of migrants. One of its first tasks will be to provide input to the preparation of the Action Plan on integration and inclusion, but it will also be able to provide advice and expertise to the Commission on the design and implementation of initiatives in any area of migration and asylum.

Key actions

[70] COM(2016) 377 final of 7 June 2016.

[71] Initiatives European Partnership on Integration and Employers together for integration; support to the Committee of Regions initiative Cities and Regions for integration.

[72] https://ec.europa.eu/commission/presscorner/detail/en/IP_20_1561

The Commission will:

- Adopt a comprehensive Action Plan on integration and inclusion for 2021-2024; and
- Implement the renewed European Partnership for Integration with social and economic partners and look into expanding the future cooperation to the area of labour migration.

9. NEXT STEPS

This New Pact on Migration and Asylum sets out the end-to-end approach needed to make migration management in Europe fair, efficient and sustainable. The EU will now have to show the will to make the New Pact a reality. This is the only way to prevent the recurrence of events such as those seen in Moria this month: by putting in place a system to match the scale of the challenge. A common European framework for migration management is the only way to have the impact required. Bringing policies together in this way is essential to provide the clarity and results needed for citizens to trust that the EU will deliver results that are both robust and humane.

Such a system can only function if it has the tools needed to deliver. This means a strong legal framework able to give the clarity and focus needed for mutual confidence, with robust and fair rules for those in need of international protection and those who do not have the right to stay. It requires migration to be at the heart of mutually beneficial partnerships with third countries to effectively improve migration management. It calls for an intelligent approach to legal migration to support the economic need for talent and the social need for integration. It also requires sufficient budget to reflect the common responsibilities and the common benefits of EU migration policies, inside and outside the EU.

Finally, it needs the engagement and commitment of all. That is why the New Pact has been built on careful consultations: with the European Parliament and the Council, the Member States, and with stakeholders. It is grounded in our values but will also provide the results needed. The Commission considers that the result is a balance of interests and needs which deserves the support of all. The Commission now calls on the European Parliament and the Council to bring a new impetus. A first step should be to reach a common understanding on the new solidarity mechanism as well as the responsibility elements in the form of the new screening and border procedure by the end of this year, followed swiftly by adopting the full package of legislation required. By working together, the EU can and must ensure that a truly common migration and asylum policy is quickly made a reality.

EUROPEAN
COMMISSION

Brussels, 23.9.2020
COM(2020) 609 final

ANNEX

ANNEXES

to the

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS

on a New Pact on Migration and Asylum

Roadmap to implement the New Pact on Migration and Asylum

Actions	Indicative Timetable
A common European framework for migration and asylum management	
The Commission:	
• Proposes an Asylum and Migration Management Regulation, including a new solidarity mechanism	Q3 2020
• Proposes new legislation to establish a screening procedure at the external border	Q3 2020
• Amends the proposal for a new Asylum Procedures Regulation to include a new border procedure and make asylum procedures more effective	Q3 2020
• Amends the Eurodac Regulation proposal to meet the data needs of the new framework	Q3 2020
• Will appoint a Return Coordinator within the Commission, supported by a new High Level Network for Returns and a new operational strategy	Q1 2021
• Will set out a new Strategy on voluntary returns and reintegration	Q1 2021
The European Border and Coast Guard Agency (Frontex) should:	
• Fully operationalise the reinforced mandate on return and provide full support to Member States at national level	Q4 2020
• Appoint a Deputy Executive Director for Return	Q2 2021
The European Parliament and the Council should:	
• Adopt the Asylum and Migration Management Regulation, as well as the Screening Regulation and the revised Asylum Procedures Regulation	Q2 2021
• Give immediate priority to adoption of the Regulation on the EU Asylum Agency	Q4 2020
• Ensure quick adoption of the revised Eurodac Regulation	Q4 2020
• Ensure quick adoption of the revised Reception Conditions Directive and the Qualification Regulation	Q2 2021
• Ensure the swift conclusion of the negotiations on the revised Return Directive	Q2 2021
A robust crisis preparedness and response system	
The Commission:	
• Presents a Migration Preparedness and Crisis Blueprint	Q3 2020
• Proposes legislation to address situations of crisis and *force majeure* and repealing the Temporary Protection Directive	Q3 2020
The European Parliament and the Council should:	
• Prioritise and conclude work on the new crisis instrument	Q2 2021
The Member States, the Council and the Commission should:	
• Start implementation of the Migration Preparedness and Crisis Blueprint	Q4 2020

Integrated border management	
The Commission:	
• Adopts a Recommendation on cooperation between Member States concerning private entities' rescue activities	Q3 2020
• Presents guidance to Member States to make clear that rescue at sea cannot be criminalised	Q3 2020
• Will adopt a Strategy on the future of Schengen	Q1 2021
• Will establish a Schengen Forum	Q4 2020
• Will launch a new European group of experts on search and rescue	Q4 2020
The Commission, the Member States and Frontex should:	
• Ensure the swift and full implementation of the new European Border and Coast Guard Regulation	Q4 2020
• Ensure the implementation and interoperability of all large scale IT systems	Q4 2023
Reinforcing the fight against migrant smuggling	
The Commission will:	
• Present a new EU Action Plan against Migrant Smuggling for 2021-2025	Q2 2021
• Start assessment how to strengthen the effectiveness of the Employers Sanctions Directive	Q4 2020
• Build action against migrant smuggling into partnerships with third countries	Q4 2020
Working with our international partners	
The Commission, in close cooperation with the High Representative and Member States, will:	
• Launch work immediately to develop and deepen tailor-made comprehensive and balanced migration dialogues and partnerships	Q4 2020
• Scale up support to help those in need and their host communities	Q4 2020
• Increase support for economic opportunity and addressing the root causes of irregular migration	Q4 2020
• Step up the place of migration in the programming of the new instruments in the next Multiannual Financial Framework	Q4 2020
• Examine options for new EU readmission agreements and arrangements	Q4 2020
• Make use of the Visa Code to incentivise and improve cooperation to facilitate return and readmission, also preparing for the new provisions of the Asylum and Migration Management Regulation	Q1 2021
• Take forward the recommendation on legal pathways to protection in the EU, including resettlement	Q4 2020
• Develop EU Talent Partnerships with key partner countries	Q4 2020
The European Parliament and the Council should:	
• Conclude swiftly negotiations on the Framework Regulation on Resettlement and Humanitarian Admission	Q4 2020

Attracting skills and talent to the EU	
The Commission will:	
• Launch a debate on the next steps on legal migration, with a public consultation	Q3 2020
• Propose a Skills and Talent package including a revision of the Long-term Residents Directive and a review of the Single Permit Directive, as well as setting out the options for developing an EU Talent Pool	Q4 2021
The European Parliament and the Council should:	
• Conclude negotiations on the EU Blue Card Directive	Q4 2020
Supporting integration for more inclusive societies	
The Commission will:	
• Adopt a comprehensive Action Plan on integration and inclusion for 2021-2024	Q4 2020
• Implement the renewed European Partnership for Integration with social and economic partners and look into expanding the future cooperation to the area of labour migration	Q1 2021

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Brussels, 24.3.2021
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COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS

EU strategy on the rights of the child

We need a strategy that is inclusive of all children and that supports children in vulnerable situations and we need a strategy that promotes and supports our right to participate in decisions that affect us. Because nothing that is decided for children should be decided without children. It's time to normalise child participation.

(Children's conclusions, 13th European Forum on the rights of the child, 2020).

Introduction

Children's rights are human rights. Every child in Europe and across the world should enjoy the same rights and be able to live free of discrimination, recrimination or intimidation of any kind.

This is a social, moral and human imperative on which children – who account for almost one in five people living in the EU[1] and one in three in the world[2] – and the wider community depends on. It is about ensuring all children can fulfil their potential and play a leading role in society– whether it be in fighting for fairness and equality, strengthening democracy or driving the twin green and digital transitions.

This is why the **protection and promotion of the rights of the child is a core objective of the European Union**'s work at home and abroad[3]. It is enshrined in the Charter of Fundamental Rights of the EU[4] which guarantees the protection of children's rights in implementing Union law. It cuts across all policy areas and forms part of the core priorities of the European Commission, as set out in President von der Leyen's Political Guidelines[5].

This **strategy's overarching ambition is to build the best possible life for children in the European Union and across the globe**. It reflects the rights and the role of children in our society. They inspire and are at the forefront of raising awareness on the nature and climate change crises, discrimination and injustice. They are as much the citizens and leaders of today as they are the leaders of tomorrow. This strategy seeks to fulfil our shared responsibility to join forces to respect, protect and fulfil the rights of every child; and to build together with children healthier, resilient, fairer and equal societies for all.

The United Nations Convention on the Rights of the Child[6] (UNCRC), which all EU Member States have ratified, continues to guide our action in this field. More than 30 years after its entry into force, significant progress has been made and children are increasingly recognised as having their own set of rights.

The Convention recognises the right of all children to have the best possible start in life, to grow up happy and healthy, and to develop to their full potential. This includes the right to live in a clean and healthy planet, a protective and caring environment, to relax, play, and enjoy cultural and artistic activities, and to enjoy and respect the natural environment.

[1] A child is a person below 18 years old. Population data. [yth_demo_010], [yth_demo_020], Eurostat, 2020
[2] Demographics. State of the World's Children 2019 Statistical Tables, UNICEF
[3] Article 3(3) of the Treaty on European Union (TEU) establishes the objective for the EU to promote the protection of the rights of the child. Article 3(5) TEU sets forth that in its relations with the wider world, the Union shall contribute to (…) the protection of human rights, in particular the rights of the child.
[4] EU Charter of Fundamental Rights,2012/C 326/02
[5] *A Union that strives for more. My agenda for Europe*. By candidate for President of the European Commission Ursula von der Leyen. Political Guidelines for the next European Commission 2019-2024
[6] Convention on the Rights of the Child, United Nations, 1989

Families and communities also need to be provided with the necessary support so that they can ensure children's wellbeing and development.

Never before have children across the EU enjoyed the rights, opportunities and security of today. This is notably thanks to EU policy actions, legislation and funding over the last decade, working alongside Member States. In past decades, the Commission has put forward important initiatives addressing child trafficking, child sexual abuse and exploitation, missing children, and on promoting child-friendly justice systems. We have elaborated and included child-friendly provisions in asylum and migration policies and law. We have stepped up efforts to make the internet safer for children and continue to combat poverty and social exclusion. The revamped 2017 EU Guidelines for the promotion and protection on the rights of the child were a milestone for children's rights globally, together with the many humanitarian and developmental programmes promoting the right to health and education. The impact of these initiatives has largely improved the life of children in the EU, and the concrete fulfilment of their rights.

This progress was hard won but should not be taken for granted. Now is the time to build on those efforts, address persisting and emerging challenges and to define a comprehensive strategy to protect and promote children's rights in today's ever-changing world.

Too many children still face severe and regular violations of their rights. Children continue to be victims of different forms of violence; suffer from socio-economic exclusion and discrimination, in particular on the grounds of their sex, sexual orientation, racial or ethnic origin, religion or belief, disability – or that of their parents. Children's concerns are not sufficiently listened to, and their views are often not considered enough in matters important to them.

The **COVID-19 pandemic has exacerbated existing challenges and inequalities and created new ones**. Children have been exposed to increased domestic violence and online abuse and exploitation, cyberbullying[7] and more child sexual abuse material has been shared online[8]. Procedures such as on asylum or family reunification experienced delays. The shift to distance learning disproportionately affected very young children, those with special needs, those living in poverty, in marginalised communities, such as Roma children, and in remote and rural areas, lacking access to internet connections and IT equipment. Many children lost their most nutritious daily meal, as well as access to services that schools provide. The pandemic also strongly affected children's mental health, with a reported increase in anxiety, stress and loneliness. Many could not participate in sports, leisure, artistic and cultural activities that are essential for their development and well-being.

The EU needs a new, comprehensive approach to reflect new realities and enduring challenges. By adopting this first comprehensive strategy on the rights of the child, the Commission is committing to putting children and their best interests at the heart of EU policies, through its internal and external actions and in line with the principle of subsidiarity. This strategy aims to bring together all new and existing EU legislative, policy and funding instruments within one comprehensive framework.

It proposes a series of targeted actions across **six thematic areas**, each one defining the priorities for EU action in the coming years. This will be supported by strengthening the **mainstreaming of children's rights** across all relevant EU policies. The specific needs of

[7] *How children (10-18) experienced online risks during the COVID-19 lockdown in spring 2020*, JRC, European Commission, 2020

[8] *Exploiting Isolation: Offenders and victims of online child sexual abuse during the COVID-19 pandemic*, Europol, 2020

certain groups of children, including those in situations of multiple vulnerabilities and facing intersecting forms of discrimination, are duly taken into account.

This strategy builds on previous Commission communications on the rights of the child[9], and on the existing legal and policy framework[10]. It also contributes to achieving the aims of the European Pillar of Social Rights[11]. The strategy is anchored in the UNCRC and its three Optional Protocols, the UN Convention on the Rights of Persons with Disabilities (UNCRPD)[12] and will contribute to achieving the United Nations Sustainable Development Goals (SDGs)[13]. It also links to the Council of Europe standards on the rights of the child, as well as with its Strategy for the Rights of the Child (2016-2021)[14].

The strategy draws upon the substantive contributions from the European Parliament[15], Member States, child rights organisations, other stakeholders and individuals, collected during the preparatory phase, including through an open public consultation[16] and the 2020 European Forum on the Rights of the Child[17].

This strategy has been developed **for children and together with children**. The **views and suggestions of over 10.000 children** have been taken on board in preparing this strategy[18]. Children have also been involved in preparing its child-friendly version[19]. This marks a new chapter and an important step for the EU towards genuine child participation in its decision-making processes.

1. Participation in political and democratic life: An EU that empowers children to be active citizens and members of democratic societies

"If not us, then who?" (Boy, 16, 13th European Forum on the Rights of the Child, 2020)

The sight of young people lining the streets around the world to call for climate action or as child human rights defenders[20] show us that children are active citizens and **agents of change**. While in most EU Member States children do not have the rights to vote until age 18, they do have the right to be active members of democratic societies and can help to shape, implement and evaluate political priorities.

[9] Towards an EU Strategy on the Rights of the Child, COM(2006)367 and An EU Agenda for the Rights of the Child, COM(2011)60

[10] See Annex 2 - Rights of the Child - EU *acquis* and policies

[11] The European Pillar of Social Rights in 20 principles

[12] Convention on the Rights of Persons with Disabilities, United Nations, 2006

[13] UN Sustainable Development Goals: a 2030 Agenda. See Annex 1: Comparative table detailing the relevant rights enshrined in the EU Charter of Fundamental Rights, the UN Convention on the Rights of the Child and the goals and targets of the UN Sustainable Development Goals, as protected and promoted by the different strands of this strategy.

[14] Council of Europe Strategy for the Rights of the Child (2016-2021). The Council of Europe is also preparing the future strategic framework, for the period 2022-2027.

[15] European Parliament Resolution of 26 November 2019 on children's rights on the occasion of the 30th anniversary of the UN Convention on the Rights of the Child (2019/2876(RSP)) – European Parliament Resolution of 11 March 2021 on children's rights in view of the EU Strategy on the rights of the child (2021/2523(RSP))

[16] Summary report of the open public consultation to the EU Strategy on the Rights of the Child, 2021

[17] 13th European Forum on the Rights of the Child, 2020

[18] UNICEF, Eurochild, Save the Children, Child Fund Alliance, World Vision: *Our Europe, Our Rights, Our Future*. - SOS Children's Villages consultation with children in residential care and children receiving family strengthening services and the summary report, Defence for Children International, Terre des Hommes and its partners.

[19] EU strategy on the rights of the child: child-friendly versions

[20] *Report of the 2018 Day of General Discussion on Protecting and Empowering Children as Human Rights Defenders*, UN Committee on the Rights of the Child, 2018; *Implementation Guide on the Rights of Child Human Rights Defenders*, Child Rights Connect, 2020

There are good examples of how different levels of governments and public authorities are promoting children's meaningful participation, leading to a real influence on decisions in the public sphere[21]. At EU level, these include EU Youth Dialogues[22] and the Learning Corner[23].

Nonetheless, **too many children do not feel considered enough in decision-making**[24]. Challenges include stereotypes and perceptions that children's participation is difficult, costly, demanding resources and expertise. Gender stereotypes, in particular, limit boys' and girls' aspirations and create barriers to their participation and life choices. While a majority of children seem to be aware of their rights, only one in four consider their rights respected by the whole of society[25]. This adversely affects child participation in schools, in sports, culture and other leisure activities, in justice and migration systems or the health-care sector, as well as in families.

This is why, the EU needs to promote and improve the **inclusive and systemic participation of children at the local, national and EU levels**. This will be driven through a new **EU Children's Participation Platform,** to be established in partnership with the European Parliament and child rights organisations, to ensure children are better involved in decision-making. The Conference on the Future of Europe also presents an excellent opportunity to put child participation into action.

The Commission will also help children, professionals working with and for children, the media, the public, politicians and policy-makers to increase awareness of children's rights, and to ensure the right of the child to be heard and listened to. It will also promote a meaningful and inclusive participation of children in the policy-making process of the European institutions and EU agencies, notably through child-specific consultations where relevant.

Key actions by the European Commission:

- establish, jointly with the European Parliament and child rights organisations, an EU Children's Participation Platform, to connect existing child participation mechanisms at local, national and EU level, and involve children in the decision-making processes at EU level;
- create space for children to become active participants of the European Climate Pact through pledges or by becoming Pact Ambassadors. By involving schools in sustainable climate, energy and environment education, the Education for Climate Coalition will help children to become agents of change in the implementation of the Climate Pact and the European Green Deal[26];
- develop and promote accessible, digitally inclusive and child friendly versions and formats of the Charter of Fundamental Rights, and other key EU instruments;
- develop and promote guidelines on the use of child friendly language in documents and in stakeholders' events and meetings with child participants;
- include children within the Fundamental Rights Forum of the EU Agency for Fundamental Rights (FRA) and the Conference on the Future of Europe;
- conduct child-specific consultations for relevant future initiatives;

[21] *Study on child participation in EU political and democratic life*, European Commission, 2021 and its accessible version
[22] EU Youth Dialogues (16-30 years old)
[23] Learning corner
[24] Europe Kids Want survey, *Sharing the view of children and young people across Europe*, UNICEF and Eurochild, 2019
[25] *Our Europe. Our Rights. Our Future*, *op. cit.*
[26] European Green Deal

– strengthen expertise and practice on child participation among Commission staff and the staff of EU agencies, including on child protection and safeguarding policies.

The European Commission invites Member States to:

– establish, improve and provide adequate resources for new and existing mechanisms of child participation at local, regional and national level, including through the Council of Europe's child participation self-assessment tool [27];
– increase awareness and knowledge of the rights of the child, including for professionals working with and for children, through awareness campaigns and training activities;
– strengthen , education on citizenship, equality and participation in democratic processes in school curricula at local, regional, national and EU level;
– support schools in their efforts to engage pupils in the school's daily life and decision-making.

2. Socio-economic inclusion, health and education: An EU that fights child poverty, promotes inclusive and child-friendly societies, health and education systems.

"I think that at some point I feel some anxiety. I would like to talk to a psychologist to give me an opinion on how it would be good to deal with things." (Child, Greece).

"School lets you open up to the world and talk to people. School is life." (Child seeking asylum, France).

Each child has the right to an adequate standard of living, and to equal opportunities, from the earliest stage of life. Strengthening the socio-economic inclusion of children is essential to address the passing of poverty and disadvantage through generations. Social protection and support to families is essential in this respect.

Each child has the right to the highest attainable standard of healthcare and quality education, irrespective of their background and where they live. However, children at risk of poverty and social exclusion are more likely to experience difficulties in accessing essential services, in particular in rural, remote and disadvantaged areas.

The European Pillar of Social Rights[28] and the 2013 Commission Recommendation 'Investing in Children: breaking the cycle of disadvantage'[29] remain important tools to reduce child poverty and improving child well-being. The EU funding instruments are equally key to support these policy objectives. Between 2021 and 2027, Member States with a rate of child at-risk-of-poverty or social exclusion higher than the EU average (in 2017-2019) will have to earmark 5% of the European Social Fund Plus (ESF+) for combatting child poverty, while all others should equally allocate appropriate amounts. The European Regional Development Fund (ERDF) will contribute to investments in infrastructure, equipment and access to mainstream and quality services, with a strong focus on the poorest regions of the Union, where public services tend to be less developed. The Recovery and Resilience Facility will help achieve fast and inclusive recovery from the COVID-19 pandemic, including through the promotion of policies for children and youth, and enhancing economic, social and territorial cohesion.

[27] Child Participation Assessment Tool, Council of Europe
[28] The European Pillar of Social Rights in 20 principles
[29] Commission Recommendation Investing in Children: breaking the cycle of disadvantage (2013/112/EU)

2.1 Combating child poverty and fostering equal opportunities

Despite a decrease over the past years, in 2019, 22.2% of children in the EU were at risk of poverty or social exclusion. Depending on the Member State, the poverty risk for children raised by a single parent, in families with three or more children, living in rural and the most remote areas of the EU, or with a migrant or Roma background is up to three times higher than that of other children[30]. Around half of children whose parents' level of education was low, were at risk of poverty or social exclusion, compared with less than 10% of children whose parents' level of education was high. Children from low-income families are at the higher risk of severe housing deprivation or overcrowding, and are more exposed to homelessness.

This translates into deep inequality of opportunities, which remains an issue for children even in countries with low levels of poverty and social exclusion[31]. Children from disadvantaged backgrounds are less likely than their better-off peers to perform well in school, enjoy good health and realise their full potential later in life.

All children, including those with disabilities and from disadvantaged groups, have an equal right to live with their families and in a community. Integrated child protection systems, including effective prevention, early intervention and family support, should provide children without or at risk of losing parental care the necessary conditions to prevent family separation. Poverty should never be the only reason for placing children in care. The shift to quality community and family-based care, and support for ageing out of care, need to be ensured.

With the Action Plan on implementing the European Pillar of Social Rights[32], the Commission has set out the ambitious target of reducing by at least 15 million the number of people at risk of poverty or social exclusion in the EU by 2030 – including at least 5 million children. One of its main deliverables is the Commission's proposal for Council recommendation establishing the **European Child Guarantee**[33], which complements this Strategy and calls for specific measures for children at risk of poverty or social exclusion. The proposal recommends to Member States that they guarantee access to quality key services for children in need: early childhood education and care, education (including school-based activities), healthcare, nutrition, and housing.

The Commission monitors how Member States address child poverty or social exclusion in the **European Semester** process and, where necessary, propose relevant country specific recommendations. The reinforced Youth Guarantee[34] stipulates that all young people from the age of 15 receive an offer of employment, education, traineeship or apprenticeship within a period of four months of becoming unemployed or leaving formal education.

Key actions by the European Commission:

- establish a **European Child Guarantee;**
- ensure the complementarity with the **European Strategy for the rights of persons with disabilities**[35] to respond to the needs of children with disabilities and provide better access to mainstream services and independent living.

[30] Commission proposal for a Joint Employment Report 2021 Commission proposal for a Joint Employment Report, 2021
[31] *Combating child poverty: an issue of fundamental rights*, FRA, 2018
[32] The European Pillar of Social Rights Action Plan, COM(2021) 102 final
[33] Proposal for a Council Recommendation establishing a European Child Guarantee, COM(2021)137
[34] Council Recommendation on A Bridge to Jobs – Reinforcing the Youth Guarantee, (2020/C 372/01)
[35] Strategy for the rights of persons with disabilities 2021-2030, COM(2021) 101 final

The European Commission invites Member States to:

- swiftly adopt in the Council the Commission proposal for a Council recommendation establishing the European Child Guarantee and implement its provisions;
- implement the reinforced Youth Guarantee and promote the involvement of young people in Youth Guarantee services.

2.2 Ensuring the right to healthcare for all children

Vaccination is the main tool to prevent serious, contagious, and sometimes deadly diseases, and is a basic element of childcare. Thanks to widespread vaccination, smallpox has been eradicated and Europe made polio-free. However, outbreaks of vaccine-preventable diseases still occur due to insufficient vaccination coverage rates. The COVID-19 pandemic has also threatened the continuity of childhood vaccination programmes in Europe. The European Commission and EU Member States share the objectives to fight disinformation, improve vaccine confidence, and ensure equitable access to vaccines for all.

In 2020, over 15,500 children and adolescents were diagnosed with cancer in the EU, with over 2,000 young patients losing their lives to it. Cancer constitutes the primary cause of death by disease beyond the age of one. Up to 30% of children affected by cancer suffer severe long-term consequences and the number of childhood cancer survivors continues to grow.

Adopting a healthy and active lifestyle at a young age will help reduce cancer risks later in life. The **Europe's Beating Cancer Plan**[36] steps up early preventive actions and launches new initiatives on paediatric cancer to help young patients recover and ensure an optimal quality of life. Children suffering with cancer have often at their disposal a reduced number of validated treatments. The revised Regulation on medicines for children, a flagship initiative of the Pharmaceutical Strategy for the EU[37], aims to foster targeted medicinal products for children, including paediatric oncology.

Childhood is a crucial stage in life in determining future physical and mental health. However, children's mental health issues are widespread and can sometimes be linked to isolation, education environment, social inclusion and poverty, and the prolonged use of digital tools. Up to 20% of children worldwide experience mental health issues, which if untreated, severely influence their development, educational attainment and their potential to live fulfilling lives. School is recognised amongst the fundamental determinants of mental health of children[38]. The European Education Area[39] will also address mental health and well-being in education. Cultural participation, spending time in nature and physical exercise can have a positive impact on children's mental health[40], by building self-esteem, self-acceptance, confidence and self-worth.

Migrant children often suffer from mental health problems from situations experienced in the country of origin, on the migratory route, from uncertainty or degrading treatment in the country of arrival. The ongoing work of the European Asylum Support Office (EASO) Vulnerables Network ('VEN') focuses, amongst other things, on mental health for asylum

[36] Communication Europe's Beating Cancer Plan, COM(2021) 44 final
[37] Communication Pharmaceutical Strategy for Europe COM(2020) 761 final
[38] European Framework for Action on Mental Health and Wellbeing, Joint Action on Mental health and Well-being 2013-2016
[39] Council Resolution on a strategic framework for European cooperation in education and training towards the European Education Area and beyond (2021-2030) (2021/C 66/01)
[40] *What is the evidence on the role of the arts in improving health and well-being?*, WHO, 2019

seekers. Some other groups of children, such as children with disabilities and LGBTIQ children, might have specific needs when it comes to mental and physical health that need to be addressed in an appropriate way.

A healthy diet, together with regular physical activity, **is vital to children's full physical and mental development.** Even today, there are children in the EU who suffer from hunger, in particular Roma and Travellers children[41], making them more susceptible to diseases and preventing their proper brain development. Homeless children and migrant children residing in overcrowded or substandard reception facilities also face similar problems.

On the other hand, during the past 30 to 40 years, the increased availability and affordability of ultra-processed, unhealthy foods, led to escalating overweight and obesity. One in three children in the EU aged 6-9 is overweight or obese. This can increase the risk of diabetes, cancer, cardiovascular diseases or premature deaths. Commission actions include the School fruit, vegetables and milk scheme[42], and the 2014-2020 EU Action Plan on Childhood Obesity[43], which will be evaluated in view of a follow-up.

The Commission Farm to Fork Strategy[44] calls on the food industry and the retail sectors to make healthy and sustainable food options increasingly available and affordable. In this context, the Commission will propose harmonised mandatory front-of-pack nutrition labelling to facilitate informed, healthy food choices, and will set nutrient profiles to restrict the promotion (via nutrition or health claims) of foods high in fat, sugars and salt. The HealthyLifestyle4All campaign will promote healthy lifestyles for all, across generations and social groups, notably children.

Key actions by the European Commission:

- step-up the implementation of the Council Recommendation to strengthen EU cooperation on vaccine-preventable diseases[45];
- provide information and exchange of best practices to address children's mental health, via the Best Practice Portal[46] and the Health Policy Platform;
- review the EU school scheme legal framework to refocus on healthy and sustainable food;
- develop best practices and a voluntary code of conduct to reduce online marketing to children of products high in sugar, fat and salt within the Joint Action on Implementation of Validated Best Practices in Nutrition.

The European Commission invites Member States to:

- identify children as a priority target group in their national mental health strategies;
- build up networks with families, schools, youth, and other stakeholders and institutions involved in mental health of children.

2.3 Building inclusive, quality education

All children have the right to develop their key competences and talents, starting in early childhood and throughout their schooling and vocational training, also in non-formal learning

[41] *Roma and Travellers in six countries*, FRA, 2020
[42] School fruit, vegetables and milk scheme, European Commission
[43] EU Action Plan on Childhood Obesity (2014-2020), European Commission
[44] Farm to Fork Strategy, COM(2020) 381 final
[45] Council Recommendation on strengthened cooperation against vaccine-preventable diseases 2018/C 466/01
[46] Best Practice Portal, Public Health, European Commission

settings. **Access to inclusive, non-segregated, quality education should be guaranteed**, amongst others, **through a non-discriminatory treatment** regardless of racial and ethnic origin, religion or belief, disability, nationality, residence status, sex and sexual orientation.

Early childhood education and care (ECEC) is particularly beneficial to children's cognitive, language and social development. Both the ET2020 benchmark[47] and the Barcelona objectives[48] on participation of children to ECEC have been met at EU level, although with a wide variation across Member States.

Enrolment rates in ECEC for children with disabilities and children from disadvantaged groups, children with a migrant background and Roma children, are much lower, even though they are among the children who would benefit the most from participation. Countries have targeted measures to facilitate ECEC access to children living in poverty, yet few countries target support measures to children from migrant backgrounds or those from regional or ethnic minorities[49]. This is particularly problematic for children with a migrant background, for whom access to ECEC is particularly beneficial in terms of language development. The Commission will propose the revision of the Barcelona targets to support further upward convergence among Member States of participation in early childhood education and care[50].

Designing inclusive school education means building meaningful learning experiences in different environments. To this end, the Commission will put forward proposals to support online and distance learning in primary and secondary education which will promote the development of more flexible and inclusive education via a blend of different learning environments (school site and distance) and tools (digital, including online, and non-digital), while taking into account the particular issues of disadvantaged groups and communities.

Despite recent progress, early leavers from education and training still represent around 10% of young people in the EU (and more than 60% among Roma youth) and only 83% have completed upper secondary education (only 28% among Roma). Of Roma children in primary schools, 44% attend segregated primary schools, undermining their chances of succeeding in subsequent stages of education[51]. Children with disabilities leave school early, and fewer learners with disabilities complete a university degree (gap of 14.4 percentage points). There is a persistent gender gap, with more boys than girls leaving school early. Moreover, the 2018 results from Programme for International Student Assessment (PISA) of the Organisation for Economic Cooperation and Development (OECD)[52] show that one in five young Europeans still lack adequate reading, maths or science competences. To help address this trend and support all students to complete their upper secondary education, the Commission will put forward a recommendation to open up pathways for school success with a focus on disadvantaged pupils.

Vocational education and training (VET) can help equip students with a balanced mix of vocational skills and key competences to thrive in the evolving labour market and society, as well as to foster inclusiveness and equal opportunities.

Key actions by the European Commission

[47] European policy cooperation (ET 2020 framework), Education and Training, European Commission
[48] *Barcelona objectives on the development of childcare facilities for young children with a view to increase female labour participation, strike a work-life balance for working parents and bring about sustainable and inclusive growth in Europe (the „Barcelona objectives")*, European Commission, 2018
[49] *Key data on early childhood education and care in Europe* - 2019 Edition, Eurydice, 2019
[50] Communication on Gender Equality Strategy 2020-2025 (COM/2020/152 final)
[51] Analytical document accompanying the EU Roma Strategic framework SWD (2020) 530 final, Annex 2 – Baselines for EU headline indicators, European Commission
[52] PISA 2018 Results *What School Life Means for Students' Lives*, OECD. Average across OECD countries.

- propose, in 2022, the revision of the Barcelona targets to support further upward convergence among Member States of participation in early childhood education and care;
- propose a Council recommendation on online and distance learning in primary and secondary education;
- propose a new initiative "Pathways to School Success", that will also contribute to decouple educational attainment and achievement from social, economic and cultural status.
- set up an expert group for creating supportive learning environments for groups at risk of underachievement and supporting well-being at school;
- support Member States in implementing the 2020 Council recommendation on VET for sustainable competitiveness, social fairness and resilience;
- promote the Toolkit for inclusion in early childhood education and care[53].

The European Commission invites the Member States to:

- work towards achieving the targets proposed within the European Education Area;
- continue implementing fully, in close cooperation with the European Commission, all relevant actions recommended in the Action Plan on Integration and Inclusion 2021-2024[54] in the area of education and training.

3. Combating violence against children and ensuring child protection: an EU that helps children grow free from violence

"The fact that we live in an institution says absolutely nothing about us, except that we have already experienced something in our lives." (Child, Slovenia).

"I wish there were fewer fights and tensions in my family." (Child, Greece).

Violence against children, in all its possible forms is widespread. Children can be victims, witnesses, as well as perpetrators of violence – starting from their own homes, in school, in leisure and recreational activities, in the justice system, offline as well as online.

It is estimated that half of all children worldwide suffer some form of violence each year. Nearly three quarters of the world's children between the age of 2 and 4 regularly suffer physical punishment and/or psychological violence at the hands of parents and caregivers[55]. In Europe, 1 in 5 children will fall victim to some form of sexual violence[56], while children account for almost a quarter of victims of trafficking in the EU - the majority being girls trafficked for sexual exploitation[57]. More than 200 million women and girls worldwide are survivors of female-genital mutilation[58], including over 600.000 in the EU[59]. 62% of intersex

[53] Toolkit for inclusion in early childhood education and care, European Commission, 2020
[54] Action plan on Integration and Inclusion 2021-2027 COM(2020)758 final
[55] *Global status report on preventing violence against children*, UNICEF/WHO, 2020
[56] One in Five campaign, Council of Europe
[57] Third report on the progress made in the fight against trafficking in human beings (2020) as required under Article 20 of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, COM(2020) 661 final SWD(2020) 226 final
[58] *Female Genital mutilation/cutting: a global concern*, UNICEF, 2016
[59] FGM in Europe. End FGM

people[60] who had undergone a surgery said neither they nor their parents gave fully informed consent before medical treatment or intervention to modify their sex characteristics[61].

The COVID-19 pandemic has led to an increase in certain forms of violence, such as domestic violence, while complaint and reporting mechanisms need to adapt to the new circumstances. The capacity and access to the child helplines (116 111) and the missing children hotlines (116 000) need to be improved.

Exposure to violence severely affects a child's physical, psychological and emotional development. It may affect their ability to go to school, to interact socially and to thrive. It can lead to mental health issues, chronic diseases, self-harm tendencies, even suicide. Children in vulnerable situations can be particularly affected.

Violence in schools and among peers is common. According to the 2018 PISA results, 23% of students reported being bullied at school (physical, verbal or relational bullying) at least a few times a month. A recent LGBTI survey by the Fundamental Rights Agency found that 51% of 15-17 years old respondents reported harassment in school.

In 2019, 12% of global international migrants (or 33 million) were children. Children in migration, including child refugees, are very often exposed to risks of abuse and have suffered from extreme forms of violence – war, violent conflict, exploitation, human trafficking, physical, psychological and sexual abuse - before and/or after their arrival on EU territory[62]. Children may go missing or become separated from their families. Risks increase when children travel unaccompanied or are obliged to share overcrowded facilities with adult strangers. The particular vulnerability of children in the migration context or due to their migration background requires additional and targeted protection and support. This is also true for those outside the EU, such as the almost 30.000 children, including children of foreign fighters, estimated to live in the Al Hol camp in Syria, suffering from conflict trauma and extremely dire living conditions[63].

The Commission will address and support Member States to combat violence, including gender-based violence, against all children. As part of this, the Commission will continue to support Member States and monitor the implementation of the actions identified in the 2017 Communication on the protection of children in migration[64].

The Commission will also work with all stakeholders to raise awareness on all forms of violence to ensure effective child-friendly prevention, protection and support for child victims and witnesses of violence. The CERV programme[65] will continue to fund child protection projects.

The Commission will seek solutions to address the lack of comparable, age and sex-disaggregated data on violence against children at national and EU levels, and draw on the expertise of the Fundamental Rights Agency, as appropriate.

This strategy will complement, and reinforce where necessary, the actions envisaged under the new EU strategy on combatting trafficking in human beings, as well as the EU strategy for

[60] Intersex people: who are born with sex characteristics that do not fit the typical definition of male or female, LGBTIQ Equality Strategy
[61] *A long way to go for LGBTI equality*, FRA, 2020
[62] Communication on the protection of children in migration, COM(2017) 211 final
[63] *Protect the rights of children of foreign fighters stranded in Syria and Iraq*, UNICEF, 2019
[64] Communication on the protection of children in migration, *op. cit.*
[65] Citizenship, Equality, Rights and Values Programme (2021-2027), European Union

a more effective fight against child sexual abuse[66]. As part of this, the Commission is also exploring setting up a European centre to prevent and counter child sexual abuse to work with companies and law enforcement bodies, to identify victims and bring offenders to justice.

The promotion of integrated child protection systems is intrinsically linked to the prevention and protection from violence. With the child at the centre, all relevant authorities and services should work together to protect and support the child, in their best interests. The Commission will further support the establishment of Children's houses (*Barnahus*[67]) in the EU. Special attention should be given to prevention measures, including family support.

Key actions by the European Commission:

- put forward a legislative proposal to combat gender-based violence against women and domestic violence, while supporting the finalisation of the EU's accession to the Council of Europe Convention on preventing and combatting violence;
- table a recommendation on the prevention of harmful practices against women and girls, including female genital mutilation;
- present an initiative aimed at supporting the development and strengthening of integrated child protection systems, which will encourage all relevant authorities and services to better work together in a system that puts the child at the centre;
- support the exchange of good practices on ending non-vital surgery and medical intervention on intersex infants and adolescents to make them fit the typical definition of male or female without their or their parents' fully informed consent (intersex genital mutilation).

The European Commission invites the Member States to:

- raise awareness of, and invest in capacity building and measures for (i) a more effective prevention of violence, (ii) protection of victims and witnesses, including with the necessary safeguards for child suspects or accused;
- provide adequate support to children with specific vulnerabilities who suffer violence, as well as to violence that occur in schools;
- adopt legislation to ban corporal punishment in all settings, if not yet available, and work towards its elimination;
- improve the functioning of child protection systems at national level, in particular:

✓ establish (where not yet available), and improve child helpline (116 111) and missing children hotline (116 000)[68], including through funding and capacity building;

✓ promote national strategies and programmes to speed up de-institutionalisation and the transition towards quality, family- and community-based care services including with an adequate focus on preparing children to leave care, including for unaccompanied migrant children.

[66] EU Strategy for a more effective fight against child sexual abuse, COM(2020)607

[67] Barnahus

[68] Commission Decision on reserving the national numbering range beginning with 116 for harmonised numbers for harmonised services of social value, (2007/116/EC), subsequently amended, and Directive establishing the European Electronic Communications Code, 2018/1972/EU, Article 96 - Missing children and child helpline hotlines

4. Child-friendly justice: An EU where the justice system upholds the rights and needs of children

"[Child-friendly justice is…] A child surrounded by a system in which he/she is protected/listened to/safe". (Girl, 17, Romania).

Children may be victims, witnesses, suspects or accused of having committed a crime, or be a party to judicial proceedings – in civil, criminal, or administrative justice. In all cases, **children should feel comfortable and safe to participate effectively and be heard. Judicial proceedings** must be adapted to their age and needs, must respect all their rights[69] and give primary consideration to the best interests of the child. While EU action in this field has been significant so far, and standards have been set within the Council of Europe framework[70], national justice systems must be better equipped to address children's needs and rights. Professionals sometimes lack training to interact with children in an age-appropriate way, including when communicating about the results of a proceeding, and to respect the child's best interests. The right of the child to be heard is not always observed and mechanisms to avoid multiple child's hearings or evidence gatherings are not always in place[71].

Children face difficulties to access justice and to obtain effective remedies for violations of their rights, including at European and international level. Vulnerable children are often exposed to multiple and intersecting forms of discrimination. Children with disabilities experience difficulties due to reduced accessibility of justice systems and judicial proceedings, and lack accessible information on rights and remedies. Data collection of children involved in judicial proceedings, including in the context of specialised courts, should be improved.

The COVID-19 pandemic has amplified the challenges related to children and justice. Some court proceedings have stopped or have been delayed; the right to visit family members in prison has been affected.

Children are in contact with the civil justice system following their parents' separation or divorce; or when they are adopted or placed in care. Substantive family law is a national competence. In cross-border cases, the Brussels IIa Regulation (with its 2019 Recast) or the Maintenance Regulation, and a closer judicial cooperation are key to protect the rights of children and ensure their access to justice. While unnecessary family separation should be prevented, any decision on the placement of a child in care should ensure the respect of the rights of the child[72]. Where courts or national authorities are aware of a close connection of the child with another Member State, appropriate measures to ensure these rights should be considered at the earliest possible stage.

In 2022, the Commission will update the Practice Guide for the application of the Brussels IIa Regulation (Recast). Specific challenges arise in cross-border situations, - including for families with divorced or separated parents, and for rainbow families.

In 2020, one third of the total number of asylum applications lodged were children[73]. The principle of best interests of the child must be the primary consideration in all actions or decisions concerning children in migration. Despite progress made so far including with the

[69] Children and Justice reports, FRA
[70] Child friendly justice Guidelines, Council of Europe
[71] EU Justice Scoreboard, child-friendly justice
[72] This includes respect of the right of children to maintain contact, where appropriate, with the parents or with other relatives, in line with Article 9 UNCRC
[73] Asylum and first time asylum applicants by citizenship, [migr_asyappctza], Eurostat, 2020

implementation of the 2017 Communication on the protection of children in migration, children are still not always provided with age-appropriate information on proceedings, nor effective guidance and support throughout asylum or return procedures. The Pact on Migration and Asylum underlined the need to both implement and reinforce EU law safeguards and protection standards for migrant children. The new rules, once adopted, will speed up the appointment of representatives for unaccompanied children, and will ensure the resources to support their special needs, including their transition to adulthood and independent living. Children will be always offered adequate accommodation and assistance, including legal assistance, throughout the procedures. The new rules will also strengthen solidarity between Member States in ensuring full protection for unaccompanied children.

Even today in Europe, there are children who are stateless, either since birth or, often, because of migration. Not having a nationality makes it difficult to access some of the basic services such as healthcare and education, and can lead to situation of violence and exploitation.

For **child victims of crime**, there is often a serious underreporting due to the age of the victim, a lack of awareness of their rights and a lack of accessible, age and gender-appropriate reporting and support services. Specific challenges arise in identifying victims of certain crimes, such as trafficking or sexual abuse, as highlighted in the EU Strategy on victims' rights[74].

The 2019 United Nations Global Study on children deprived of liberty[75] highlighted that too many children are still deprived of their liberty because they are in conflict with the law or related to migration and asylum procedures. National authorities, including in the EU Member States, need to make available and increase the use of **viable and effective non-custodial measures**, in line with EU *acquis*, and ensure that detention is used only as a last resort and for the shortest appropriate time. When parents are imprisoned, policies and practices respecting the right of their children should also be fostered. The complete and correct implementation and application in practice of the Procedural Safeguards Directive[76] will ensure better protection of children suspects or accused in criminal proceedings.

Key actions by the European Commission:

- propose in 2022 a horizontal legislative initiative to support the mutual recognition of parenthood between Member States;
- contribute to training of justice professionals on the rights of the child and child friendly justice, in line with the European judicial training strategy for 2021-2024[77], and through the European Judicial Training Network (EJTN)[78], the Justice and CERV programmes, as well as the European Training Platform of the EU e-justice portal[79];
- strengthen the implementation of the 2010 Guidelines on Child-friendly Justice with the Council of Europe;
- provide targeted financial support for trans-national and innovative projects to protect children in migration under the new Asylum, Migration and Integration Fund (AMIF)[80];
- support Member States in the development of effective and viable alternatives to the detention of children in migration procedures.

[74] EU Strategy on victims' rights (2020-2025), COM(2020) 258 final
[75] UN Global Study on Children Deprived of Liberty, Manfred Nowak, 2019
[76] Directive on procedural safeguards for children who are suspects or accused persons in criminal proceedings; 2016/800/EU
[77] European Judicial Training strategy for 2021-2024 COM(2020) 713 final
[78] European Judicial Training Network
[79] E-justice portal, European Judicial training platform
[80] To be adopted towards end of June/beginning of July 2021

The European Commission invites the Member States to:

- support judicial training providers and all relevant professionals' bodies to address the rights of the child and child friendly and accessible justice in their activities. To this end, allocate necessary resources for the above capacity building activities, and take advantage of the support of the FRA to strengthen capacities on topics such as child-friendly justice and children in migration;
- develop robust alternatives to judicial action: from alternatives to detention, to the use of restorative justice and mediation in the context of civil justice;
- implement the Council of Europe's Recommendation on children with imprisoned parents[81];
- strengthen guardianship systems for all unaccompanied children, including through participation to the activities of the European Guardianship Network[82];
- promote and ensure universal, free and immediate access to birth registration and certification for all children. Moreover, increase capacity of front-line officials to respond to statelessness and nationality-related problems in the context of migration;
- enhance cooperation in cases with cross-border implications, to ensure the full respect of the rights of the child.

5. Digital and information society: An EU where children can safely navigate the digital environment, and harness its opportunities

"I didn't have a computer, the internet didn't reach my village, and I didn't have any data. (...)I couldn't connect for the last 3 months, and I had to repeat." (Girl, 15, Spain).

The development of the digital environment, and the use of new technologies, have opened up many opportunities. Children play, create, learn, interact and express themselves in an online and connected environment, from a very young age. Digital technologies allow children to be part of global movements and play the role of active citizens. As digital natives, they are better placed to thrive in an increasingly digitalised and connected education and future labour market systems. The use of digital tools can help children with disabilities in learning, connecting, communicating and participating in recreational activities online, provided they are accessible.

However, children's online presence increases their exposure to harmful or illegal content, such as child sexual abuse or exploitation materials, pornography and adult content, sexting, online hate-speech or mis- and disinformation, due to the lack of effective parental control/ age verification systems. Online exposure also harbours risks of harmful and illegal contact, such as cyber-grooming and sexual solicitation, cyberbullying or online abuse and harassment. Almost one third of girls and 20% of boys experienced disturbing content once a month in the past year; and children from minorities encounter upsetting events online more frequently[83]. Amongst LGBTI 15-17 years old respondents, 15% have experienced cyber

[81] Recommendation concerning children with imprisoned parents, Council of Europe, CM/Rec(2018)5
[82] European Guardianship Network
[83] "Our Europe. Our Rights. Our Future.", *op. cit.*

harassment due to their sexual orientation[84]. More and more traffickers use Internet platforms to recruit and exploit victims, children being a particularly vulnerable target group[85].

In the context of the EU strategy for a more effective fight against child sexual abuse[86], the Commission put forward an interim proposal to allow Information and Communication Technologies (ICT) companies to continue voluntarily reporting child sexual abuse to the authorities to the extent such practices are lawful, and calls on the co-legislators to swiftly agree on its adoption. For the longer term, the Commission will present a legislative proposal to effectively tackle child sexual abuse online.

The over-exposure to screens and online activities are a concern for children's health, mental well-being, leading to heightened stress, attention deficit, eyesight problems and a lack of physical activity and sport.

The COVID-19 pandemic significantly increased the time children spend online, with schools, cultural and social life shifting online. This led to heightened online risks and a widening of digital inequalities. One child out of 10 reported no online activities and infrequent teacher contact during the spring lockdown[87]. Access to the Internet remains a challenge for a considerable number of children in the EU: it is 20% higher for high-income households, and is markedly lower in rural areas[88]. In its recent Communication on Europe's Digital Decade, the Commission's announced ambitious connectivity targets for all households in Europe[89].

The EU has developed legal instruments and policy initiatives to cater to children's rights in the digital environment[90]. When necessary, these should be adapted and updated as new threats emerge or developments and technologies change. The revised Audiovisual Media Services Directive has strengthened the protection of children from harmful content and inappropriate commercial communications. The recent Digital Services Act[91] proposes due diligence obligations for service providers to ensure safety of users online, including children. The Code of Practice on Disinformation[92] will establish a co-regulatory regime tailored for tackling the risks linked to the spread of disinformation. The new Digital Education Action Plan (2021-2027)[93] promotes digital literacy in view of tackling disinformation and puts education and training at the heart of this effort. Internationally, guidance has just been released on the interpretation of the rights of the child in the digital environment[94].

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[84] *A long way to go for LGBTI equality*, FRA, 2020.

[85] Third Report on the progress made against trafficking in human beings COM(2020) 661 final and SWD(2020) 226 final; *The challenges of countering human trafficking in the digital era*, Europol, 2020

[86] EU Strategy for a more effective fight against Child sexual abuse, *op. cit.*

[87] *How families handled emergency remote schooling during the COVID-19 lockdown in spring 2020*, 2020, JRC

[88] Eurostat. Survey on ICT usage in households and by individuals [isoc_i, ci_in_h], 2019

[89] Commission Communication on '2030 Digital Compass: the European way for the Digital Decade', COM(2021) 118 final

[90] Directive on combating the sexual abuse and sexual exploitation of children and child pornography, 2011/93/EU; Framework Decision on combating certain forms and expressions of racism and xenophobia, 2008/913/JHA; Directive on the Audiovisual Media Services, 2018/1808/EU; Regulation on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, 2016/679/EU; Directive on Unfair Commercial Practices, 2005/29/EC; Communication on Tackling online disinformation: a European Approach, COM(2018)236; European Strategy for a Better Internet for Children, COM(2012)196.

[91] Commission Proposal for a Regulation on a Single Market for Digital Services (Digital Services Act), COM/2020/825 final)

[92] The Code of Practice on Disinformation includes a set of commitments that major online platforms and trade organisations representing the ad industry and advertisers have undersigned to limit the impact of disinformation online. The signatories of the Code will be asked to strengthen the Code following a Guidance that the Commission will issue in Spring 2021.

[93] Digital Education Action Plan 2021-2027, COM(2020)624

[94] *General Comment No. 25 (2021) on Rights of children in relation to the digital environment*, UN Committee on the Rights of the Child

On data protection and privacy rules, children advocate for companies to develop understandable privacy policies for digital services and applications and ask to be involved in the design and development of new digital products they will use. The Commission is ready to support these efforts, in particular through the Youth Pledge for a Better Internet[95] and the Youth Call for Action[96].

The Commission will continue to provide support through the Digital Programme to the Safer Internet Centres and the Better Internet for Kids platform[97] to raise awareness of and build capacity around cyberbullying, recognition of mis- and disinformation, and promotion of healthy and responsible behaviour online. The upcoming Pathways to School Success initiative[98] will promote the prevention of cyberbullying. The Erasmus+ programme[99] will fund initiatives to support the acquisition of digital skills by all children.

Artificial intelligence (AI) has and will have a great impact on children and their rights[100], for example in the fields of education, leisure and healthcare provision. However, it can also entail some risks related to privacy, safety and security. The upcoming Commission proposal on a horizontal legal framework for AI will identify the use of high-risk AI systems that pose significant risks to fundamental rights, including of children.

Key actions by the European Commission:

- adopt an updated Better Internet for Kids Strategy in 2022;
- create and facilitate a child-led process aimed at developing a set of principles to be promoted and adhered to by the industry[101];
- promote the development and use of accessible ICT and assistive technologies for children with disabilities such as speech recognition, closed captioning and others[102], including in Commission's conferences and events;
- ensure the full implementation of the European Accessibility Act[103];
- step up the fight against all forms of online child sexual abuse, such as by proposing the necessary legislation including obligations for relevant online services providers to detect and report known child sexual abuse material online.

The European Commission invites the Member States to:

- ensure effective equal access to digital tools and high-speed Internet connection, digital literacy, accessible online educational material and education tools etc. for all children;
- support the development of children's basic digital competences, through the Digital Competence Framework for citizens[104];
- support media literacy actions as part of education, to develop children's ability to critically evaluate online content, and detect disinformation and abusive material;
- support and promote the work of the EU co-funded Safer Internet Centres, and support child helplines and hotlines in developing online avenues for communication;

[95] Youth Pledge for a Better Internet
[96] Youth Call for Action
[97] Better internet for kids
[98] Announced in the Communication Achieving the European Education Area by 2025 COM(2020) 625 final
[99] Erasmus+ Programme
[100] *Draft Policy Guidance on AI for Children*, UNICEF, 2020
[101] Building on the upcoming proposal of a set of digital principles as announced in the 'Digital Decade' Communication
[102] Harmonised European Standards, Accessibility requirement for ICT products and services, ETSI, 2018
[103] Directive on the accessibility requirements for products and services, 2019/882/EU
[104] Digital Competence Framework 2.0, EU Science Hub, European Commission

– encourage children's and especially girls' participation in science, technology, engineering and mathematics (STEM) studies and dismantle gender stereotypes in this field to ensure equal opportunities in the digital labour market.

The European Commission invites ICT companies to:

– ensure that children's rights, including privacy, personal data protection, and access to age-appropriate content, are included in digital products and services by design and by default, including for children with disabilities;
– equip children and parents with adequate tools to control their screen time and behaviour, and protect them from the effects of overuse of and addiction to online products;
– strengthen measures to help tackle harmful content and inappropriate commercial communication, such as through easy-to-use reporting and blocking channels or effective age-verification tools;
– continue their efforts to detect, report and remove illegal online content, including child sexual abuse from their platforms and services, to the extent that those practices are lawful.

6. The Global Dimension: an EU that supports, protects and empowers children globally, including during crisis and conflict.

"The EU has a force that unites many countries of the world for peace, cooperation, equality between people, funds projects for organisations working to protect the rights of children". (Child, Albania).

"You have got to get deep into the mining pit by a rope, take what you have been ordered and then go back to the surface. I nearly suffocated inside the pits due to an inadequate supply of oxygen" (Boy, 11, Tanzania).

The EU's commitment to promote, protect, fulfil and respect the rights of the child is a global commitment. Through this strategy, the EU aims to strengthen its position also as a key global player in this respect. The EU already plays a leading role in protecting and supporting children globally, by strengthening access to education, services, health, and in protecting from all forms of violence, abuse and neglect, including in humanitarian context.

Despite significant progress over the last decades, too many **children worldwide still suffer from or are at risk of human rights violations, humanitarian crisis, environment and climate crisis, lack of access to education, malnutrition, poverty, inequalities and exclusion**. The situation of girls is particularly difficult; they continue to be victims of discrimination and gender-based violence including child, early and forced marriages, and of female genital mutilation as early as at the age of 4.

Almost two thirds of the world's children live in a country affected by conflict. Of these, 1 in 6 live within 50km of a conflict zone[105]. This not only threatens the physical and mental health of children but it can often deprive them of education[106] and negatively impact on their future life opportunities, as well as those of the communities they come from.

Children are also victims of recruitment and use in armed conflict. Their participation in conflict seriously affects their physical, psychological and emotional well-being. Both girl and

[105] *Children affected by armed conflict*, 1990-2019, Peace Research Institute Oslo, Conflict trends, 2020
[106] Inter-agency Network for Education in Emergencies, 2020

boy child soldiers are also often victims of sexual violence, which is too often being used as a weapon of war.

An estimated 5.2 million children[107] under 5 years die each year, mostly from preventable and treatable causes, many of which are driven by poverty, social exclusion, discrimination, gender norms and neglect of basic human rights. The COVID-19 pandemic and climate change have further exacerbated existing forms of discrimination against children as well as exposure to vulnerable situations of children and families worldwide. At the height of the pandemic, some 1.6 billion children were out of school globally[108].

The EU action in the external dimension will be in line with the commitments set out in the framework of the EU Action Plan on Human Rights and Democracy 2020-2024[109] and supported by targeted actions included in other relevant initiatives, such as the Guidelines on the Promotion and Protection of the Rights of the Child[110], the Guidelines on Children and Armed Conflict[111], the EU Gender Action Plan for external action (2021-2025)[112], and the Child Rights Toolkit[113].

In all contexts, the EU will continue to contribute to ensuring quality, safe and inclusive education, social protection, health services, nutrition, clean drinking water, housing, clean indoor air, and adequate sanitation. In particular, the EU **development policies** will (i) advance universal health coverage to ensure essential services for maternal, new-born, child and adolescent health, including mental health and psychosocial support; (ii) call for food systems to deliver nutritious, safe, affordable, and sustainable diets that meet the needs and rights of children and (iii) further invest in the development of quality, accessible education systems, including early childhood, primary, lower and upper secondary schooling. In addition, financial assistance will support access to affordable and sustainable connectivity for schools, as well as to include digital skills in school curricula and teacher's training.

In **humanitarian crises**, the EU will continue to support children while applying a needs-based approach in accordance with the humanitarian principles, as well as ensure that its aid is gender and age sensitive. The EU will continue to place an emphasis on child protection, addressing all types of violence against children as well as providing mental health and psychosocial support. Moreover, continued access to safe, quality and inclusive education, is of great importance to equip children and young people with essential skills, to offer protection and sense of normality, as well as to contribute to peace, and be a vehicle for reintegration and resilience.

A total of 152 million children (9.6% of all children globally) are victims of **child labour**, with 73 million in hazardous work likely to harm their health, safety and development[114]. The Commission's political guidelines announced a zero tolerance approach against **child labour**, thus contributing to the global efforts in the framework of the UN 2021 International Year for the Elimination of Child Labour[115]. The EU Action Plan on Human Rights and Democracy[116] also includes an action to reduce substantially the global incidence of child labour, in line

[107] Children: improving survival and well-being, World Health Organisation, 2019
[108] *Policy Brief: Education during COVID-19 and beyond*, United Nations, August 2020
[109] Joint communication on an EU Action Plan on Human Rights and Democracy 2020-2024 (JOIN/2020/5 final)
[110] Guidelines on the promotion and protection on the rights of the child, 2017
[111] EU Guidelines on children in armed conflict, 2008
[112] EU Gender Action Plan for external action (2021-2025)
[113] Child Rights Toolkit. Integrating Child Rights in Development Cooperation
[114] *Global estimates of child labour*, International Labour Organisation, 2017
[115] International Labour Organisation
[116] EU Action Plan on Human Rights and Democracy 2020-2024, *op.cit.*

with the target date of 2025 proclaimed by the United Nations for the full elimination of child labour worldwide. This will cover supporting free and easily accessible compulsory education for children until reaching the minimum age for work, as well as extending social welfare programmes to help lifting families out of poverty.

EU trade and investment agreements, as well as the Generalised System of Preferences (GSP) have played an important role in promoting respect for core human and labour rights, as reflected in the UN fundamental conventions of the International Labour Organization (ILO). Particular priority will be given to the implementation of these commitments, including action against child labour The EU will insist on third countries to update regularly national lists of hazardous occupations children should never be tasked to do. The EU will also step up efforts to ensure the supply chains of EU companies are free from child labour, notably by promoting sustainable corporate governance.

In line with the Action Plan on Human Rights and Democracy, the EU will step up its efforts to ensure **meaningful child participation;** to prevent, combat and respond to all forms of violence against children, including gender-based violence; to eliminate early, forced and child marriage, female genital mutilation, child trafficking, smuggling, begging, (sexual) exploitation and neglect. Work will be intensified also to prevent and end grave violations against children affected by armed conflict, including with advocacy activities promoting compliance with International Humanitarian Law. The Action Plan also supports partner countries in building and **strengthening child-friendly justice and child protection systems**, including for migrant, refugee and forcibly displaced children and children belonging to minorities, notably Roma. The EU will continue supporting the resettlement of children and other vulnerable people in need of international protection to the EU. The EU will support actions to address the issue of street children as well as invest in the development of quality alternative care and the transition from institution-based to quality family- and community-based care for children without parental care and children with disabilities.

The EU will continue to include children's rights in the political dialogue with partner countries, and in particular in the context of accession negotiations and the stabilisation and association process. It will also promote measures to tackle violence and discrimination, in particular against vulnerable children, including support for civil society organisations. The EU will support the monitoring and collection of disaggregated data on the situation of children in the region, and continue to report on this in the annual enlargement package of country reports.

To achieve these objectives, the EU will coordinate the use of all its available spending programmes under the 2021-2027 multiannual financial framework, in particular the Neighbourhood, Development and International Cooperation instrument (NDICI), the Instrument for Pre-accession Assistance III (IPA III) and the humanitarian aid instrument.

It will also promote actions in multilateral and regional human rights fora, advocacy and awareness raising campaigns, as well as with civil society, children and adolescents, national human rights institutions, academia, the business sector and other relevant stakeholders.

Key actions by the European Commission:

- dedicate 10% of overall funding under the NDICI in Sub-Saharan Africa, Asia and the Pacific, and Americas and the Caribbean to education;
- continue allocating 10% of humanitarian aid funding for education in emergencies and protracted crises, and promote the endorsement of the Safe Schools Declaration;
- work towards making supply chains of EU companies free of child labour, notably through a legislative initiative on sustainable corporate governance;

- promote and provide technical assistance to strengthen labour inspection systems for monitoring and enforcement of child labour laws;
- provide technical assistance as Team Europe to partner countries' administrations through its programmes and facilities, such as SOCIEUX+, the Technical Assistance and Information Exchange instrument (TAIEX) and TWINNING programmes;
- prepare a Youth Action Plan by 2022 to promote youth and child empowerment and participation;
- designate Youth focal points and strengthen child protection capacities within the EU Delegations.

7. Embedding a child perspective in all EU actions

To achieve the objectives set out in the strategy, the Commission will ensure that a children's rights perspective is mainstreamed in all relevant policies, legislation and funding programmes[117]. This will be part of efforts to create **a child-friendly culture in EU policy-making** and will be supported by providing training and capacity building to EU staff, and enhanced internal coordination through the team of the Commission's coordinator for the rights of the child. A mainstreaming checklist on the rights of the child will be developed.

Reliable and comparable data are needed to develop evidence-based policies. The Commission will invite the FRA to continue providing Member States with technical assistance and methodological support, inter alia, on the design and implementation of data-collection exercises. More age and sex-disaggregation of Eurostat data, and data generated by other EU agencies, will also be pursued, as will research on specific thematic areas covered by this strategy. This will be done through the research and innovation framework programme Horizon Europe (2021-2027)[118].

The strategy will also help with the mainstreaming and coordination of initiatives at national level and among key stakeholders to ensure better implementation of existing EU and international legal obligations. For this, the Commission will also establish the **EU Network for Children's Rights** by end of 2021. Building on the work of the existing informal expert group on the rights of the child[119], the Network will reinforce the dialogue and mutual learning between the EU and Member States on children's rights, and support the implementation, monitoring and evaluation of the strategy. It will be composed of national representatives, and will include in some of its activities international and non-governmental organisations, representatives of local and regional authorities and children, among others. The Commission will also develop closer collaboration with regional and local authorities, and with other relevant institutions, regional and international organisations, civil society and ombudspersons for children.

This strategy should be read in conjunction with the Strategy to strengthen the application of the Charter of Fundamental Rights in the EU, and the European Democracy action plan. It complements targeted efforts to make EU rights and values more tangible in areas such as[120]

[117] See Annex 2
[118] Horizon Europe
[119] Informal expert group rights of the child, European Commission
[120] Communication on the protection of children in migration, COM(2017)211 final; Communication on Gender Equality Strategy 2020-2025, COM/2020/152 final; Communication on an EU Roma strategic framework for equality, inclusion and participation, COM/2020/620 final and the Council Recommendation on Roma equality, inclusion and participation (2021/C 93/01) ; Communication on a LGBTIQ Equality Strategy 2020-2025, COM/2020/698 final, Action plan on Integration and Inclusion 2021-2027, COM(2020)758 final, and Strategy for the Rights of Persons with Disabilities; Communication on an

the protection of children in migration, equality and inclusion, gender equality, anti-racism and pluralism, EU citizenship rights, victims' rights, the fight against child sexual abuse, social rights and inclusive education and training[121]. It is also in line with the priorities set out in the EU Action Plan on Human Rights and Democracy[122].

7.1 Contribution of EU funds to the strategy's implementation

EU funding is key to support the implementation of EU policies in the Member States. With this strategy, the Commission will support Member States to make the best use of EU funds in their initiatives to protect and fulfil the rights of the child. It should also encourage child rights budgeting and explore ways to track spending of EU budget in this area, so that funds are channelled towards the most pressing needs. Funding for child rights should be prioritised by Member States in the EU funding programmes, according to identified needs at national and regional level. Under the 2021-2027 multiannual financial framework,

The European Social Fund Plus (ESF+) and the European Regional Development Fund (ERDF) support investments in human capacity and infrastructure development, equipment and access to services in education, employment, housing, social, health and child care, as well as the shift from institutional to family- and community-based services.

Member States that have a rate of child at-risk-of-poverty or social exclusion higher than the EU average (in 2017-2019) will have to earmark 5% of the ESF+ for combatting child poverty, while other Member States will be required to earmark an appropriate amount. In the 2021-2027 programming period, Member States should fulfil several enabling conditions, which might have a close link to child rights measures. This includes policy frameworks in the field of poverty reduction, Roma inclusion and compliance with the UNCRPD and the Charter. The new AMIF will reinforce the protection of unaccompanied migrant children by recognising and providing financial support and incentives for their particular reception, accommodation and other special needs, with a co-financing rate up to 75%, which may be increased to 90 % for projects implemented under specific actions.

Other EU funds and programmes can be used for the realisation of children's rights , include the Justice Programme, the CERV Programme, Erasmus+, Horizon2020, the Digital Programme, the Recovery and Resilience Facility, the European Agricultural Fund for Rural Development (EAFRD), REACT-EU, and InvestEU. In addition, the Technical Support Instrument is able, on request, to provide technical support to Member States to develop capacity-building actions.

Member States are invited to ensure a coordinated approach at national, macro-regional[123], regional and local level in the programming and implementation of EU funds, as well as involve local and regional authorities, civil society organisations, including organisations working with and for children, and social and economic partners in preparing, revising, implementing and monitoring programmes for the 2021-2027 EU funds.

EU Anti-racism Plan 2020-2025 COM/2020/565 final, and the forthcoming strategy on combating antisemitism, planned for 2021; EU Citizenship Report 2020 Empowering citizens and protecting their rights, COM/2020/730 final, EU Strategy on Victims' rights (2020-2025), COM(2020)258, EU Strategy for a more effective fight against Child sexual abuse, COM(2020)607

[121] The Commission Recommendation Investing in children: breaking the cycle of disadvantage (2013/112/EU); European Pillar of social rights; European Pillar of Social Rights Action Plan, COM(2021) 102 final; Proposal for a Council Recommendation establishing a European Child Guarantee, COM(2021)137; Communication on achieving the European Education Area by 2025 COM(2020)625 final; and Digital Education Action Plan 2021-2027, COM(2020)624

[122] EU Action Plan on Human Rights and Democracy 2020-2024, JOIN(2020) 5 final.

[123] Macroregional strategy, European Commission

The strategy also addresses the inequalities exacerbated by the COVID-19 crisis, which has disproportionately affected vulnerable children. As part of this work, the Commission will encourage Member States to make full use of the possibilities offered by NextGenerationEU to mitigate the disproportionate impact of the crisis, and will help Member States to mainstream children's rights in the design and implementation of reforms through the Technical Support Instrument.

For real progress to be made on the ground, this strategy needs to be accompanied by **commitments and investments at national level**. The Commission calls on EU Member States to develop, where not yet available, robust and evidence-based national strategies on the rights of the child, in cooperation with all relevant stakeholders, including children; and in synergy with other relevant national strategies and plans. It also calls on Member States to ratify all UNCRC Optional Protocols and UNCRPD Optional protocols, and duly consider the Concluding Observations of the UN Committee on the Rights of the Child[124] and of the UN Committee on the Rights of Persons with Disabilities[125]. The Commission also invites the Member States to support all actions recommended in this strategy through appropriate financial resources, including EU funding.

Conclusion

The European Commission is fully committed to support children develop their potential as engaged, responsible citizens. For this to happen, participation in democratic life needs to start during childhood. All children have the right to express their views on matters that concern them, and to have them taken into account. To enable their active participation, we also must tackle poverty, inequalities and discrimination to break the intergenerational cycle of disadvantage.

This strategy is inclusive by design and will be inclusive in its implementation. The Commission will monitor the implementation of the strategy at EU and national level, and report on the progress at the annual European Forum on the rights of the child. Children will be part of the monitoring and evaluation, notably through the future Children's Participation Platform. The strategy's actions will be adapted where needed.

The Commission invites the European Parliament and the Council to endorse the strategy and work together on its implementation. The Commission calls on the Committee of the Regions and the European Economic and Social Committee to promote dialogue with local and regional authorities and civil society.

We all have the responsibility to listen to children and to act now. To use the words expressed by one of the members of the Eurochild Children's Council: ***"Well done is better than well said".***

[124] UN Committee on the Rights of the Child, concluding observations
[125] UN Committee on the Rights of Persons with Disabilities, concluding observations

EUROPEAN
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REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

on the implementation of Directive 2003/86/EC on the right to family reunification

I. INTRODUCTION

On 22 September 2003 the Council adopted Directive 2003/86/EC setting out common rules on the exercise of the right to family reunification by third-country nationals residing lawfully in Member States (hereinafter "the Directive"). It applies to all Member States except Denmark, Ireland, and the UK[1]. In accordance with Article 3(3) of the Directive, it does not regulate the situation of third-country nationals who are family members of an EU citizen.

For the past 30 years, family reunification has been one of the main reasons of immigration to the EU. In 2017, 472,994 were admitted to the EU-25 on grounds of family reunification, amounting to 28% of all first permits issued to third-country nationals in the EU-25[2].

In many Member States, family reunification accounts for a large share of legal migration. In 2008, the Commission published its first Report on the application of the Directive[3], highlighting the different policy choices taken by Member States on how to manage effectively the large inflow of migrants on the grounds of family reunification. In the recent years, many Member States have introduced or revised in particular the family reunification rules for refugees (and also for beneficiaries of subsidiary protection, who are excluded from the scope of the Directive). In spite of the recent migratory challenges and high numbers of applicants for international protection, beneficiaries of international protection have continued to benefit from more favourable family reunification rules as compared to other categories of third-country nationals, and beneficiaries of subsidiary protection overall benefit from a similar level of legally-ensured protection as refugees[4].

The Commission has been monitoring these policy and legislative choices that need to remain within the margin of discretion offered by the Directive, and respect the right to family reunification set out therein. In 2014, the Commission published a Communication[5] providing guidance to Member States on how to apply the Directive. This guidance document has provided for a consistent interpretation of the main provisions of the Directive that led to meaningful changes in the laws and practices of some Member States[6].

The Court of Justice of the European Union (CJEU) has also played a crucial role in the implementation of the Directive, providing an extensive case law on the interpretation of the most sensitive provisions of the Directive, by mainly addressing preliminary questions sent by the national courts of the Member States.

This report gives an overview of the current situation on the implementation of the Directive by Member States, focusing on the key issues that have emerged from the Commission's own compliance analysis, complaints received and relevant judgements of the CJEU. In this respect, it is worth stressing that the Commission has received numerous complaints related to the family reunification of third-country nationals[7]. The main issues raised concern: the refusal to issue visas or permits, proof of identity or family ties as ground for rejection, long processing times by administrations, disproportionate charges for issuing permits, the notion

1 In this report, "Member States" means the Member States bound by the Directive, alternatively referred as EU-25.
2 Source: Eurostat, [migr_resfam] of 25.09.18.
3 COM(2008) 610 final of 8 October 2008.
4 EMN study on Family Reunification of Third-Country Nationals in the EU, April 2017, p. 43.
5 Communication from the Commission to the European Parliament and the Council on guidance for application of Directive 2003/86/EC on the right to family reunification, COM(2014) 210 final.
6 EMN study (2017), p. 12.
7 However, many of those complaints falls outside the scope of the applicable EU legislation, as they concern questions related to access to citizenship of a Member State, family members of "non-mobile" EU citizens, and general complaints about alleged discrimination or maladministration.

of stable and regular resources, access to employment for family members, incorrectly applied waiting periods, and the proportionality of pre-integration conditions.

A recent study carried out by the European Migration Network (EMN)[8], which assessed both legal and practical challenges in the implementation of the Directive, has also informed this report. The study highlighted three major problems faced by applicants. The first concerns the obligation to appear in person at a diplomatic mission to submit their application[9]; this obligation creates a practical problem in particular for applicants to smaller Member States that do not necessarily have a diplomatic representation in every country. The second major problem concerns the often very long processing time of an application[10]. The third major problem is the lack of documents necessary to process the application[11], especially the proof of identity and family ties. From the perspective of national authorities, the study reported as a major challenge the detection of forced or sham marriages or registered partnerships and false declarations of parenthood[12], which requires thorough investigations and in turn may affect the processing time of applications.

II. COMPLIANCE OF THE TRANSPOSITION MEASURES

Right to family reunification – Article 1

The Directive recognises the existence of a right to family reunification. It imposes a precise positive obligation on Member States, requiring them in cases determined by the Directive to authorise family reunification of certain members of the sponsor's family and leaving them no leeway in this. The subject matter of the Directive has been correctly reflected in the national legislation of all Member States, even if most of them[13] do not have a specific provision corresponding to Article 1, which defines the purpose of the Directive and therefore does not need a specific transposition.

Definitions of key terms – Article 2

Overall, the definitions set by the Directive have been correctly transposed by the majority of Member States. In those cases where Member States have not explicitly transposed the definitions, such in particular the definition of "sponsor", they can nonetheless be inferred from the provisions establishing the conditions for family reunification.

Scope of application – Article 3

Sponsor

For third-country nationals to be eligible as sponsors for family reunification they must legally reside in a Member State, have a residence permit valid for at least one year (irrespective of the title of residence) and have reasonable prospects of obtaining the right of permanent residence.

Article 3 has been correctly transposed by all Member States. It must be emphasised that the national legal frameworks of some Member States contain provisions that are more favourable than Article 3 (for example, Bulgaria, Hungary, the Netherlands and Slovakia have not transposed the criterion of reasonable prospects of obtaining the right of permanent residence), which is allowed by the Directive.

8 EMN study (2017), p. 37.
9 AT, EE, FI, HU, IT, LU, LV, NL, SE.
10 AT, BE, DE, FR, IE, IT, NL, SE.
11 AT, BE, CY, FI, IT, LT, LU, LV, MT, NL.
12 BE, EE, IT.
13 With the exception of EE, ES and MT.

Family members of EU citizens

Both the sponsor and their family member need to be third-country nationals to fall under the scope of the Directive. This implies that the family members of EU citizens are excluded from the Directive. They may however be covered by Directive 2004/38/EC[14], if they are family members of EU citizens who move to or reside in a Member State other than that of which they are a national. However, family reunification of EU citizens residing in the Member State of their nationality is not subject to Union law and remains a national competence. In a recent judgement[15], the CJEU held that it has jurisdiction, on the basis of Article 267 TFEU, to interpret provisions of the Family Reunification Directive, if that provision was made directly and unconditionally applicable under national law to family members of an EU citizen who has not exercised their right of free movement.

In practice, these rules are largely similar in Spain, Lithuania, the Netherlands, and Sweden. Where differences exist, the provisions for third-country nationals who are family members of non-mobile EU citizens are normally more favourable. Such provisions may include, for example[16]: a broader definition of family[17]; a waiver of specific conditions that must be fulfilled by family members[18]; no income threshold[19]; a lower reference amount or less onerous assessment of financial circumstances[20]; no waiting period or a shortened one[21]; no quota requirement[22]; free access to the labour market[23].

Asylum applicants and beneficiaries of temporary or subsidiary protection

The Directive also excludes from its scope sponsors who are beneficiaries of temporary or subsidiary protection, as well as asylum applicants[24]. However, the Commission in its guidance Communication[25] stressed that the Directive should not be interpreted as obliging Member States to deny beneficiaries of temporary or subsidiary protection the right to family reunification. The guidance also encouraged Member States to adopt rules that grant to those categories of people family reunification rights that are similar to the rights of refugees. In a recent judgement[26], the CJEU held that it is competent to interpret the provisions of the Directive in respect of the right to family reunification of a beneficiary of subsidiary protection, if these provisions were made directly and unconditionally applicable to such a situation under national law.

In many Member States beneficiaries of subsidiary protection can apply for family reunification under the same conditions as refugees[27]. In certain Member States, the law provides for family reunification with beneficiaries of subsidiary protection at the earliest three years (Austria) or two years (Latvia) from the date of obtaining subsidiary status.

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14 Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.

15 Judgment of 7 November 2018, C and A (C-257/17) ECLI:EU:C:2018:876.

16 Source: EMN study (2017), p. 30.

17 AT, BE, HU, LV

18 Age requirement in LT, SK.

19 FI, FR, PL, SE.

20 HR, IE, SI.

21 CY, DE, PL.

22 AT.

23 CY, HR, HU, LV.

24 Council Directive 2001/55/EC explicitly entitles beneficiaries of temporary protection to reunite with their family members.

25 COM(2014) 210 final.

26 CJEU, Judgment of 7 November 2018, K and B (C-380/17) ECLI:EU:C:2018:877.

27 BE, BG, EE, EL, ES, FR, HR, HU, IT, LT, LU, NL, SI, SK – source: EMN study (2017), p. 20.

Any marriage or registered partnership with beneficiaries of subsidiary protection or persons granted refugee status must have already existed in the country of origin or prior to entry[28]. Cyprus does not allow beneficiaries of subsidiary protection to apply for family reunification, whilst other Member States such as Czechia allow them to do so under a national scheme (parallel to the Family Reunification Directive). Finally, Germany recently restricted family reunification for beneficiaries of subsidiary protection, suspending family reunification for all those who were granted a residence permit under subsidiary protection after mid-March 2016. Since August 2018, this suspension has been partially lifted for a monthly quota of 1,000 family members.

Eligible family members – Article 4(1)

Family members entitled to join the sponsor include as a minimum the "nuclear family": the sponsor's spouse and the minor children of the sponsor or spouse.

Spouse

Article 4(1) grants the sponsor's spouse the right to family reunification. Most of the Member States have correctly transposed this requirement.

In case of polygamous marriage,[29] the reunification of only one spouse is permitted, and the entry of children of other spouses to join the sponsor may be refused (Article 4(4)). Also, Member States can fix a minimum age for both sponsor and spouse (Article 4(5)). Most Member States have applied this optional clause, arguing that it can help prevent forced marriages. Five Member States[30] set the age at 21 years, the maximum threshold under the Directive.

Most Member States' laws allow same-sex partners to apply for family reunification[31]. A smaller number of Member States does not permit this[32]. Same-sex couples have an equal right to family reunification as spouses from opposite sexes in nine Member States[33].

In its judgement in case *Marjan Noorzia*[34], the CJEU had to decide whether the minimum age of 21 provided under Article 4(5) of the Directive refers to the date when the application seeking family reunification is lodged, or the date when the application is ruled upon. The Court held that Article 4(5) must be interpreted as meaning that the provision does not preclude a rule that spouses and registered partners must have reached the age of 21 when the application is lodged.

In this judgement the Court analysed the objective and proportionality of the minimum age requirement and stated: *"In that regard, it must be noted that the minimum age fixed by the Member States by virtue of Article 4(5) of Directive 2003/86 ultimately corresponds with the age at which, according to the Member State concerned, a person is presumed to have acquired sufficient maturity not only to refuse to enter into a forced marriage but also to choose voluntarily to move to a different country with his or her spouse, in order to lead a family life with him or her there and to become integrated there. (….) Further, such a measure does not undermine the purpose of preventing forced marriages since it permits the presumption that, due to greater maturity, it will be more difficult to influence the persons concerned to contract a forced marriage and accept family reunification if they must have*

28 AT, DE, EE, HR, NL, SI.
29 This issue has not yet led to any judgment from the EU Court of Justice.
30 BE, CY, LT, MT, NL.
31 AT, BE, CY, CZ, DE, ES, FI, FR, HU, LU, NL, SE, SI.
32 EE, LT, LV, MT, PL, SK.
33 AT, BE, CY, CZ, FI, LU, NL, SI, SE. Source: EMN study (2017), p. 21-22.
34 CJEU, *M. Noorzia*, C-338/13, ECLI:EU:C:2014:2092.

reached the age of 21 by the date when the application is lodged than it would be if they were under 21 at that date."

Minor children

Minor children are those below the age of majority set at national level (commonly 18 years) and who are not married. The Directive allows two restrictions for family reunification of minor children, provided they were already part of the Member State's national legislation on the date of implementation of the Directive (so-called "standstill clause").

Firstly, children over 12 years arriving independently of the rest of their families may have to prove that they meet the integration conditions required under national legislation. However, the CJEU held[35] that this provision must respect the best interests of the child. Only DE applies this derogation.

Secondly, Member States may require that applications concerning family reunification of children must be submitted before the age of 15 (Article 4(6)). No Member State has implemented this restriction. As this provision is a standstill clause, such limitations under national legislation are now prohibited.

As regards minor children, two judgements of the CJEU are of particular interest. In the joined cases *O. and S.* and *Maahanmuuttovirasto*[36] the Court confirmed the general rule that the substantive provisions of the Directive[37] must be interpreted and applied in the light of Articles 7 and 24(2) and (3) of the EU Charter of Fundamental Rights and Article 5(5) of that Directive. These provisions require the Member States to assess the applications for reunification in question in the interests of the children concerned and with a view to promoting family life.

In another more recent case[38], *A and S*, the CJEU held that in matters relating to family reunification of refugees, the date of arrival on Member State territory and not the date of application for family reunification should be taken into account for assessing whether a person falls under the definition of 'unaccompanied minor'. According to the judgement delivered in this case, the term 'unaccompanied minor' must therefore be understood as covering a person who was under the age of 18 when they arrived, attained the age of 18 during the asylum procedure, and after having attained the age of 18 applied for family reunification.

Other family members – Article 4(2) and (3)

In addition to the nuclear family, Member States may include, as family members, dependent parents and unmarried adult children of the sponsor or their spouse, and unmarried partner (duly attested long-term relationship or registered partnership) of the sponsor.

Several Member States decided to widen the number of family members authorised to apply. Many of them[39], however, chose not to include first-degree relatives in the direct ascending line of the sponsor or his/her spouse, where they are dependent on them and do not enjoy proper family support in the country of origin. Italy has partially applied this option by only extending it to the first-degree relatives of the sponsor.

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35 CJEU, European Parliament v Council of the European Union, C-540/03, ECLI:EU:C:2006:429, para 75.

36 CJEU, *Maahanmuuttovirasto*, C-356/11 and 357/11, ECLI:EU:C:2012:776.

37 In this case the financial resources requirement under Article 7(1)(c) – for more details see section 4.3.3.

38 CJEU, A, S, C-550/16, ECLI:EU:C:2018:248.

39 AT, BE, BG, CY, CZ, EL, FI, FR, LV, MT, NL, PL.

Apart from the first-degree relatives of the sponsor or their spouse, Article 4(2) also grants the possibility of family reunification to the adult unmarried children of the sponsor or their spouse, where they are objectively unable to provide for their own needs on account of their state of health. This option is applied by fifteen Member States[40].

Article 4(3) allows for the entry and residence of the registered partner of the sponsor and the unmarried partner with whom the sponsor is in a duly attested stable long-term relationship. Only ES and SE fully apply this option.

Requirements for exercising the right to family reunification

Article 7 allows Member States to impose two separate types of requirements. Firstly, it allows them to require evidence that the sponsor has accommodation, sickness insurance, and stable and regular resources. Secondly, it allows them to request third-country nationals to comply with integration measures.

Accommodation – Article 7(1)(a)

Member States have the option to request evidence that the sponsor has accommodation regarded as normal for a comparable family in the same region. Most Member States have implemented this option, with the exception of Finland, Croatia, the Netherlands, and Slovenia. The size of the accommodation considered suitable varies across Member States, though some (Latvia, Sweden) do not appear to have set specific criteria for assessing such suitability[41.]

Sickness insurance – Article 7(1)(b)

The possibility to request sickness insurance has been widely used, except for Bulgaria, Finland, France, Portugal and Sweden.

Stable and regular resources – (Article 7(1)(c)

All Member States impose the requirement of stable and regular resources. However, this requirement must be applied in line with the interpretation laid down by the CJEU, which sets out that the relevant national provisions must not undermine the objective and the effectiveness of the Directive.

In the case *Chakroun*[42], the Court limited the room for manoeuvre of Member States in setting the resources requirement. In particular, it ruled that Member States are not allowed to refuse family reunification to a sponsor who has stable and regular resources that are sufficient to maintain themselves and the members of their family, but who, given the level of their resources, will nevertheless be entitled to claim special assistance in order to meet exceptional, individually determined, essential living costs, tax refunds granted by local authorities on the basis of his/her income, or income-support measures in the context of local-authority minimum-income policies. Furthermore, the Court ruled that the Directive must be interpreted as precluding national legislation that, in applying the income requirement set out in Article 7(1)(c), draws a distinction according to whether the family relationship arose before or after the sponsor entered the territory of the host Member State.

In the joined cases *O. and S.* and *Maahanmuuttovirasto*[43], the Court held that the resources requirement must be applied in the light of Articles 7 (right to family life) and 24 (best interest of the child) of the Charter of Fundamental Rights of the European Union. The CJEU

40 BE, BG, CZ, DE, EE, ES, HR, HU, IT, LU, PT, RO, SE, SI, SK
41 EMN study (2017), p. 21-22.
42 CJEU, *Chakroun, C-578/08,* ECLI:EU:C:2010:117.
43 CJEU, *Maahanmuuttovirasto*, C-356/11 and 357/11, ECLI:EU:C:2012:776.

stressed that the authorisation to family reunification being the general rule and objective of the Directive, the faculty provided for in Article 7(1)(c) of the Directive must be interpreted strictly. Member States must therefore not use their discretionary powers in a way that would undermine the objective and the effectiveness of that Directive.

In the *Khachab* case[44], the Court confirmed that national provisions providing for a prospective financial resources assessment based on preceding income patterns was compatible with EU law. The Court held that Article 7(1)(c) of the Directive must be interpreted as allowing the national competent authorities to refuse an application for family reunification on the basis of a prospective assessment of the likelihood of the sponsor retaining, or failing to retain, the necessary stable and regular resources in the year following the date of submission of that application. The Court added that the assessment should be based on the pattern of the sponsor's income in the six months preceding that date.

Most Member States[45] have set a reference income threshold for assessing the sufficiency of financial resources required for exercising the right to family reunification. In many Member States this sum is equivalent to[46] or higher than[47] the basic minimum monthly income or minimum subsistence amount per month of that country.

In other Member States, the threshold is set at a specific amount, albeit the amount may vary depending on the size of the family[48]. Most Member States[49] apply exemptions to the income threshold, notably for refugees and/or beneficiaries of subsidiary protection[50]. Some Member States have no income threshold at all, and assess the resources requirement on a case-by-case basis[51].

Integration measures - Article 7(2)

This optional clause enables Member States to require that third-country nationals comply with integration measures, which in the case of family members of refugees can only be applied once family reunification is granted[52]. The Commission has closely monitored the implementation of this clause and has asked some Member States for clarification, as national provisions should not impede the "effet utile" of the Directive and need to comply with relevant case law of the CJEU[53].

Most Member States did not apply this option, though such measures are under investigation or subject to proposals in some instances[54]. Where integration measures exist prior to admission for family reunification, Member States usually require family members to demonstrate basic language proficiency; exemptions apply to family members of refugees or (in some cases) beneficiaries of subsidiary protection.

Language classes or online language tutorials are usually taken at the initiative of family members, and costs arising from these lessons must be borne by them[55]. Fees depend on the

44 CJEU, *Khachab;* C-558/14, ECLI:EU:C:2016:285.
45 AT, BE, BG, CY, CZ, DE, EE, EL, FI, FR, HR, HU, LT, LU, LV, NL, PL, SE, SI, SK.
46 AT, BG, DE, FR, LT, LU, LV, NL, SI, SK.
47 BE, MT, PL.
48 CZ, EE, ES, FI, HR, IE, IT. Source: EMN study (2017), p. 25.
49 BE, BG, FI, DE, HR,IT, LT, LU, LV, NL, SE, SI, SK.
50 AT, BE, BG, DE, EE, ES, FI, FR, HR, LT, LU, LV, SE, SI, SK, NL.
51 CY, HU. Source: EMN study (2017), p. 26.
52 Refugees are required to fulfil integration conditions for family formation in the NL.
53 See CJEU judgments in cases C-153/14, *K and A*, ECLI:EU:C:2015:453; C-579/13, *P and S*, ECLI:EU:C:2015:369 and C-540/03, *Parliament / Council*, ECLI:EU:C:2006:429.
54 FI, LU.
55 AT, DE, NL.

country of origin, course provider or course format[56]. Some Member States may additionally require family members to acquire further language proficiency after admission (usually A2 or B1)[57], or to take a civic integration exam after admission[58] – as part of their general integration programme or as part of requirements for permanent settlement in the country[59]. Free-of-charge language training may be provided in some instances[60].

Next to language proficiency, Member States' integration programmes may also include courses about the country history and values, social orientation or professional guidance[61]. Further integration measures may also take the form of reporting to an integration centre[62], signing a declaration of integration[63] or an integration contract[64] prescribing civic training and language training. The non-respect of these integration measures may sometimes lead to the withdrawal/non-renewal of a residence permit or refusal of long-term permits[65].

The objective of such measures is to facilitate the integration of family members. Their admissibility under the Directive depends on whether they serve this purpose and whether they respect the principle of proportionality. Their admissibility can be questioned on the basis of the accessibility of such courses or tests, how they are designed and/or organised (e.g. test materials, fees, venue), whether such measures or their impact serve purposes other than integration (e.g. high fees excluding low-income families). The procedural safeguard to ensure the right to mount a legal challenge should also be respected.

In the *Minister van Buitenlandse Zaken v. K. and A.* case[66], the CJEU recognised in paras 53-54 of its judgement that: "*…it cannot be disputed that the acquisition of knowledge of the language and society of the host Member State greatly facilitates communication between third country nationals and nationals of the Member State concerned and, moreover, encourages interaction and the development of social relations between them. Nor can it be contested that the acquisition of knowledge of the language of the host Member State makes it less difficult for third country nationals to access the labour market and vocational training. (…) From that perspective, the requirement to pass a civic integration examination at a basic level is capable of ensuring that the nationals of third countries acquire knowledge which is undeniably useful for establishing connections with the host Member State."*

However, in the same judgement (paras 56-58) the Court also indicated the limits of Member States discretion when imposing integration conditions: "*The principle of proportionality requires the conditions of application of such a requirement not to exceed what is necessary to achieve those aims. (…) The integration measures referred to in the first subparagraph of Article 7(2) of Directive 2003/86 must be aimed not at filtering those persons who will be able to exercise their right to family reunification, but at facilitating the integration of such persons within the Member States. Moreover, specific individual circumstances, such as the age, illiteracy, level of education, economic situation or health of a sponsor's relevant family members must be taken into consideration (…)".*

56 EMN study (2017), p. 26.
57 AT, NL.
58 NL.
59 AT, DE, LV, NL.
60 EE, LV.
61 BE, DE, EE, NL, SE.
62 AT.
63 BE, NL.
64 FR.
65 EMN study (2017), p. 26-27.
66 CJEU, C-153/14, *K and A*, ECLI:EU:C:2015:453.

Therefore, in line with the principle of proportionality, national legislation transposing the first subparagraph of Article 7(2) must be suitable for achieving the objectives of that legislation and must not go beyond what is necessary to attain them.

In two recent judgements[67], the CJEU further elaborated its case law on integration conditions in the specific context of Article 15 (granting of an autonomous permit).

Waiting period and reception capacity – Article 8

Article 8 sets out the possibility for Member States to require a period of lawful residence before a sponsor may be joined by their family members (first subparagraph), and to provide for a waiting period of up to three years for the issue of a residence permit in cases where their previous legislation on family reunification required the need to take into account reception capacities (second subparagraph).

Many countries transposed the option under first subparagraph. However, the Commission identified several inconsistencies in the implementation, which have required clarifications and modifications in national legislations following exchanges with the Member States concerned. The option under second subparagraph was transposed only by Austria and Croatia.

Many Member States do not set a waiting period before a sponsor's family is eligible to apply for family reunification[68]. Where this provision applies, the waiting period can be between one[69], one and a half[70], two[71] or three years[72] from the point the sponsor became resident in the country or received a final decision granting international protection, with exemptions granted by individual Member States[73].

Possible restrictions on grounds of public order, public security and public health - Article 6

Overall, most Member States have correctly transposed Article 6, but a number of difference in the use of terminology have been identified, especially for the term "national security". Member States have used various methods when implementing this provision, some referring to the relevant provisions of the Schengen *acquis*, some referring to a criminal offence with custodial sentence.

Recital 14 of the Directive provides some indication of what might constitute a threat to public policy and public security. Aside from that, Member States are free to set their standards in line with the general principle of proportionality and Article 17 of the Directive, which requires them to take account of the nature and solidity of the persons' relationship and duration of residence, weighing it against the severity and type of offence against public policy or security. The public health criterion can be applied as long as illness or disability is not the sole ground for withdrawal or non-renewal of a residence permit. The terms "public policy", "public security" and "public health" in Article 6 must be interpreted in the light of the case law of the CJEU and the European Court of Human Rights.

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67 CJEU, Judgment of 7 November 2018, *C and A* (C-257/17), ECLI:EU:C:2018:876 and Judgment of 7 November 2018, *K* (C-484/17), ECLI:EU:C:2018:878.

68 BG, EE, IE, FI, HR, HU, IT, SI, SE, SK.

69 ES, LU, NL.

70 FR.

71 CY, EL, HR, LT, LV, MT, PL.

72 AT.

73 EMN study (2017), p. 27-28.

There is currently no general rule or well-established case law, according to which the public order clauses laid down in the family reunification directive and other migration directives, would always have to be interpreted in the same way as the public order clause in the Free Movement Directive 2004/38/EC (on which a significant CJEU jurisprudence exists).

This was already confirmed in the Commission guidance on the application of the Directive[74], which highlighted that even though the case law of the CJEU on the free movement directive is not directly relevant for third-country nationals, it may serve *mutatis mutandis* as background when defining the notions in question by analogy. Further interpretative guidance by the CJEU can be expected following two preliminary references submitted in cases C-381/18 and C- 382/18 (both pending) in which the Court was asked, for the first time, to directly interpret the public order clauses of both Article 6(1) and (2) of the Directive.

Application assessment procedure – Article 5

The applicant – Article 5(1)

Under Article 5(1) Member States must decide whether the person entitled to submit the application is the family member or the sponsor. Member States are split on the implementation of this Article: in some[75] the entitled person is the sponsor, whereas in others[76] is the family member or both are entitled[77].

Place of application – Article 5(3)

The Directive requires that the family member must reside outside the territory of the Member State at the time when the application is filed, and only allows for a derogation in appropriate circumstances. All Member States have correctly transposed this provision, and all (except Romania and Bulgaria) have used the derogation allowing family members to submit their application in the territory of the Member State, if they are already residing lawfully there[78], or where exceptional conditions justify it[79], e.g. where there is an obstacle in doing so in the country of origin.

Documentary evidence – first subparagraph of Article 5(2)

The list of required documents varies between Member States: some have a detailed list, while others just refer to general requirements and thereby leave authorities with considerable margin of appreciation. The Directive sets specific provisions for refugees: Member States should take into account other evidence where a refugee cannot provide an official document proving the family ties (Article 11(2)). In general, in the absence of (reliable) documentation, Member States take a flexible approach[80], especially for beneficiaries of international protection and their family members. They often accept a range of other means of proof, as long as they can check the identity of the applicants and the existence of family ties[81]. These include documents from asylum interviews, evidence from an appeal hearing, notarised declarations or written statements, photos of events, and receipts.

74 COM (2014)210.
75 BG, CY, EL, ES, FR, PL, SI
76 AT, BE, CZ, DE, EE, FI, HR, HU, LU, LV, SE, SK.
77 IT, LT, LV, NL, PT, RO.
78 BE, CZ, DE, EE, HR, HU, LV.
79 AT, FI, LU. Source: EMN study (2017), p. 32.
80 EMN study (2017), p. 33 and p. 37.
81 In his opinion of 29 November 2018 in CJEU Case C-635/17 (pending), ECLI:EU:C:2018:973, AG Wahl suggested to impose an obligation of active cooperation on both applicants and authorities in case of insufficient documentary evidence.

Member States may also request or suggest a DNA test, usually as a last resort, including in cases when doubt persists and a more reliable confirmation is needed. In spite of this flexible approach, the 2017 EMN study showed that the lack of documents to process the application is one of the most frequently mentioned challenges[82]. This was also shown in some complaints received by the Commission, which in one case have led to information exchanges with the Member State concerned.

Interviews and investigations – second subparagraph of Article 5(2)

Most Member States use the possibility to carry out interviews and to conduct other investigations if deemed necessary to obtain evidence on the existence of a family relationship. Only few Member States[83] do not apply this option.

To be admissible under EU law, the interviews and/or other investigations must be proportionate – thus not render the right to family reunification nugatory – and respect fundamental rights, in particular the right to privacy and family life. The Commission has so far not identified any issues concerning the implementation of this provision.

Fraud, marriage, partnership or adoption of convenience – Article 16(4)

This provision allows Member States to conduct specific checks and inspections where there is a reason to suspect fraud or a marriage, partnership or adoption of convenience. Every national system contains rules to prevent family reunification if a relationship exists with the sole purpose of obtaining a residence permit. The option is implemented in the national legislation of most Member States[84]. Others[85] partially apply the provision, which is not a cause of concern for the Commission.

In a recent preliminary reference[86], the CJEU was asked to state whether Article 16(2)(a) must be interpreted as precluding the withdrawal of a residence permit if the acquisition of that residence permit was based on fraudulent information but the family member was unaware of the fraud.

Fees

In almost all Member States, applicants have to pay fees. The total amount varies depending on the Member State: on average, the fee is between EUR 50 and 150. The Directive is silent on the issue of administrative fees payable in the procedure. However, as stated in the 2008 Commission Report, Member States should not set fees in a way which may undermine the Directive's "effet utile".

On costs for "civic integration examinations", the CJEU held that, while the Member States are free to require third-country nationals to pay various fees related to integration measures adopted under Article 7(2) of the Directive and to determine the amount of those fees, in line with the principle of proportionality, the level at which those fees are determined must not aim to, or have the effect of, making family reunification impossible or excessively difficult.

That would be the case if the amount of the fees to take the civic integration examination were excessive by having a significant financial impact on the third-country nationals concerned[87].

82 AT, BE, CY, FI, IT, LT, LU, LV, MT, NL.
83 BG, EE, HR, NL, SI.
84 AT, BE, BG, CY, DE, EL, FI, HU, IT, LT, MT, PL, PT, RO, SE, SK.
85 EL, FI, LT, PL, SK.
86 CJEU, Pending Case, Y.Z. and others (C-557/17).
87 CJEU, C-153/14, *K and A*, ECLI:EU:C:2015:453, paras 64 and 65.

Written notification and length of procedure – Article 5(4)

The national competent authority is obliged under the first subparagraph of Article 5(4), to give a written notification of the decision to the applicant as soon as possible and in any event no later than nine months from the date on which the application was lodged. Most Member States comply with this provision, applying deadlines under the nine-month requirement. Under the second subparagraph, the time limit may be extended in exceptional circumstances linked to the complexity of the examination. The implementation of this provision raises no concern for the Commission.

Best interest of the child – Article 5(5)

Under Article 5(5), when examining an application, Member States should have due regard to the best interests of minor children. This was emphasised by the CJEU in *O. and S., Maahanmuuttovirasto*[88], and *Parliament/Council*[89]. Most Member States have complied with this obligation, but not all have explicitly transposed it for the purpose of reviewing a family reunification application. However, the obligation of taking into account the best interests of the child appears to be a general legal principle in the national legislation.

Horizontal clause on relevant consideration – Article 17

The obligation to take due account of the nature and solidity of the person's family relationships, the duration of their residence in the Member State and of the existence of family, cultural and social ties with their country of origin, and thereby the need to apply a case-by-case approach, has often been recalled by the CJEU, especially in case *Parliament/Council* of 2006[90]. In line with that judgement, the mere reference to Article 8 of the European Convention on Human Rights does not seem to constitute an adequate implementation of Article 17.

This provision has been correctly implemented by most Member States. The principles of proportionality and legal certainty (general principles of EU law) must be applied in any decision on rejection, withdrawal or refusal to renew a permit. In two pending cases[91], the CJEU was asked to assess the impact of Article 17 in the context of withdrawals of permits for public order reasons.

Redress (Article 18)

In general, Article 18 has been correctly transposed in all Member States. All have established the right to mount a legal challenge in line with this provision (though in different ways). No national provisions have been identified as being too burdensome or hinder the right to legal challenge.

Entry and residence – articles 13 and 15

Visa facilitation – Article 13(1)

As soon as a family reunification application has been accepted, Member States must authorise the entry of the family members and grant them every facility for obtaining the requisite visas. Article 13(1) has been correctly transposed by most Member States. It must be pointed out that facilitation towards obtaining the requisite visa is mandatory for Member States.

88 CJEU, *Maahanmuuttovirasto*, C-356/11 and 357/11, ECLI:EU:C:2012:776.
89 CJEU, C-540/03, *Parliament / Council*, ECLI:EU:C:2006:429.
90 ibid.
91 CJEU, pending cases C-381/18 and 382/18.

Duration of residence – Article 13(2) and (3)

Article 13(2) lays down that Member States must grant family members a first residence permit of at least one year's duration, which shall be renewable. Most Member States correctly transposed the provision; however, some of them explicitly state that the minimum validity of the residence permit is one year.

Article 13(3) provides that the duration of the residence permits granted to the family members must in principle not go beyond the date of expiry of the residence permit held by the sponsor. All Member States correctly transposed this provision.

Autonomous residence permit – Article 15

The first subparagraph of Article 15(1) provides that not later than after five years of residence, and provided that the family member has not been granted a residence permit for reasons other than family reunification, the spouse or unmarried partner or a child who has reached majority shall be entitled (upon application if required by the national legislation) to an autonomous permit. This provision has been correctly included within the legislation of the majority of the Member States (notwithstanding a few disparities concerning the duration of the marital status or the counting of the five-year time period, though not raising concerns about compliance).

Article 15(3) lays down an option granting Member States the right, in the event of widowhood, divorce, separation, or death of first-degree relatives in the direct ascending or descending line, to issue an autonomous residence permit (upon application if required by the national legislation) to persons who have entered by virtue of family reunification (it also includes this possibility in the event of particularly difficult circumstances). The option was implemented by all Member States.

In two recent judgements[92] related to Article 15, the CJEU clarified that, although issuing an autonomous residence permit is, in principle, an entitlement arising from five years of residence in a Member State by virtue of family reunification, the EU legislature nevertheless authorised the Member States to subject the grant of such a permit to certain conditions, which it left to be defined by the Member States.

In particular, the CJEU considered the possibility for a Member State to impose integration conditions for obtaining an autonomous permit under Article 15 of the Family Reunification Directive (C-257/17 and C-484/17) and clarified that such conditions are compatible with the Directive, subject to their proportionality "*Article 15 (…) does not preclude national legislation which permits an application for an autonomous residence permit, lodged by a third country national who has resided over five years in a Member State by virtue of family reunification, to be rejected on the ground that he has not shown that he has passed a civic integration test on the language and society of that Member State provided that the detailed rules for the requirement to pass that examination do not go beyond what is necessary to attain the objective of facilitating the integration of those third country nationals."*

In its judgement in case C-257/17 the Court also clarified a further procedural detail related to the issuance date of autonomous permits and stated that the Directive does not preclude national legislation which provides that an autonomous residence permit cannot be issued earlier than the date on which it was applied for.

[92] CJEU, Judgment of 7 November 2018, C and A (C-257/17), ECLI:EU:C:2018:876 and Judgment of 7 November 2018, K (C-484/17), ECLI:EU:C:2018:878.

Access to education and employment – Article 14

Article 14(1) lays down the areas in which the sponsor's family members should enjoy equal treatment with the sponsor: access to education, employment, vocational guidance, initial and further training and retraining. The Directive further gives the possibility to Member States to decide, according to national law, the conditions under which family members shall exercise an employed or self-employed activity (Article 14(2)), and allows Member States to restrict access to employment or self-employment activity by first-degree relatives in the direct ascending line or adult unmarried children to whom Article 4(2) applies (Article 14(3)).

Overall, Member States have correctly transposed the equality requirements set out in Article 14(1), but most of them[93] have not applied the option set out in Article 14(2). The option under Article 14(3) has been adopted only by Slovakia. These provisions have often been implemented in the national legislation together with the general principle of non-discrimination.

Family reunification of refugees – Articles 9 to 12

Chapter V of the Directive refers to a series of derogations granting more favourable provisions for the family reunification of refugees so as to take their particular situation into account. The key aspects are highlighted below.

Article 10 sets out the application of the definition of family members to the family reunification of refugees. It provides for certain exceptions, and for specific rules with respect to sponsors who are unaccompanied minors. This article has been correctly transposed by most Member States. In a recent preliminary reference[94], the CJEU was asked to clarify whether Member States are allowed to use the "may clause" of Article 10(2) in a more restrictive way than provided for in the Directive and to allow the family reunification of other "dependent" family member only in those cases in which the dependency is related to the state of health.

Article 11 sets out the submission and examination of the application for refugees. As stated in Article 11(1), the submission and examination of the application to grant family reunification with a sponsor that has been granted refugee status should be carried out in line with Article 5, subject to Article 11(2).

In line with Article 11(2), Member States should take into account other evidence with which the existence of a family relationship can be proven where a refugee cannot provide official documentary evidence of the family relationship. A decision rejecting an application may not be based solely on the fact that documentary evidence is lacking. It must be stressed that compliance issues may easily arise in the practical implementation of this provision, and Member States should remain vigilant to the issue of documentary evidence from refugees. In the *E.* case[95] (pending), a preliminary question was referred to the CJEU concerning the obligation for refugees to cooperate and explain the non-availability of documentary evidence. The impending judgement is likely to clarify this important issue.

Article 12 provides that some of the family reunification facilitations offered to refugees are only applicable, if an application for family reunification is submitted within a period of three months after the granting of refugee status. In a recent judgement[96], the CFEU confirmed, in principle, the absolute character of this time limit, but highlighted that this strict rule cannot

93 Except for BE, BG, CY, EL, LU, MT.
94 CJEU, Pending Case, Bevándorlási és Menekültügyi Hivatal (C-519/18).
95 CJEU Case C-635/17 (pending).
96 CJEU, Judgment of 7 November 2018, K and B (C-380/17) ECLI:EU:C:2018:877.

apply to situations in which particular circumstances render the late submission of the application objectively excusable.

III. CONCLUSIONS

Since 2008, the implementation state of play of the family reunification Directive has improved, also due to the infringement proceedings launched by the Commission and its guidance Communication published in 2014, as well as to the numerous judgments of the Court of Justice of the European Union. Member States have been investing major efforts to improve and adapt their national legislations so that they fulfil the requirements of the Directive.

In its First Report on implementation of the Directive from 2008, the Commission highlighted a number of problematic issues of implementation regarding visa facilitation, autonomous permits, more favourable provisions for refugees, the best interest of the child and legal redress. Nonetheless, these issues mainly revolved around legal aspects of transposition, since Member States had not yet experienced practical application of these rules for a long time.

The Commission Communication from 2014, which served as a guidance for the application of the Directive highlighted persistent issues in national legislations, in particular a few problematic cross-cutting issues that had clearly emerged, such as integration measures, stable and regular resources, the need to take into account effectively the best interest of the child and the more favourable provisions for the family reunification of refugees.

Four years later, these core issues remain a challenge for some Member States, which should continue to seek effective application of the Directive, by paying specific attention to the paramount importance of the fundamental right of respect for family life, the rights of the child and the right to an effective remedy.

Moreover, as mentioned both in the 2008 Report and 2014 Communication, the wording of the Directive, which leaves to Member States relevant room for discretion in its implementation, should not result in lowering the standards when applying "*may*" provisions on certain requirements for the exercise of the right to family reunification in a too broad or disproportionate way. The general principles of EU law, first and foremost proportionality and legal certainty, must be regarded as the main key in assessing the compatibility of national provisions with the Directive.

As the guardian of the EU Treaties, the Commission has been regularly monitoring the legal and practical implementation of the Directive by Member States, particularly on the issues highlighted in this report. As family reunification remains a major challenge for the EU in the frame of migration policy, the Commission will continue to closely monitor national legislations and administrative practices and may consider appropriate action – in line with its powers under the EU Treaties – including opening infringement procedures, where necessary.

May 2021
This factsheet does not bind the Court and is not exhaustive

Children's rights

See also the factsheets on "International child abductions", "Parental rights", and "Protection of minors", "Accompanied migrant children in detention" and "Unaccompanied migrant minors in detention".

Article 1 (obligation to respect human rights) of the European Convention on Human Rights ("the Convention"):

"The High Contracting Parties shall secure to ***everyone*** within their jurisdiction the rights and freedoms defined in … this Convention".

Right of access to a court (Article 6 of the Convention)

Stagno v. Belgium

7 July 2009

When their father died, the two applicants, who were minors at the time, and several other descendants were paid a sum of money by an insurance company as the beneficiaries of their father's life insurance. Their mother, being the statutory administrator of her children's property, deposited the money in savings accounts that were emptied within less than a year. On coming of age, the applicants each brought an action against their mother and against the insurance company. They later dropped the claim against their mother after entering into an agreement. Before the European Court of Human Rights the applicants complained of a violation of their right of access to a court, alleging that the Belgian courts had deprived them of any effective remedy before a court by rejecting their action as statute-barred, given that the statutory limitation period had not been suspended while they were minors even though they had been unable to bring legal proceedings during that period.

The European Court of Human Rights held that there had been a **violation of Article 6 § 1** (right to a fair trial – access to court) of the European Convention on Human Rights, noting in particular that, by holding that the limitation period also ran against minors, the Belgian courts had put the interests of the insurance companies first. However, it had been practically impossible for the applicants to defend their property rights against the company before reaching their majority, and by the time they did come of age, their claim against the company had become time-barred. The strict application of a statutory limitation period, without taking into account the particular circumstances of the case, had thus prevented the applicants from using a remedy that in principle was available to them.

Right to respect for private and family life (Article 8)

Adoption

Chbihi Loudoudi and Others v. Belgium

16 December 2014

This case concerned the procedure in Belgium for the adoption by the applicants of their

Moroccan niece, who had been entrusted to their care by "kafala"[1]. The applicants complained in particular of the Belgian authorities' refusal to recognise the kafala agreement and approve the adoption of their niece, to the detriment of the child's best interests, and of the uncertain nature of her residence status.
The Court held that there had been **no violation of Article 8** (right to respect for private and family life) of the Convention concerning the refusal to grant the adoption, and **no violation of Article 8** (right to respect for private and family life) concerning the child's residence status. It found in particular that the refusal to grant adoption was based on a law which sought to ensure, in accordance with the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption, that international adoptions took place in the best interests of the child and with respect for the child's private and family life, and that the Belgian authorities could legitimately consider that such a refusal was in the child's best interests, by ensuring the maintaining of a single parent-child relationship in both Morocco and Belgium (i.e. the legal parent-child relationship with the genetic parents). In addition, reiterating that the Convention did not guarantee a right to a particular residence status, the Court observed that the only real obstacle encountered by the girl had been her inability to take part in a school trip. That difficulty, owing to the absence of a residence permit between May 2010 and February 2011, did not suffice for Belgium to be required to grant her unlimited leave to remain in order to protect her private life.

Zaieţ v. Romania

24 March 2015

This case concerned the annulment of a woman's adoption, at the instigation of her adoptive sister, 31 years after it had been approved and 18 years after the death of their adoptive mother. The applicant alleged in particular that the annulment of her adoption had been an arbitrary and disproportionate intrusion into her family life, submitting that she had lived with her adoptive mother since the age of nine and that their relationship had been based on affection, responsibility and mutual support. She also complained that, after the annulment of her adoption, she lost title to the five hectares of forest she inherited from her adoptive mother.
This was the first occasion on which the Court had to consider the annulment of an adoption order in a context where the adoptive parent was dead and the adopted child had long reached adulthood. In the applicant's case, the Court, finding that the annulment decision was vague and lacking in justification for the taking of such a radical measure, concluded that the interference in her family life had not been supported by relevant and sufficient reasons, in **violation of Article 8** (right to respect for private and family life) of the Convention. The Court noted in particular that, in any event, the annulment of an adoption should not even be envisaged as a measure against an adopted child and underlined that in legal provisions and decisions on adoption matters, the interests of the child had to remain paramount. The Court also held that there had been a **violation of Article 1 of Protocol No. 1** (protection of property) to the Convention, on the account of the disproportionate interference with the applicant's property right over the disputed land.

Bogonosovy v. Russia

5 March 2019

This case concerned a grandfather who wanted to maintain ties with his granddaughter after her adoption by another family.
The Court found that the domestic court's failure to examine the question of the applicant's post-adoption ties with his granddaughter had led to a **breach of** his right to respect for his family life secured by **Article 8** of the Convention. It considered in

[1]. In Islamic law, adoption, which creates family bonds comparable to those created by biological filiation, is prohibited. Instead, Islamic law provides for a form of guardianship called "kafala". In Muslim States, with the exception of Turkey, Indonesia and Tunisia, kafala is defined as a voluntary undertaking to provide for a child and take care of his or her welfare and education.

particular that the domestic courts should have assessed the applicant's request to maintain a post adoption relationship with his granddaughter but had instead interpreted and applied the law in a way that had denied him such an examination. He had thus been excluded completely and automatically from his granddaughter's life.

Compulsory childhood vaccination

Vavřička and Others v. Czech Republic

8 April 2021 (Grand Chamber)

This case concerned the Czech legislation on compulsory vaccination[2] and its consequences for the applicants who refused to comply with it. The first applicant had been fined for failure to comply with the vaccination duty in relation to his two children. The other applicants had all been denied admission to nursery school for the same reason. The applicants all alleged, in particular, that the various consequences for them of non-compliance with the statutory duty of vaccination had been incompatible with their right to respect for their private life.

The Court held that there had been **no violation of Article 8** of the Convention in the present case, finding that the measures complained of by the applicants, assessed in the context of the national system, had been in a reasonable relationship of proportionality to the legitimate aims pursued by the respondent State (to protect against diseases which could pose a serious risk to health) through the vaccination duty. The Court clarified that, ultimately, the issue to be determined was not whether a different, less prescriptive policy might have been adopted, as had been done in some other European States. Rather, it was whether, in striking the particular balance that they did, the Czech authorities had exceeded their wide margin of appreciation in this area. The Court concluded that the impugned measures could be regarded as being "necessary in a democratic society". The Court noted, in particular, that in the Czech Republic the vaccination duty was strongly supported by the relevant medical authorities. It could be said to represent the national authorities' answer to the pressing social need to protect individual and public health against the diseases in question and to guard against any downward trend in the rate of vaccination among children. The judgment also emphasised that in all decisions concerning children, their best interests must be of paramount importance. With regard to immunisation, the objective had to be that every child was protected against serious diseases, through vaccination or by virtue of herd immunity. The Czech health policy could therefore be said to be consistent with the best interests of the children who were its focus. The Court further noted that the vaccination duty concerned nine diseases against which vaccination was considered effective and safe by the scientific community, as was the tenth vaccination, which was given to children with particular health indications.

Family reunification rights

Sen v. the Netherlands

21 December 2001

The applicants are a couple of Turkish nationals and their daughter, who had been born in Turkey in 1983 and who her mother left in her aunt's custody when she joined her husband in the Netherlands in 1986. The parents complained of an infringement of their right to respect for their family life, on account of the rejection of their application for a residence permit for their daughter, a decision which prevented her from joining them in the Netherlands. They had two other children, who were born in 1990 and 1994 respectively in the Netherlands and have always lived there with their parents.

[2]. In the Czech Republic there is a general legal duty to vaccinate children against nine diseases that are well known to medical science. Compliance with the duty cannot be physically enforced. Parents who fail to comply, without good reason, can be fined. Non-vaccinated children are not accepted in nursery schools (an exception is made for those who cannot be vaccinated for health reasons).

Being required to determine whether the Dutch authorities had a positive obligation to authorise the third applicant to live with her parents in the Netherlands, having regard, among other things, to her young age when the application was made, the Court noted that she had spent her whole life in Turkey and had strong links with the linguistic and cultural environment of her country in which she still had relatives. However, there was a major obstacle to the rest of the family's return to Turkey. The first two applicants had settled as a couple in the Netherlands, where they had been legally resident for many years, and two of their three children had always lived in the Netherlands and went to school there. Concluding that the Netherlands had failed to strike a fair balance between the applicants' interest and their own interest in controlling immigration, the Court held that there had been a **violation of Article 8** (right to respect for family life) of the Convention.

See also: **Tuquabo-Tekle and Others v. the Netherlands**, judgment of 1 December 2005.

Osman v. Denmark

14 June 2011

At the age of fifteen the applicant, a Somali national who had been living with her parents and siblings in Denmark since the age of seven, was sent against her will to a refugee camp in Kenya by her father to take care of her paternal grandmother. Two years later, when still a minor, she applied to be reunited with her family in Denmark, but her application was turned down by Danish immigration on the grounds that her residence permit had lapsed as she had been absent from Denmark for more than twelve consecutive months. She was not entitled to a new residence permit as, following a change in the law that had been introduced to deter immigrant parents from sending their adolescent children to their countries of origin to receive a more traditional upbringing, only children below the age of fifteen could apply for family reunification.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention, finding in particular that the applicant could be considered a settled migrant who had lawfully spent all or the major part of her childhood and youth in the host country so that very serious reasons would be required to justify the refusal to renew her residence permit. Although the aim pursued by the law on which that refusal was based was legitimate – discouraging immigrant parents from sending their children to their countries of origin to be "re-educated" in a manner their parents considered more consistent with their ethnic origins – the children's right to respect for private and family life could not be ignored. In the circumstances of the case, it could not be said that the applicant's interests had been sufficiently taken into account or balanced fairly against the State's interest in controlling immigration.

Berisha v. Switzerland

30 July 2013

This case concerned the Swiss authorities' refusal to grant residence permits to the applicants' three children, who were born in Kosovo and entered Switzerland illegally, and the authorities' decision to expel the children to Kosovo.

The Court held that there had been **no violation of Article 8** (right to respect of family life) of the Convention, considering in particular that the applicants were living in Switzerland because of their conscious decision to settle there rather than in Kosovo, and that their three children had not lived in Switzerland for long enough to have completely lost their ties with their country of birth, where they grew up and were educated for many years. Moreover the children still had family ties in Kosovo, the older two children, 17 and 19 years old, were of an age that they could be supported at a distance, and there was nothing to prevent the applicants traveling to, or staying with the youngest child, 10 years old, in Kosovo to safeguard her best interests as a child. Also taking into account the at times untruthful conduct of the applicants in the domestic proceedings, the Court concluded that the Swiss authorities had not overstepped their

margin of appreciation under Article 8 of the Convention in refusing to grant residence permits to their children.

Mugenzi v. France, Tanda-Muzinga v. France and Senigo Longue and Others v. France

10 July 2014

These cases concerned the difficulties encountered by the applicants – who were either granted refugee status or lawfully residing in France – in obtaining visas for their children so that their families could be reunited. The applicants alleged that the refusal by the consular authorities to issue visas to their children for the purpose of family reunification had infringed their right to respect for their family life.

The Court observed in particular that the procedure for examining applications for family reunification had to contain a number of elements, having regard to the applicants' refugee status on the one hand and the best interests of the children on the other, so that their interests as guaranteed by Article 8 (right to respect for private and family life) of the Convention from the point of view of procedural requirements were safeguarded.

In all three cases, the Court held that there had been a **violation of Article 8** of the Convention. Since the national authorities had not given due consideration to the applicants' specific circumstances, it concluded that the family reunification procedure had not offered the requisite guarantees of flexibility, promptness and effectiveness to ensure compliance with their right to respect for their family life. For that reason, the French State had not struck a fair balance between the applicants' interests on the one hand, and its own interest in controlling immigration on the other.

See also, raising similar questions: **Ly v. France**, decision on the admissibility of 17 June 2014 (the Court declared the application in question inadmissible as manifestly ill-founded, considering that the decision-making process, taken as a whole, had enabled the applicant to be sufficiently involved to ensure his interests were defended).

I.A.A. and Others v. the United Kingdom (application no. 25960/13)

31 March 2016

This case concerned the complaint by five Somali nationals, the applicants, about the UK authorities' refusal to grant them entry into the United Kingdom to be reunited with their mother. The applicants' mother had joined her second husband in the UK in 2004 and the applicants were left in the care of their mother's sister in Somalia. They moved in 2006 to Ethiopia where the applicants had been living ever since.

The Court declared the application **inadmissible** as being manifestly ill-founded, finding that, in refusing the application to join their mother, the national courts had struck a fair balance between the applicants' interest in developing a family life in the UK and the State's interest in controlling immigration. While the applicants' situation was certainly unenviable, they were no longer young children (they are currently 21, 20, 19, 14 and 13) and had grown up in the cultural and linguistic environment of their country of origin before living together as a family unit in Ethiopia for the last nine years. Indeed, they had never been to the UK and had not lived together with their mother for more than 11 years. As concerned the applicants' mother, who had apparently made a conscious decision to leave her children in Somalia in order to join her new husband in the UK, there was no evidence to suggest that there would be any insurmountable obstacles to her relocating either to Ethiopia or to Somalia.

Legal recognition for children born as a result of surrogacy treatment

Mennesson and Others v. France and Labassee v. France

26 June 2014

These cases concerned the refusal to grant legal recognition in France to parent-child relationships that had been legally established in the United States between children born as a result of surrogacy treatment and the couples who had had the treatment. The

applicants complained in particular of the fact that, to the detriment of the children's best interests, they were unable to obtain recognition in France of parent-child relationships that had been legally established abroad.
In both cases the Court held that there had been **no violation of Article 8** (right to respect for private and family life) of the Convention concerning the applicants' right to respect for their family life. It further held in both cases that there had been a **violation of Article 8** concerning the children's right to respect for their private life. The Court observed that the French authorities, despite being aware that the children had been identified in the United States as the children of Mr and Mrs Mennesson and Mr and Mrs Labassee, had nevertheless denied them that status under French law. It considered that this contradiction undermined the children's identity within French society. The Court further noted that the case-law completely precluded the establishment of a legal relationship between children born as a result of – lawful – surrogacy treatment abroad and their biological father. This overstepped the wide margin of appreciation left to States in the sphere of decisions relating to surrogacy.

See also: **Foulon and Bouvet v. France**, judgment of 21 July 2016; **Laborie v. France**, judgment of 19 January 2017.

D. and Others v. Belgium (no. 29176/13)

8 July 2014 (decision – partly struck out of the list of cases; partly inadmissible)
This case concerned the Belgian authorities' initial refusal to authorise the arrival on its national territory of a child who had been born in Ukraine from a surrogate pregnancy, as resorted to by the applicants, two Belgian nationals. The applicants relied in particular on Articles 3 (prohibition of inhuman or degrading treatment) and 8 (right to respect for private and family life) of the Convention.
In view of developments in the case since the application was lodged, namely the granting of a laissez-passer for the child and his arrival in Belgium, where he has since lived with the applicants, the Court considered this part of the dispute to be resolved and struck out of its list the complaint concerning the Belgian authorities' refusal to issue travel documents for the child. The Court further declared **inadmissible** the remainder of the application. While the authorities' refusal, maintained until the applicants had submitted sufficient evidence to permit confirmation of a family relationship with the child, had resulted in the child effectively being separated from the applicants, and amounted to interference in their right to respect for their family life, nonetheless, Belgium had acted within its broad discretion ("wide margin of appreciation") to decide on such matters. The Court also considered that there was no reason to conclude that the child had been subjected to treatment contrary to Article 3 of the Convention during the period of his separation from the applicants.

Paradiso and Campanelli v. Italy

24 January 2017 (Grand Chamber)
This case concerned the placement in social-service care of a nine-month-old child who had been born in Russia following a gestational surrogacy contract entered into with a Russian woman by an Italian couple (the applicants); it subsequently transpired that they had no biological relationship with the child. The applicants complained, in particular, about the child's removal from them, and about the refusal to acknowledge the parent-child relationship established abroad by registering the child's birth certificate in Italy.
The Grand Chamber found, by eleven votes to six, that there had been **no violation of Article 8** (right to respect for private and family life) of the Convention in the applicants' case. Having regard to the absence of any biological tie between the child and the applicants, the short duration of their relationship with the child and the uncertainty of the ties between them from a legal perspective, and in spite of the existence of a parental project and the quality of the emotional bonds, the Grand Chamber held that a family life did not exist between the applicants and the child. It found, however, that the contested measures fell within the scope of the applicants' private life. The Grand

Chamber further considered that the contested measures had pursued the legitimate aims of preventing disorder and protecting the rights and freedoms of others. On this last point, it regarded as legitimate the Italian authorities' wish to reaffirm the State's exclusive competence to recognise a legal parent-child relationship – and this solely in the case of a biological tie or lawful adoption – with a view to protecting children. The Grand Chamber also accepted that the Italian courts, having concluded in particular that the child would not suffer grave or irreparable harm as a result of the separation, had struck a fair balance between the different interests at stake, while remaining within the room for manoeuvre ("margin of appreciation") available to them.

Advisory opinion concerning the recognition in domestic law of a legal parent-child relationship between a child born through a gestational surrogacy arrangement abroad and the intended mother, requested by the French Court of Cassation (Request No. P16-2018-001)

10 April 2019 (Grand Chamber)

This case concerned the possibility of recognition in domestic law of a legal parent-child relationship between a child born abroad through a gestational surrogacy arrangement and the intended mother, designated in the birth certificate legally established abroad as the "legal mother", in a situation where the child was conceived using the eggs of a third-party donor and where the legal parent-child relationship with the intended father has been recognised in domestic law.

The Court found that States were not required to register the details of the birth certificate of a child born through gestational surrogacy abroad in order to establish the legal parent-child relationship with the intended mother, as adoption may also serve as a means of recognising that relationship.

It held in particular that, in a situation where a child was born abroad through a gestational surrogacy arrangement and was conceived using the gametes of the intended father and a third-party donor, and where the legal parent-child relationship with the intended father has been recognised in domestic law,

1. the child's right to respect for private life within the meaning of Article 8 of the Convention requires that domestic law provide a possibility of recognition of a legal parent-child relationship with the intended mother, designated in the birth certificate legally established abroad as the "legal mother";

2. the child's right to respect for private life does not require such recognition to take the form of entry in the register of births, marriages and deaths of the details of the birth certificate legally established abroad; another means, such as adoption of the child by the intended mother, may be used.

C and E v. France (nos. 1462/18 and 17348/18)

19 November 2019 (Committee decision on the admissibility)

This case concerned the French authorities' refusal to enter in the French register of births, marriages and deaths the full details of the birth certificates of children born abroad through a gestational surrogacy arrangement and conceived using the gametes of the intended father and a third-party donor, in so far as the birth certificates designated the intended mother as the legal mother.

The Court declared the two applications **inadmissible** as being manifestly ill-founded. It considered in particular that the refusal of the French authorities was not disproportionate, as domestic law afforded a possibility of recognising the parent-child relationship between the applicant children and their intended mother by means of adoption of the other spouse's child. The Court also noted that the average waiting time for a decision was only 4.1 months in the case of full adoption and 4.7 months in the case of simple adoption.

D v. France (n° 11288/18)

16 juillet 2020

This case concerned the refusal to record in the French register of births, marriages and deaths the details of the birth certificate of a child born abroad through a gestational

surrogacy arrangement in so far as the certificate designated the intended mother, who was also the child's genetic mother, as the mother. The child, the third applicant in the case, was born in Ukraine in 2012. Her birth certificate, issued in Kyiv, named the first applicant as the mother and the second applicant as the father, without mentioning the woman who had given birth to the child. The two first applicants, husband and wife, and the child complained of a violation of the child's right to respect for her private life, and of discrimination on the grounds of "birth" in her enjoyment of that right.
The Court held that there had been **no violation of Article 8** (right to respect for family life) of the Convention, finding that, in refusing to record the details of the third applicant's Ukrainian birth certificate in the French register of births in so far as it designated the first applicant as the child's mother, France had not overstepped its margin of appreciation in the circumstances of the present case. It also held that there had been **no violation of Article 14** (prohibition of discrimination) of the Convention **read in conjunction with Article 8**, accepting that the difference in treatment of which the applicants complained with regard to the means of recognition of the legal relationship between such children and their genetic mother had an objective and reasonable justification. In its judgment, the Court noted in particular that it had previously ruled on the issue of the legal parent-child relationship between a child and its intended father where the latter was the biological father, in its judgments in *Mennesson* and *Labassee* (see above). According to its case-law, the existence of a genetic link did not mean that the child's right to respect for his or her private life required the legal relationship with the intended father to be established specifically by means of the recording of the details of the foreign birth certificate. The Court saw no reason in the circumstances of the present case to reach a different decision regarding recognition of the legal relationship with the intended mother, who was the child's genetic mother. The Court also pointed to its finding in advisory opinion no. P16-2018-001 (see above) that adoption produced similar effects to registration of the foreign birth details when it came to recognising the legal relationship between the child and the intended mother.

Valdís Fjölnisdóttir and Others v. Iceland

18 May 2021[3]

This case concerned the non-recognition of a parental link between the first two applicants and the third applicant, who was born to them via a surrogate mother in the United States. The first and second applicants were the third applicant's intended parents, but neither of them was biologically related to him. They had not been recognised as the child's parents in Iceland, where surrogacy is illegal. The applicants complained, in particular, that the refusal by the authorities to register the first and second applicants as the third applicant's parents had amounted to an interference with their rights.
The Court held that there had been **no violation of Article 8** (right to respect for family life) of the Convention. It considered, in particular, that despite the lack of a biological link between the applicants, there had been "family life" in the applicants' relationship. However, the Court found that the decision not to recognise the first two applicants as the child's parents had had a sufficient basis in domestic law and, taking note of the efforts on the parts of the authorities to maintain that "family life", ultimately adjudged that Iceland had acted within its discretion in the present case.

Pending applications

Schlittner-Hay v. Poland (nos. 56846/15 and 56849/15)

Application communicated to the Polish Government on 26 February 2019

This case concerns the refusal to grant Polish nationality to children of a same-sex couple born through surrogacy in the United States of America.

[3]. This judgment will become final in the circumstances set out in Article 44 § 2 (final judgments) of the European Convention on Human Rights.

The Court gave notice of the applications to the Polish Government and put questions to the parties under Article 8 (right to respect for private and family life) alone and in conjunction with Article 14 (prohibition of discrimination) of the Convention.

A.L. v. France (no. 13344/20)

Application communicated to the French Government on 20 October 2020

This case concerns the refusal to establish paternity between the applicant and his biological son, born from a surrogate pregnancy practised in France, after the child was entrusted by the surrogate mother to a third party couple.

The Court gave notice of the application to the French Government and put questions to the parties under Article 8 (right to respect for private and family life) of the Convention.

Parental authority, child custody and access rights

N.Ts.v. Georgia (no. 71776/12)

2 February 2016

This case concerned proceedings for the return of three young boys – who had been living with their maternal family since their mother's death – to their father. The first applicant maintained in particular that the national authorities had failed to thoroughly assess the best interests of her nephews and that the proceedings had been procedurally flawed.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention. It found in particular that the boys had not been adequately represented before the domestic courts, in particular as the functions and powers of the domestic authority designated to represent them had not been clearly defined and the courts had not considered hearing the oldest of the boys in person. Moreover, the courts had made an inadequate assessment of the boys' best interests, which did not take their emotional state of mind into consideration.

V.D. and Others v. Russia (no. 72931/10)

9 April 2019

This case concerned a child, who was cared for by a foster mother, the first applicant in the case, for nine years and was then returned to his biological parents. The foster mother and her remaining children complained about the Russian courts' decisions to return the child to his parents, to terminate the first applicant's guardianship rights and to deny them all access to the child.

The Court held that there had been **no violation of Article 8** (right to respect for private and family life) of the Convention owing to the order by the domestic courts to remove the child from his foster mother and return him to his biological parents and a **violation of Article 8** of the Convention because of the decision to deny the foster family any subsequent contact with the child. It found in particular that the domestic courts had weighed up all the necessary factors when deciding to return the child to his parents, such as whether the measure had been in his best interests. However, the courts had denied the foster family any subsequent contact with the child, who had formed close ties with the first applicant and her remaining children. In this regard, the Court noted that the courts' decision had been based solely on an application of Russia's legislation on contact rights, which was inflexible and did not take account of varying family situations. The domestic courts had therefore not carried out the required assessment of the individual circumstances of the case.

Right to know one's origins

Mikulić v. Croatia

7 February 2002

This case concerned a child born out of wedlock who, together with her mother, filed a paternity suit. The applicant complained that Croatian law did not oblige men against

whom paternity suits were brought to comply with court orders to undergo DNA tests, and that the failure of the domestic courts to decide her paternity claim had left her uncertain as to her personal identity. She also complained about the length of the proceedings and the lack of an effective remedy to speed the process up.
The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention. It observed in particular that, in determining an application to have paternity established, the courts were required to have regard to the basic principle of the child's interests. In the present case, it found that the procedure available did not strike a fair balance between the right of the applicant to have her uncertainty as to her personal identity eliminated without unnecessary delay and that of her supposed father not to undergo DNA tests. Accordingly, the inefficiency of the courts had left the applicant in a state of prolonged uncertainty as to her personal identity. The Court further held that there had been a **violation of Articles 6 § 1** (right to a fair hearing within a reasonable time) and a **violation of Article 13** (right to an effective remedy) of the Convention.

See also, among others: **Gaskin v. the United Kingdom**, judgment of 7 July 1989; **Ebru and Tayfun Engin Çolak v. Turkey**, judgment of 30 May 2006; **Phinikaridou v. Cyprus**, judgment of 20 December 2007; **Kalacheva v. Russia**, judgment of 7 May 2009; **Grönmark v. Finland** and **Backlund v. Finland**, judgments of 6 July 2010; **Pascaud v. France**, judgment of 16 June 2011; **Laakso v. Finland**, judgment of 15 January 2013; and **Röman v. Finland**, judgment of 29 January 2013; **Konstantinidis v. Greece**, judgment of 3 April 2014; **Călin and Others v. Romania**, judgment of 19 July 2016.

Odièvre v. France

13 February 2003 (Grand Chamber)

The applicant was abandoned by her natural mother at birth and left with the Health and Social Security Department. Her mother requested that her identity be kept secret from the applicant, who was placed in State care and later adopted under a full adoption order. The applicant subsequently tried to find out the identity of her natural parents and brothers. Her request was rejected because she had been born under a special procedure which allowed mothers to remain anonymous. The applicant complained that she had been unable to obtain details identifying her natural family and said that her inability to do so was highly damaging to her as it deprived her of the chance of reconstituting her life history. She further submitted that the French rules on confidentiality governing birth amounted to discrimination on the ground of birth.
In its Grand Chamber judgment, the Court noted that birth, and in particular the circumstances in which a child was born, formed part of a child's, and subsequently the adult's, private life guaranteed by Article 8 of the Convention. In the instant case, it held that there had been **no violation of Article 8** (right to respect for private life), observing in particular that the applicant had been given access to non-identifying information about her mother and natural family that enabled her to trace some of her roots, while ensuring the protection of third-party interests. In addition, recent legislation enacted in 2002 enabled confidentiality to be waived and set up a special body to facilitate searches for information about biological origins. The applicant could now use that legislation to request disclosure of her mother's identity, subject to the latter's consent being obtained to ensure that the mother's need for protection and the applicant's legitimate request were fairly reconciled. The French legislation thus sought to strike a balance and to ensure sufficient proportion between the competing interests. The Court further held that there had been **no violation of Article 14** (prohibition of discrimination) **taken in conjunction with Article 8** of the Convention, finding that the applicant had suffered no discrimination with regard to her filiation, as she had parental ties with her adoptive parents and a prospective interest in their property and estate and, furthermore, could not claim that her situation with regard to her natural mother was comparable to that of children who enjoyed established parental ties with their natural mother.

Jäggi v. Switzerland

13 July 2006

The applicant was not allowed to have DNA tests performed on the body of a deceased man whom he believed to be his biological father. He was therefore unable to establish paternity.

The Court held that there had been a **violation Article 8** (right to respect for private life) of the Convention, on account of the fact that it had been impossible for the applicant to obtain a DNA analysis of the mortal remains of his putative biological father. It observed in particular that the DNA test was not particularly intrusive, the family had cited no philosophical or religious objections and, if the applicant had not renewed the lease on the deceased man's tomb, his body would already have been exhumed.

A. M. M. v. Romania (no. 2151/10)

14 February 2012

This case concerned proceedings to establish paternity of a minor who was born in 2001 outside marriage and who has a number of disabilities. He had been registered in his birth certificate as having a father of unknown identity. Before the European Court, the applicant was first represented by his mother and subsequently, since his mother suffered from a serious disability, by his maternal grandmother.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention, finding that the domestic courts did not strike a fair balance between the child's right to have his interests safeguarded in the proceedings and the right of his putative father not to undergo a paternity test or take part in the proceedings.

Godelli v. Italy

25 September 2012

This case concerned the confidentiality of information concerning a child's birth and the inability of a person abandoned by her mother to find out about her origins. The applicant maintained that she had suffered severe damage as a result of not knowing her personal history, having been unable to trace any of her roots while ensuring the protection of third-party interests.

The Court held that there had been a **violation of Article 8** (right to respect for private life) of the Convention, considering in particular that a fair balance had not been struck between the interests at stake since the Italian legislation, in cases where the mother had opted not to disclose her identity, did not allow a child who had not been formally recognised at birth and was subsequently adopted to request either non-identifying information about his or her origins or the disclosure of the birth mother's identity with the latter's consent.

Canonne v. France

2 June 2015 (decision on the admissibility)

In this case, the applicant complained about the fact that the domestic courts had inferred his paternity of a young woman from his refusal to submit to the genetic tests ordered by them. He emphasised in particular that under French law individuals who were the respondents in paternity actions were obliged to submit to a DNA test in order to establish that they were not the fathers. He alleged a breach of the principle of the inviolability of the human body which, in his view, prohibited any enforcement of genetic tests in civil cases.

The Court declared **inadmissible** as manifestly ill-founded the applicant's complaints under Article 8 (right to respect for private and family life) of the Convention. It found that the domestic courts had not exceeded the room for manoeuvre ("wide margin of appreciation") available to them when they took into account the applicant's refusal to submit to court-ordered genetic testing and declared him the father of the young woman, and in giving priority to the latter's right to respect for private life over that of the applicant.

Mandet v. France

14 January 2016

This case concerned the quashing of the formal recognition of paternity made by the mother's husband at the request of the child's biological father. The applicants – the mother, her husband and the child – complained about the quashing of the recognition of paternity and about the annulation of the child's legitimation. In particular, they considered these measures to be disproportionate, having regard to the best interests of the child which, they submitted, required that the legal parent-child relationship, established for several years, be maintained, and that his emotional stability be preserved.

The Court held that there had been **no violation of Article 8** (right to respect for private and family life) of the Convention. It noted in particular that the reasoning in the French courts' decisions showed that the child's best interests had been duly placed at the heart of their considerations. In taking this approach, they had found that, although the child considered that his mother's husband was his father, his interests lay primarily in knowing the truth about his origins. These decisions did not amount to unduly favouring the biological father's interests over those of the child, but in holding that the interests of the child and of the biological father partly overlapped. It was also to be noted that, having conferred parental responsibility to the mother, the French courts' decisions had not prevented the child from continuing to live as part of the Mandet family, in accordance with his wishes.

Pending applications

Gauvin-Fournis v. France (no. 21424/16)

Application communicated to the French Government on 5 June 2018

Silliau v. France (no. 45728/17)

Application communicated to the French Government on 5 June 2018

Sex education in State schools

A.R. and L.R. v. Switzerland (no. 22338/15)

19 December 2017 (decision on the admissibility)

This case concerned the refusal by a Basle primary school to grant the first applicant's request that her daughter (the second applicant), then aged seven and about to move up to the second year of primary school, be exempted from sex education lessons. Both applicants, who stated that they were not against sex education as such in State schools but were merely calling into question its usefulness at the kindergarten and early primary school stages, alleged that there had been a violation of the first applicant's right to respect for her private and family life. They also argued that the second applicant had been subjected to an unjustified interference with the exercise of her right to respect for her private life.

As regards the applicants' victim status, the Court began by finding that, under Article 34 (right of individual application) of the Convention, the application was manifestly ill-founded in respect of the second applicant, who had never actually attended sex education classes before the end of her second year at primary school. The Court also declared **inadmissible**, as being manifestly ill-founded, the first applicant's complaints under Article 8 (right to respect for private and family life) of the Convention, finding that the Swiss authorities had not overstepped the room for manoeuvre ("margin of appreciation") accorded to them by the Convention. The Court noted in particular that one of the aims of sex education was the prevention of sexual violence and exploitation, which posed a real threat to the physical and mental health of children and against which they had to be protected at all ages. It also stressed that one of the objectives of State education was to prepare children for social realities, and this tended to justify the sexual education of very young children attending kindergarten or primary school. The Court thus found that school sex education, as practised in the

canton of Basel-Urban, pursued legitimate aims. As to the proportionality of the refusal to grant exemption from such classes, the Court observed in particular that the national authorities had recognised the paramount importance of the parents' right to provide for the sexual education of their children. Moreover, sex education at a kindergarten and in the first years of primary school was complementary in nature and not systematic; the teachers merely had to "react to the children's questions and actions".

Freedom of thought, conscience and religion (Article 9)

Dogru v. France and Kervanci v. France

4 December 2008

The applicants, both Muslims, were enrolled in the first year of a state secondary school in 1998-1999. On numerous occasions they attended physical education classes wearing their headscarves and refused to take them off, despite repeated requests to do so by their teacher. The school's discipline committee decided to expel them from school for breaching the duty of assiduity by failing to participate actively in those classes, a decision that was upheld by the courts.

The Court held that there had been **no violation of Article 9** (freedom of religion) of the Convention in both cases, finding in particular that the conclusion reached by the national authorities that the wearing of a veil, such as the Islamic headscarf, was incompatible with sports classes for reasons of health or safety was not unreasonable. It accepted that the penalty imposed was the consequence of the applicants' refusal to comply with the rules applicable on the school premises – of which they had been properly informed – and not of their religious convictions, as they alleged.

Aktas v. France, Bayrak v. France, Gamaleddyn v. France, Ghazal v. France, J. Singh v. France and R. Singh v. France

30 June 2009 (decisions on the admissibility)

These applications concerned the expulsion of six pupils from school for wearing conspicuous symbols of religious affiliation. They were enrolled in various state schools for the year 2004-2005. On the first day of school, the girls, who are Muslims, arrived wearing a headscarf or kerchief. The boys were wearing a "keski", an under-turban worn by Sikhs. As they refused to remove the offending headwear, they were denied access to the classroom and, after a period of dialogue with the families, expelled from school for failure to comply with the Education Code. Before the Court, they complained of the ban on headwear imposed by their schools, relying in particular on Article 9 of the Convention.

The Court declared the applications **inadmissible** (manifestly ill-founded), holding in particular that the interference with the pupils' freedom to manifest their religion was prescribed by law and pursued the legitimate aim of protecting the rights and freedoms of others and of public order. It further underlined the State's role as a neutral organiser of the exercise of various religions, faiths and beliefs. As to the punishment of definitive expulsion, it was not disproportionate to the aims pursued as the pupils still had the possibility of continuing their schooling by correspondence courses.

Grzelak v. Poland

15 June 2010

The first two applicants, who are declared agnostics, are parents of the third applicant. In conformity with the wishes of his parents, the latter did not attend religious instruction during his schooling. His parents systematically requested the school authorities to organise a class in ethics for him. However, no such class was provided throughout his entire schooling at primary and secondary level because there were not enough pupils interested. His school reports and certificates contained a straight line instead of a mark for "religion/ethics".

The Court declared the application **inadmissible** (incompatible *ratione personae*) with respect to the parents and held that there had been a **violation of Article 14**

(prohibition of discrimination) **taken in conjunction with Article 9** (freedom of religion) of the Convention with respect to their child, finding in particular that the absence of a mark for "religion/ethics" on his school certificates throughout the entire period of his schooling had amounted to his unwarranted stigmatisation, in breach of his right not to manifest his religion or convictions.

Freedom of expression (Article 10)

Cyprus v. Turkey

10 May 2001 (Grand Chamber)

In this case, which related to the situation that has existed in northern Cyprus since the conduct of military operations there by Turkey in July and August 1974 and the continuing division of the territory of Cyprus, Cyprus alleged, among other things, a violation of Article 10 (freedom of expression) of the Convention, as regards the Karpas Greek Cypriots, because of the excessive censorship of school-books.

The Court held that there had been a violation of A**rticle 10** (freedom of expression) of the Convention in respect of Greek Cypriots living in northern Cyprus in so far as school-books destined for use in their primary school had been subject to excessive measures of censorship.

Prohibition of discrimination (Article 14)

Affiliation- and inheritance-related rights

Marckx v. Belgium

13 June 1979

An unmarried Belgian mother complained that she and her daughter were denied rights accorded to married mothers and their children: among other things, she had to recognise her child (or bring legal proceedings) to establish affiliation (married mothers could rely on the birth certificate); recognition restricted her ability to bequeath property to her child and did not create a legal bond between the child and mother's family, her grandmother and aunt. Only by marrying and then adopting her own daughter (or going through a legitimation process) would she have ensured that she had the same rights as a legitimate child.

The Court held in particular that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention taken alone, and a **violation of Article 14** (prohibition of discrimination) of the Convention **taken in conjunction with Article 8**, regarding both applicants, concerning the establishment of the second applicant's maternal affiliation, the lack of a legal bond with her mother's family and her inheritance rights and her mother's freedom to choose how to dispose of her property. A bill to erase differences in treatment between children of married and unmarried parents was going through the Belgian Parliament at the time of the judgment.

Inze v. Austria

28 October 1987

The applicant was not legally entitled to inherit his mother's farm when she died intestate because he was born out of wedlock. Although he had worked on the farm until he was 23, his younger half-brother inherited the entire farm. By a subsequent judicial settlement, the applicant ultimately obtained a piece of land which had been promised to him by his mother during her lifetime.

The Court held that there had been a **violation of Article 14** (prohibition of discrimination) of the Convention **taken in conjunction with Article 1 of Protocol No. 1** (right to the peaceful enjoyment of one's possessions) to the Convention. Having recalled that the Convention is a living instrument, to be interpreted in the light of present-day conditions, and that the question of equality between children born in and

children born out of wedlock as regards their civil rights is today given importance in the member States of the Council of Europe, it found in particular that very weighty reasons would accordingly have to be advanced before a difference of treatment on the ground of birth out of wedlock could be regarded as compatible with the Convention.

Mazurek v. France

1 February 2000

The applicant, born of an adulterous relationship, had his entitlement to inherit reduced by half because a legitimated child also had a claim to their mother's estate, according to the law in force at that time (1990). He complained in particular of an infringement of his right to the peaceful enjoyment of his possessions.

The Court held that there had been a **violation of Article 14** (prohibition of discrimination) of the Convention **in conjunction with Article 1 of Protocol No. 1** (right to the peaceful enjoyment of one's possessions) to the Convention. With regard to the situation in the other member States of the Council of Europe, it noted in particular, contrary to the French Government's assertions, a clear trend towards the abolition of discrimination in relation to adulterine children. The Court could not disregard such developments in its interpretation – which was necessarily evolutive – of the relevant provisions of the Convention. The Court further found in the present case that there was no good reason for discrimination based on adulterine birth. In any event, the adulterine child could not be reproached with events which were not his fault. Yet because the applicant was the child of an adulterous union he had been penalised as regards the division of the estate. The Court therefore concluded that there had been no reasonable relationship of proportionality between the means employed and the aim pursued.

See also: **Merger and Cros v. France**, judgment of 22 December 2004.

Camp and Bourimi v. the Netherlands

3 October 2000

The first applicant and her baby son (the second applicant) had to move out of their family home after the first applicant's partner died intestate, before marrying her and recognising the child (as had been his stated intention). Under Dutch law at the time the deceased's parents and siblings inherited his estate. They then moved into his house. The child was later declared legitimate, but as the decision was not retroactive, he was not made his father's heir.

The Court held that there had been a **violation of Article 14** (prohibition of discrimination) **in conjunction with Article 8** (right to respect for family life) of the Convention with respect to the second applicant. It observed that the child, who had not obtained legally-recognised family ties with his father until he had been declared legitimate two years after his birth, had been unable to inherit from his father unlike children who did have such ties either because they were born in wedlock or had been recognised by their father. This had undoubtedly constituted a difference in treatment between persons in similar situations, based on birth. According to the Court's case-law, very weighty reasons need to be put forward before a difference in treatment on the ground of birth out of wedlock can be regarded as compatible with the Convention. The Court observed in this respect that there had been no conscious decision on the part of the deceased not to recognise the child the first applicant was carrying. On the contrary, he had intended to marry her and the child had been declared legitimate precisely because his untimely death had precluded that marriage. The Court could therefore not accept the Dutch Government's arguments as to how the deceased might have prevented his son's present predicament and considered the child's exclusion from his father's inheritance disproportionate.

Pla and Puncernau v. Andorra

13 July 2004

The first applicant, an adopted child, was disinherited and his mother, the second applicant, consequently lost her right to the life tenancy of the family estate after the

Andorran courts interpreted a clause in a will – stipulating that the heir must be born of a "legitimate and canonical marriage" – as referring only to biological children.
The Court held that there had been a **violation of Article 14** (prohibition of discrimination) **in conjunction with Article 8** (right to respect for private and family life) of the Convention. It noted that the first applicant's parents had a "legitimate and canonical marriage" and there was nothing in the will in question to suggest that adopted children were excluded. The domestic courts' decision had amounted to "judicial deprivation of an adopted child's inheritance rights" which was "blatantly inconsistent with the prohibition of discrimination" (paragraph 59 of the judgment).

Brauer v. Germany

28 May 2009

The applicant was unable to inherit from her father who had recognised her under a law affecting children born outside marriage before 1 July 1949. The equal inheritance rights available under the law of the former German Democratic Republic (where she had lived for much of her life) did not apply because her father had lived in the Federal Republic of Germany when Germany was unified. The applicant complained that, following her father's death, her exclusion from any entitlement to his estate had amounted to discriminatory treatment and had been wholly disproportionate.
The Court held that there had been a **violation of Article 14** (prohibition of discrimination) **in conjunction with Article 8** (right to respect for private and family life) of the Convention. It could not find any ground on which such discrimination based on birth outside marriage could be justified today, particularly as the applicant's exclusion from any statutory entitlement to inherit penalised her to an even greater extent than the applicants in other similar cases brought before it.

Fabris v. France

7 February 2013 (Grand Chamber)

The applicant was born in 1943 of a liaison between his father and a married woman who was already the mother of two children born of her marriage. At the age of 40, he was judicially declared the latter's "illegitimate" child. Following his mother's death in 1994, he sought an abatement of the *inter vivos* division, claiming a reserved portion of the estate equal to that of the donees, namely, his mother's legitimate children. In a judgment of September 2004, the *tribunal de grande instance* declared the action brought by the applicant admissible and upheld his claim on the merits. Following an appeal by the legitimate children, the court of appeal set aside the lower court's judgment. The applicant unsuccessfully appealed on points of law. Before the Court, the applicant complained that he had been unable to benefit from a law introduced in 2001 granting children "born of adultery" identical inheritance rights to those of legitimate children, passed following delivery of the Court's judgment in *Mazurek v. France* of 1 February 2000 (see above).
The Court held that there had been a **violation of Article 14** (prohibition of discrimination) **taken in conjunction with Article 1** (protection of property) **of Protocol No. 1** to the Convention. It found in particular that the legitimate aim of protecting the inheritance rights of the applicant's half-brother and half-sister did not outweigh the applicant's claim to a share of his mother's estate and that the difference of treatment in his regard was discriminatory, as it had no objective and reasonable justification[4].

See also: **Quilichini v. France**, judgment of 14 March 2019.

[4]. See also, with regard to the same case, the Grand Chamber judgment of 28 June 2013 on the question of just satisfaction. In this judgment, the Court took formal note of the friendly settlement reached between the French Government and the applicant and decided to strike the remainder of the case out of its list of cases, pursuant to Article 39 of the Convention.

Mitzinger v. Germany

9 February 2017

The applicant in this case complained that she could not assert her inheritance rights after her father's death in 2009, as she had been born out of wedlock and before a cut-off point provided for by legislation in force at the time. Notably, children born outside marriage before 1 July 1949 were excluded from any statutory entitlement to inherit and from the right to financial compensation.

The Court held that there had been a **violation of Article 14** (prohibition of discrimination) **in conjunction with Article 8** (right to respect for private and family life) of the Convention. It found that the aims pursued by the applicant's difference in treatment, namely the preservation of legal certainty and the protection of the deceased and his family, had been legitimate. However, the Court was not satisfied that excluding children born out of wedlock before a certain cut-off point provided for by legislation had been a proportionate means to achieving the aims sought to be achieved. Decisive for that conclusion was the fact that the applicant's father had recognised her. Furthermore, she had regularly visited him and his wife. The latter's awareness of the applicant's existence, as well as of the fact that the legislation allowed children born inside marriage and outside marriage after the cut-off date to inherit, had therefore to have had a bearing on her expectations to her husband's estate. In any case, the Court noted, European case-law and national legislative reforms had shown a clear tendency towards eliminating all discrimination regarding the inheritance rights of children born outside marriage.

Citizenship

Genovese v. Malta

11 October 2011

The applicant was born out of wedlock of a British mother and a Maltese father. After the latter's paternity had been established judicially, the applicant's mother filed a request for her son to be granted Maltese citizenship. Her application was rejected on the basis that Maltese citizenship could not be granted to an illegitimate child whose mother was not Maltese.

The Court held that there had been a **violation of Article 14** (prohibition of discrimination) **taken in conjunction with Article 8** (right to respect for private life) of the Convention. It noted in particular that the 1975 European Convention on the Legal Status of Children Born out of Wedlock was in force in more than 20 European countries and reiterated that very weighty reasons would have had to be advanced to justify an arbitrary difference in treatment on the ground of birth. The applicant was in an analogous situation to other children with a father of Maltese nationality and a mother of foreign nationality. The only distinguishing factor, which had rendered him ineligible to acquire citizenship, was the fact that he had been born out of wedlock. The Court was not convinced by the Maltese Government's argument that children born in wedlock had a link with their parents resulting from their parents' marriage, which did not exist in cases of children born out of wedlock. It was precisely a distinction in treatment based on such a link which Article 14 of the Convention prohibited, unless it was otherwise objectively justified. Furthermore, the Court could not accept the argument that, while the mother was always certain, a father was not. In the applicant's case, his father was known and was registered in his birth certificate, yet the distinction arising from the Citizenship Act had persisted. Accordingly, no reasonable or objective grounds had been given to justify that difference in treatment.

Education

Case "relating to certain aspects of the laws on the use of languages in education in Belgium" v. Belgium (Belgian Linguistic Case)

23 July 1968

The applicants, parents of more than 800 Francophone children, living in certain (mostly Dutch-speaking) parts of Belgium, complained that their children were denied access to an education in French.

The Court found that, denying certain children access to the French-language schools with a special status in the six communes on the outskirts of Brussels because their parents lived outside those communes was in **violation of Article 14** (prohibition of discrimination) of the Convention **taken in conjunction with Article 2** (right to education) of Protocol No. 1 to the Convention. However, the Court also held that the Convention did not guarantee a child the right to state or state-subsidised education in the language of her/his parents.

D.H. and Others v. the Czech Republic

13 November 2007 (Grand Chamber)

This case concerned 18 Roma children, all Czech nationals, who were placed in schools for children with special needs, including those with a mental or social handicap, from 1996 to 1999. The applicants claimed that a two-tier educational system was in place in which the segregation of Roma children into such schools – which followed a simplified curriculum – was quasi-automatic.

The Court noted that, at the relevant time, the majority of children in special schools in the Czech Republic were of Roma origin. Roma children of average/above average intellect were often placed in those schools on the basis of psychological tests which were not adapted to people of their ethnic origin. The Court concluded that the law at that time had a disproportionately prejudicial effect on Roma children, in **violation of Article 14** (prohibition of discrimination) of the Convention **taken in conjunction with Article 2** (right to education) **of Protocol No. 1** to the Convention.

Oršuš and Others v. Croatia

16 March 2010 (Grand Chamber)

This case concerned fifteen Croatians national of Roma origin who complained that they had been victims of racial discrimination during their school years in that they had been segregated into Roma-only classes and consequently suffered educational, psychological and emotional damage.

Even though the present case differed from *D.H. and Others v. the Czech Republic* (see above) in that it had not been a general policy in both schools to automatically place Roma pupils in separate classes, it was common ground that a number of European States encountered serious difficulties in providing adequate schooling for Roma children. In the instant case, the Court observed that only Roma children had been placed in the special classes in the schools concerned. The Croatian Government attributed the separation to the pupils' lack of proficiency in Croatian; however, the tests determining their placement in such classes did not focus specifically on language skills, the educational programme subsequently followed did not target language problems and the children's progress was not clearly monitored. The placement of the applicants in Roma-only classes had therefore been unjustified, in **violation of Article 14** (prohibition of discrimination) of the Convention **taken in conjunction with Article 2** (right to education) **of Protocol No. 1** to the Convention.

See also: **Sampanis and Others v. Greece**, judgment of 5 June 2008; **Horvàth and Vadàzi v. Hungary**, decision on the admissibility of 9 November 2010; **Sampani and Others v. Greece**, judgment of 11 December 2012; **Horváth et Kiss c. Hongrie**, judgment of 29 January 2013; **Lavida and Others v. Greece**, judgment of 28 May 2013; and the factsheet on **"Roma and Travellers"**.

Ádám and Others v. Romania

13 October 2020

The applicants, ethnic Hungarians, undertook their education in their mother tongue. In order to receive their baccalaureate (school-leaving) qualification they had to sit exams to test their Romanian and their Hungarian, having to take two more exams than ethnic Romanians. They complained about discrimination against them as members of the Hungarian minority in the taking of final school exams — they had to take more exams than ethnic Romanians (two Hungarian tests) over the same number of days, and the Romanian exams had been difficult for them as non-native speakers.

The Court held that there had been **no violation of Article 1** (general prohibition on discrimination) of **Protocol No. 12** to the Convention, finding that neither the content of the curriculum nor the scheduling of the exams had caused a violation of the applicants' rights. It noted in particular that the importance for members of a national minority to study the official language of the State and the corresponding need to assess their command of it in the baccalaureate was not called into question in the case. Nor was it its role to decide on what subjects should be tested or in what order, which came within States' discretion ("margin of appreciation"). Furthermore, the extra tests the applicants had had to take had been a result of their own choice to study in their mother tongue.

Protection of property (Article 1 of Protocol No. 1 to the Convention)

S.L. and J.L. v. Croatia (no. 13712/11)

7 May 2015

This case concerned a deal to swap a seaside villa for a less valuable flat. The Social Welfare Centre had to give its consent to the deal as the owners of the villa – the two applicants – were minors. The Social Welfare Centre agreed to the proposed swap without rigorously examining the particular circumstances of the case or the family. The lawyer acting on behalf of the children's parents also happened to be the son-in-law of the original owner of the flat. Before the Court, the applicants complained that the Croatian State, through the Social Welfare Centre, had failed to properly protect their interests as the owners of a villa which was of significantly greater value than the flat they had been given in exchange.

The central question in this case was whether the State took the best interests of the children into account in accepting the property swap. As minors their interests were supposed to be safeguarded by the State, in particular through the Social Welfare Centre and it was incumbent on the civil courts to examine the allegations concerning the swap agreement which raised the issue of compliance with the constitutional obligation of the State to protect children. The Court held that in the applicants' case there had been a **violation of Article 1** (protection of property) **of Protocol 1** to the Convention, finding that the domestic authorities had failed to take the necessary measures to safeguard the proprietary interests of the children in the real estate swap agreement or to give them a reasonable opportunity to effectively challenge the agreement.

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

Timishev v. Russia

13 December 2005

The applicant's children, aged seven and nine, were excluded from a school they had attended for two years because their father, a Chechen, was not registered as a resident of the city (Nalchik, in the Kabardino-Balkaria Republic of Russia) where they lived and no longer had a migrant's card, which he had been obliged to surrender in exchange for compensation for property he had lost in Chechnya.

The Court observed that the applicant's children had been refused admission to the school which they had attended for the previous two years. The Russian Government had not contested the submission that the true reason for the refusal had been that the applicant had surrendered his migrant's card and had thereby forfeited his registration as a resident in the town of Nalchik. The Government had confirmed however that Russian law did not allow children's right to education to be made conditional on the registration of their parents' residence. The applicant's children were therefore denied the right to education provided for by domestic law. As Russian law did not allow children's access to education to be made conditional on the registration of their parent's place of residence, the Court held that there had been a **violation of Article 2** (right to education) **of Protocol No. 1** to the Convention.

Folgerø and Others v. Norway

29 June 2007 (Grand Chamber)

In 1997 the Norwegian primary school curriculum was changed, with two separate subjects – Christianity and philosophy of life – being replaced by a single subject covering Christianity, religion and philosophy, known as KRL. Members of the Norwegian Humanist Association, the applicants attempted unsuccessfully to have their children entirely exempted from attending KRL. Before the Court, they complained in particular that the authorities' refusal to grant them full exemption prevented them from ensuring that their children received an education in conformity with their religious and philosophical convictions.

The Court held that there had been a **violation of Article 2** (right to education) **of Protocol No. 1** to the Convention. It found in particular that the curriculum of KRL gave preponderant weight to Christianity by stating that the object of primary and lower secondary education was to give pupils a Christian and moral upbringing. The option of having children exempted from certain parts of the curriculum was capable of subjecting the parents concerned to a heavy burden with a risk of undue exposure of their private life, and the potential for conflict was likely to deter them from making such requests. At the same time, the Court pointed out that the intention behind the introduction of the new subject that by teaching Christianity, other religions and philosophies together, it would be possible to ensure an open and inclusive school environment, was in principle consistent with the principles of pluralism and objectivity embodied in Article 2 of Protocol No. 1.

Hasan and Eylem Zengin v. Turkey

9 October 2007

Pointing out that his family followed the Alevist branch of Islam (an unorthodox minority branch of Islam), the applicant in 2001 requested for his daughter to be exempted from attending classes in religious culture and ethics at the State school in Istanbul where she was a pupil. His requests were dismissed, lastly on appeal before the Supreme Administrative Court. The applicants complained, in particular, of the way in which religious culture and ethics were taught at the State school, namely from a perspective which praised the Sunni interpretation of the Islamic faith and tradition and without providing detailed information about other religions.

The Court held that there had been a **violation of Article 2** (right to education) **of Protocol No. 1** to the Convention. Having examined the Turkish Ministry of Education's guidelines for lessons in religious culture and ethics and school textbooks, it found in particular that the syllabus gave greater priority to knowledge of Islam than to that of other religions and philosophies and provided specific instruction in the major principles of the Muslim faith, including its cultural rites. While it was possible for Christian or Jewish children to be exempted from religious culture and ethics lessons, the lessons were compulsory for Muslim children, including those following the Alevist branch.

Under **Article 46** (binding force and execution of judgments) of the Convention, the Court further concluded that the violation found originated in a problem related to implementation of the syllabus for religious instruction in Turkey and the absence of appropriate methods for ensuring respect for parents' convictions. In consequence, it

considered that bringing the Turkish educational system and domestic legislation into conformity with Article 2 of Protocol No. 1 to the Convention would represent an appropriate form of compensation.

Ali v. the United Kingdom

11 January 2011

The applicant was excluded from school during a police investigation into a fire at his school, because he had been in the vicinity at the relevant time. He was offered alternative schooling and, after the criminal proceedings against him were discontinued, his parents were invited to a meeting with the school to discuss his reintegration. They failed to attend and also delayed deciding on whether they wanted him to return to the school. His place was given to another child.

The Court noted that the right to education under the Convention comprised access to an educational institution as well as the right to obtain, in conformity with the rules in each State, official recognition of the studies completed. Any restriction imposed on it had to be foreseeable for those concerned and pursue a legitimate aim. At the same time, the right to education did not necessarily entail the right of access to a particular educational institution and it did not in principle exclude disciplinary measures such as suspension or expulsion in order to comply with internal rules. In the instant case, the Court found that the exclusion of the applicant had not amounted to a denial of the right to education. In particular, it had been the result of an ongoing criminal investigation and as such had pursued a legitimate aim. It had also been done in accordance with the 1998 Act and had thus been foreseeable. In addition, the applicant had only been excluded temporarily, until the termination of the criminal investigation into the fire. His parents had been invited to a meeting with a view to facilitating his reintegration, yet they had not attended. Had they done so, their son's reintegration would have been likely. Further, the applicant had been offered alternative education during the exclusion period, but did not take up the offer. Accordingly, the Court was satisfied that his exclusion had been proportionate to the legitimate aim pursued and had not interfered with his right to education. There had, therefore, been **no violation of Article 2** (right to education) **of Protocol No. 1** to the Convention.

Catan and Others v. the Republic of Moldova and Russia

19 October 2012 (Grand Chamber)

This case concerned the complaint by children and parents from the Moldovan community in Transdniestria about the effects of a language policy adopted in 1992 and 1994 by the separatist regime forbidding the use of the Latin alphabet in schools and the subsequent measures taken to enforce the policy. Those measures included the forcible eviction of pupils and teachers from Moldovan/Romanian-language schools as well as forcing the schools to close down and reopen in different premises.

The Court held that there had been **no violation of Article 2** (right to education) of **Protocol No. 1** to the Convention in respect of ***the Republic of Moldova*** and a **violation of Article 2 of Protocol No. 1** in respect of the ***Russian Federation***. It found in particular that the separatist regime could not survive without Russia's continued military, economic and political support and that the closure of the schools therefore fell within Russia's jurisdiction under the Convention. The Republic of Moldova, on the other hand, had not only refrained from supporting the regime but had made considerable efforts to support the applicants themselves by paying for the rent and refurbishment of the new school premises as well as for all equipment, teachers' salaries and transport costs.

Mansur Yalçın and Others v. Turkey

16 September 2014

In this case, the applicants, who are adherents of the Alevi faith, an unorthodox minority branch of Islam, complained that the content of the compulsory classes in religion and ethics in schools was based on the Sunni understanding of Islam.

The Court held that there had been a **violation of Article 2** (right to education) **of Protocol No. 1** to the Convention with respect to three of the applicants, whose children were at secondary school at the relevant time. It observed in particular that in the field of religious instruction, the Turkish education system was still inadequately equipped to ensure respect for parents' convictions.
Under **Article 46** (binding force and execution of judgments) of the Convention, observing that the violation of Article 2 of Protocol No. 1 found had arisen out of a structural problem already identified in the case of *Hasan and Eylem Zengin* (see above), the Court held that Turkey was to implement appropriate measures to remedy the situation without delay, in particular by introducing a system whereby pupils could be exempted from religion and ethics classes without their parents having to disclose their own religious or philosophical convictions.

Memlika v. Greece

6 October 2015
This case concerned the exclusion of children aged 7 and 11 from school after they were wrongly diagnosed with leprosy. The applicants – the two children in question and their parents – alleged in particular that the exclusion of the children from school had infringed their right to education.
The Court held that there had been a **violation of Article 2** (right to education) **of Protocol No. 1** to the Convention. It accepted that the children's exclusion from school had pursued the legitimate aim of preventing any risk of contamination. Nevertheless, it considered that the delay in setting up the panel responsible for deciding on the children's return to school had not been proportionate to the legitimate aim pursued. As the children had been prevented from attending classes for over three months, the Court therefore found that their exclusion had breached their right to education.

C.P. v. the United Kingdom (no. 300/11)

6 September 2016 (decision on the admissibility)
The applicant, a minor, complained that his temporary exclusion from school from 7 February 2007 to 20 April 2007 had breached his right to education.
The Court declared the application **inadmissible** pursuant to Article 35 (admissibility criteria) of the Convention, finding that, in the circumstances of the case, the applicant could not be said to have suffered a significant disadvantage in the sense of important adverse consequences.

Dupin v. France

18 December 2018 (decision on the admissibility)
The applicant, the mother of an autistic child, complained in particular that the domestic authorities had refused to allow her child to attend a mainstream school. She also argued that the State had failed to fulfil its positive obligation to take the necessary measures for disabled children, and that the lack of education in itself constituted discrimination. Lastly, she complained that the specific resources earmarked by the State for autistic children were insufficient.
The Court held that the complaint that there had been a violation of the right to education of the applicant's child was **inadmissible** as manifestly ill-founded, finding that the refusal to admit the child to a mainstream school did not constitute a failure by the State to fulfil its obligations under Article 2 (right to education) of Protocol No. 1 or a systematic negation of his right to education on account of his disability. It observed in particular that the national authorities had regarded the child's condition as an obstacle to his education in a mainstream setting. After weighing in the balance the level of his disability and the benefit he could derive from access to inclusive education, they had opted for an education that was tailored to his needs, in a specialised setting. The Court also noted that this strategy had been satisfactory for the child's father, who had custody of the child. Moreover, since 2013, the child had received effective educational support within an institution for special health and educational needs, and this form of schooling was conducive to his personal development. The Court further considered that

the complaint that the French authorities had failed to take the necessary measures to cater for disabled children was also manifestly ill-founded, for lack of evidence. The Court lastly observed that the complaint about the alleged insufficiency of the specific resources earmarked by the State for autistic children was inadmissible for non-exhaustion of domestic remedies.

Iovcev and Others v. the Republic of Moldova and Russia

17 September 2019 (Committee judgment)

This case concerned complaints about pressure that had been brought to bear in 2013-14 by the authorities of the self-proclaimed "Moldavian Republic of Transdniestria" (the "MRT"), on four Romanian/Moldovan-speaking schools in that Region which used the Latin alphabet. Among the applicants, five pupils and three parents of pupils complained in particular that measures had been taken to harass and intimidate them because of their choice to pursue their or their children's education at the schools concerned.

The Court held that **Russia** had **breached** a number of Convention rights including, in respect of the five pupils and three parents of pupils, the right to education protected by **Article 2 of Protocol No. 1** to the Convention. In particular it found that Russia had exercised effective control over the "MRT" during the period in question and that, in view of its continuing military, economic and political support for the "MRT", without which the latter could not have survived, the responsibility of Russia was engaged under the Convention on account of the interference with the applicants' rights. The Court found, by contrast, that the Republic of Moldova had not failed, in respect of the complaints raised by the applicants, to fulfil its positive obligations.

Papageorgiou and Others v. Greece

31 October 2019

This case concerned compulsory religious education in Greek schools. The applicant parents complained that if they had wanted to have their daughters exempted from religious education, they would have had to declare that they were not Orthodox Christians. Furthermore, they complained that the school principal would have had to verify whether their declarations were true and that such declarations were then kept in the school archives.

The Court held that there had been a **violation of Article 2** (right to education) **of Protocol No. 1** (right to education) to the Convention, **interpreted in the light of Article 9** (freedom of thought, conscience, and religion) of the Convention. It stressed in particular that the authorities did not have the right to oblige individuals to reveal their beliefs. However, the system in Greece for exempting children from religious education classes required parents to submit a solemn declaration saying that their children were not Orthodox Christians. That requirement placed an undue burden on parents to disclose information from which it could be inferred that they and their children held, or did not hold, a specific religious belief. Moreover, such a system could even deter parents from making an exemption request, especially in a case such as that of the applicants, who lived on small islands where the great majority of the population owed allegiance to a particular religion and the risk of stigmatisation was much higher.

Texts and documents

See, in particular:

- **Handbook on European law relating to the rights of the child**, European Union Agency for Fundamental Rights and Council of Europe, June 2015
- Internet site of the Council of Europe programme for the promotion of Children's Rights and the protection of Children from violence: **"Building a Europe for and with Children"**

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This Factsheet does not bind the Court and is not exhaustive

Accompanied migrant minors in detention

See also the factsheets on "Unaccompanied migrant minors in detention" and "Migrants in detention".

"[T]he child's extreme vulnerability is the decisive factor and takes precedence over considerations relating to the status of illegal immigrant (…). ... [C]hildren have specific needs that are related in particular to their age and lack of independence, but also to their asylum-seeker status. The [European] Court [of Human Rights] would, moreover, observe that the Convention on the Rights of the Child encourages States to take the appropriate measures to ensure that a child who is seeking to obtain refugee status enjoys protection and humanitarian assistance, whether the child is alone or accompanied by his or her parents (…)." (judgment Popov v. France of 19 January 2012, § 91).

"A measure of confinement must … be proportionate to the aim pursued by the authorities, namely the enforcement of a removal decision ... It can be seen from the Court's case-law that, where families are concerned, the authorities must, in assessing proportionality, take account of the child's best interests. In this connection … there is currently a broad consensus – including in international law – in support of the idea that in all decisions concerning children, their best interests must be paramount (…).[T]he protection of the child's best interests involves both keeping the family together, as far as possible, and considering alternatives so that the detention of minors is only a measure of last resort ..." (judgment Popov v. France of 19 January 2012, §§ 140-141).

Conditions of detention

Muskhadzhiyeva and Others v. Belgium (see also below, under "Deprivation of liberty")

19 January 2010

In October 2006, having fled from Grozny (Chechnya), the applicants – a mother and her four children (respectively aged seven months, three and a half years, five and seven years at the material time), Russian nationals of Chechen origin – arrived in Belgium, where they sought asylum. As they had spent some time in Poland, the Polish authorities agreed to take charge of them, by virtue of the "Dublin II" Regulation[1]. The Belgian authorities accordingly issued a decision refusing them permission to stay in Belgium and ordering them to leave the country. In January 2007 they were placed in a closed transit centre run by the Aliens Office near Brussels airport, where aliens (single adults or families) were held pending their removal from the country.

In view of the young age of the children, the duration of their detention and their state of health as attested by medical certificates during their detention, the European Court of Human Rights found that the conditions in which the children had been held in the closed transit centre had attained the minimum level of severity required to constitute a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights. The Court recalled in particular that the extreme

[1]. The "Dublin system" aims at determining which EU Member State is responsible for examining an asylum application lodged in one of the Member States by a third-country national. See also the factsheet on "'Dublin' cases".

vulnerability of a child was a paramount consideration and took precedence over the status as an illegal alien. It was true that in the present case the four children had not been separated from their mother, but that did not suffice to exempt the authorities from their obligation to protect the children. They had been held for over a month in a closed centre which was not designed to house children, as confirmed by several reports cited by the Court. The Court also referred to the concern expressed by independent doctors about the children's state of health. The Court held, however, that there had been **no violation of Article 3** of the Convention in respect of the first applicant, noting in particular that she had not been separated from her children and that their constant presence must have somewhat appeased the distress and frustration she must have felt at being unable to protect them against the conditions of their detention, so that it did not reach the level of severity required to constitute inhuman treatment.

Kanagaratnam v. Belgium (see also below, under "Deprivation of liberty")

13 December 2011

This case concerned the detention for almost four months in a closed transit centre, pending their removal, of a mother and her three children (respectively aged 13, 11 and eight years at the material time), Sri Lankan nationals of Tamil origin asylum seekers who had arrived in Belgium in January 2009.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention in respect of the children. It noted in particular that the circumstances of the instant case were comparable with those of the case of *Muskhadzhiyeva and Others v. Belgium* (see above). The Court also reiterated that the particular vulnerability of the children, who were already traumatised even before their arrival in Belgium as a result of circumstances relating to the civil war in their home country and their flight, had also been recognised by the Belgian authorities since they had finally granted the family refugee status. That vulnerability had increased on their arrival in Belgium, following their arrest at the border and placement in a closed centre pending their removal. Therefore, despite the fact that the children had been accompanied by their mother, the Court considered that by placing them in a closed centre, the Belgian authorities had exposed them to feelings of anxiety and inferiority and had, in full knowledge of the facts, risked compromising their development. Consequently, the situation experienced by the children had amounted to inhuman and degrading treatment. The Court found, however, that there had been **no violation of Article 3** of the Convention in respect of the children's mother. While acknowledging that the dilution of her parental role, her reduced power to control her children's lives and her powerlessness to end her children's suffering had certainly exposed her to extreme uncertainty and helplessness, it did not have sufficient grounds for departing from the approach adopted in the case of *Muskhadzhiyeva and Others*.

Popov v. France (see also below, under "Deprivation of liberty" and "Right to respect for family life")

19 January 2012

The applicants, a married couple from Kazakhstan accompanied by their two children, applied for asylum in France, but their application was rejected, as were their applications for residence permits. In August 2007, the applicants and their children, then aged five months and three years, were arrested at their home and taken into police custody and the following day they were transferred to Charles-de-Gaulle airport to be flown back to Kazakhstan. The flight was cancelled, however, and the applicants and their children were then taken to the Rouen-Oissel administrative detention centre, which was authorised to accommodate families.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention had occurred with respect to the detention conditions of the children. It observed in particular that, while families were separated from other detainees at the Rouen-Oissel centre, the only beds available were iron-frame beds for adults, which were dangerous for children. Nor were there any play areas or activities for children, and the automatic doors to the rooms were dangerous for them. The Court further noted that the Council of Europe Commissioner for Human Rights and

the European Committee for the Prevention of Torture and Inhuman or degrading Treatment or Punishment (CPT) had also pointed out that the stress, insecurity, and hostile atmosphere in these centres was bad for young children, in contradiction with international child protection principles according to which the authorities must do everything in their power to avoid detaining children for lengthy periods. Two weeks' detention, while not in itself excessive, could seem like a very long time for children living in an environment ill-suited to their age. The conditions in which the applicants' children had been obliged to live with their parents in a situation of particular vulnerability heightened by their detention were bound to cause them distress and have serious psychological repercussions. The Court found, however, that there had been **no violation of Article 3** of the Convention in so far as detention conditions of the parents were concerned, noting in particular that the fact that they had not been separated from their children during their detention must have alleviated the feeling of helplessness, distress and frustration their stay at the administrative detention centre must have caused them.

Mahmundi and Others v. Greece

31 July 2012

This case concerned the detention in the Pagani detention centre on the island of Lesbos of a married couple from Afghanistan, accompanied by their children aged two and six. The woman was eight months pregnant and gave birth in Lesbos Hospital while in detention. Her sister was accompanied by her 14-year-old twins. In August 2009, after being rescued by the maritime police from a boat that was starting to sink off the island of Lesbos, they were taken into detention pending deportation.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention, finding that the applicants' conditions of detention had amounted to inhuman and degrading treatment. It noted in particular that, following its visit to Pagani in September 2009, the European Committee for the Prevention of Torture and Inhuman or degrading Treatment or Punishment (CPT) had found that the centre was filthy beyond description, and deplored the fact that there had been no improvement in the situation despite the "abominable" conditions of detention it had criticised in its 2008 report. The Court also stressed, in particular, the absence of any specific supervision of the applicants despite their particular status as minors and a pregnant woman. In this case the Court also held that there had been a **violation of Article 13** (right to an effective remedy) of the Convention, noting in particular that it had been materially impossible for the applicants to take any action before the courts to complain of their conditions of detention in Pagani.

A.B. and Others v. France (n° 11593/12) (see also below, under "Deprivation of liberty" and "Right to respect for family life")

12 July 2016

This case concerned the administrative detention of a child, then aged four, for eighteen days, in the context of a deportation procedure against his parents, Armenian nationals. The applicants alleged in particular that the placement in administrative detention of their son in the Toulouse-Cornebarrieu administrative detention centre had amounted to treatment contrary to Article 3 (prohibition of inhuman or degrading treatment) of the Convention.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention in respect of the applicant's child, finding that, given his age and the duration and conditions of his detention in the administrative detention centre, the French authorities had subjected him to treatment which had exceeded the threshold of seriousness required by Article 3. The Court noted in particular that, where the parents were placed in administrative detention, the children were *de facto* deprived of liberty. It acknowledged that this deprivation of liberty, which resulted from the parents' legitimate decision not to entrust them to another person, was not in principle contrary to domestic law. The Court held, however, that the presence in administrative detention of a child who was accompanying his or her

parents was only compatible with the European Convention on Human Rights if the domestic authorities established that they had taken this measure of last resort only after having verified, in the specific circumstances, that no other less restrictive measure could be applied. Lastly, the Court observed that the authorities had not taken all the necessary steps to enforce the removal measure as quickly as possible and thus limit the time spend in detention. In the absence of a particular risk of absconding, the administrative detention of eighteen days' duration seemed disproportionate to the aim pursued.

See also the judgments delivered by the Court on the same day in the cases of **A.M. and Others v. France** (no. 24587/12), **R.C. and V.C. v. France** (no. 76491/14), **R.K. and Others v. France** (no. 68264/14) and **R.M. and Others v. France** (no. 33201/11).

S.F. and Others v. Bulgaria (no. 8138/16)

7 December 2017

This case concerned a complaint brought by an Iraqi family about the conditions in which they had been kept in immigration detention for a few days when trying to cross Bulgaria on their way to Western Europe in 2015. The applicants complained in particular about the conditions in which the three minors – then aged 16, 11 and one and a half years – had been kept in the detention facility in Vidin. Submitting a video recording, they alleged in particular that the cell in which they had been held had been extremely run-down. They also maintained that the authorities had failed to provide them with food and drink for the first 24 hours of their custody and that the baby bottle and milk of the youngest child had been taken away upon their arrival at the facility and only given to the mother 19 hours later.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention in respect of the three children. It noted in particular that the amount of time spent by the applicants in detention – a period of either thirty-two hours or forty-one hours (the exact length of time was disputed by the parties) – was shorter than the periods referred to in the above-mentioned cases. However, the conditions were considerably worse than those in all those cases (including limited access to toilet facilities, failure to provide food and drink and delayed access to the toddler's baby bottle and milk). For the Court, by keeping the three minor applicants in such conditions, even for a brief period of time, the Bulgarian authorities subjected them to inhuman and degrading treatment. While acknowledging that in recent years the States Parties that sit on the European Union's external borders have had difficulties in coping with the massive influx of migrants, the Court found, however, that it could not be said that at the relevant time Bulgaria was facing an emergency of such proportions that it was practically impossible for its authorities to ensure minimally decent conditions in the short-term holding facilities in which they decided to place minor migrants immediately after their interception and arrest.

See also, recently: ***G.B. and Others v. Turkey (n° 4633/15)***, judgment of 17 October 2019.

Pending applications

A.S. and Others v. Hungary (no. 34883/17)

Application communicated to the Hungarian Government on 10 July 2017

The application concerns the confinement, in conditions which were allegedly inhuman, of an Afghan family (a mother who was eight months pregnant at the material time, her husband and their two underage children) to the Röszke transit zone at the border of Hungary and Serbia during one month, pending the examination of their asylum request.

The Court gave notice of the application to the Hungarian Government and put questions to the parties under Articles 3 (prohibition of inhuman or degrading treatment), 5 (right to liberty and security) and 13 (right to an effective remedy) of the Convention.

Similar applications pending: **N.A. and Others v. Hungary** (no. 37325/17) and **H.M. and Others v. Hungary** (no. 38967/17), communicated to the Government on 13 September 2017.

N.B. and Others v. France (no. 49775/20)

Application communicated to the French Government on 25 February 2021

This case concerns the administrative detention of a couple and their minor child, aged eight at the relevant time, for fourteen days.

The Court gave notice of the application to the French Government and put questions to the parties under Articles 3 (prohibition of inhuman or degrading treatment) and 34 (right of individual application) of the Convention.

Deprivation of liberty and challenging the lawfulness of detention

Muskhadzhiyeva and Others v. Belgium (see also above, under "Conditions of detention")

19 January 2010

This case concerned the detention for more than a month of three underage children and their mother in a closed transit centre. They complained in particular that their detention had been unlawful and the remedy against it before the Court of Cassation ineffective, as they had been removed from the country before the court had reached a decision.

The Court noted in particular that the applicants had been in a situation where it was in principle possible under the Convention to place them in detention (the Convention authorises the "lawful arrest and detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition"). That did not mean, however, that their detention was necessarily lawful. In the present case, in so far as the four children had been kept in a closed centre designed for adults and ill-suited to their extreme vulnerability, even though they were accompanied by their mother, the Court found that there had been a **violation of Article 5 § 1** (right to liberty and security) in their respect. The Court saw however no reason, on the other hand, to find the mother's detention in breach of the Convention. She had been lawfully detained with a view to her expulsion from Belgium. The Court therefore held that there had been **no violation of Article 5 § 1** of the Convention in her respect. The Court further held that none of the applicants had been the victim of a **violation of Article 5 § 4** (right to have lawfulness of detention decided speedily by a court) of the Convention. It was true that the Belgian Court of Cassation had delivered its decision concerning the applicants' request for release after they had been sent back to Poland. Prior to that, however, two courts having *de facto* and *de jure* jurisdiction had examined the request without delay while they were still in Belgium. The Court pointed out that it was sufficient in principle for an appeal to be examined by a single court, on condition that the procedure followed had a judicial character and gave the individual concerned guarantees appropriate to the kind of deprivation of liberty in question.

Kanagaratnam v. Belgium (see also above, under "Conditions of detention")

13 December 2011

This case concerned the detention of a mother and her three underage children for almost four months in a closed centre for illegal aliens pending their removal. They complained in particular that their continued detention had not been in accordance with the law and had been arbitrary.

The Court held that there had been a **violation of Article 5 § 1** (right to liberty and security) of the Convention in respect of the three children and their mother, finding that their detention had been unlawful. Concerning the children in particular, the Court considered that by placing them in a closed centre designed for adult illegal aliens, in conditions which were ill-suited to their extreme vulnerability as minors, the Belgian authorities had not sufficiently guaranteed the children's right to their liberty. The fact

that the children had been accompanied by their mother was not a reason to depart from that conclusion.

Popov v. France (see also above, under "Conditions of detention", and below, under "Right to respect for family life")

19 January 2012

This case concerned the administrative detention of a couple of asylum-seekers and their two underage children for two weeks pending their removal. They complained in particular that their detention had been unlawful.

The Court held that there had been a **violation of Article 5 § 1** (right to liberty and security) of the Convention in respect of the children. It found in particular that, although the children had been placed with their parents in a wing reserved for families, their particular situation had not been taken into account by the French authorities, who had not sought to establish whether any alternative solution, other than administrative detention, could have been envisaged. The Court also held that there had been a **violation of Article 5 § 4** (right to have lawfulness of detention decided speedily by a court) of the Convention concerning the children. In this respect, it noted in particular that, while the parents had had the possibility to have the lawfulness of their detention examined by the French courts, the children "accompanying" their parents had found themselves in a legal void, unable to avail themselves of such a remedy. In the present case no removal order had been issued against the children that they might have challenged in court. Nor had their administrative detention been ordered, so the courts had not been able to examine the lawfulness of their presence in the administrative detention centre. That being so, they had not enjoyed the protection required by the Convention.

See also: judgments in the cases of **A.B. and Others v. France** (no. 11593/12), **R.K. and Others v. France** (no. 68264/14) and **R.M. and Others v. France** (no. 33201/11) of 12 July 2016.

A.M. and Others v. France (no. 24587/12) (see also above, under "Conditions of detention", and below, under "Right to respect for family life")

12 July 2016

This case concerned the administrative detention of two underage children who were accompanying their mother in the context of a deportation procedure.

In the present case, the Court held that there had been **no violation of Article 5 § 1** (right to liberty and security) of the Convention in respect of the child. It noted in particular that the option of resorting to a less coercive measure had been dismissed by the prefect on account of the mother's refusal to contact the border police with a view to organising her departure, the absence of identity papers and the uncertain nature of her accommodation. The French authorities had thus effectively sought to establish whether the placement of this family in administrative detention was a measure of last resort for which no alternative was available. The Court also held that there had been a **violation of Article 5 § 4** (right to have lawfulness of detention decided speedily by a court) of the Convention concerning the child.

See also the judgment delivered by the Court on the same day in the case of **R.C. and V.C. v. France** (no. 76491/14).

See also, recently: ***G.B. and Others v. Turkey (n° 4633/15)***, judgment of 17 October 2019; ***Bilalova and Others v. Poland***, judgment of 26 March 2020.

R.R. and Others v. Hungary (no. 36037/17)

2 March 2021[2]

This case concerned the confinement of an asylum-seeking family, including three minor children, in the Röszke transit zone on the border with Serbia in April-August 2017. The applicants complained, in particular, of the fact of and the conditions of their detention in

[2]. This judgment will become final in the circumstances set out in Article 44 § 2 (final judgments) of the European Convention on Human Rights.

the transit zone, of the lack of a legal remedy to complain of the conditions of detention, and of the lack of judicial review of their detention.
The Court found that the applicants' stay in the transit zone had amounted to a *de facto* deprivation of liberty. It considered that without any formal decision of the authorities and solely by virtue of an overly broad interpretation of a general provision of the law, the applicants' detention could not be considered to have been lawful. Accordingly, it concluded that in the present case there had been no strictly defined statutory basis for the applicants' detention and that there had thus been a **violation of Article 5 § 1** (right to liberty and security) of the Convention. In the absence of any formal decision of the authorities and any proceedings by which the lawfulness of the applicant's detention could have been decided speedily by a court, the Court also held that there had been a **violation of Article 5 § 4** (right to have lawfulness of detention decided speedily by a court) of the Convention. Lastly, in view, in particular, of the applicant children's young age, the applicant mother's pregnancy and health situation and the length of the applicants' stay in the conditions in the transit zone, the Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention.

Pending application

A.S. and Others v. Hungary (no. 34883/17)

Application communicated to the Hungarian Government on 10 July 2017
See above, under "Conditions of detention".

Right to respect for family life

Popov v. France (See also above, under "Conditions of detention" and "Deprivation of liberty")

19 January 2012
This case concerned the administrative detention of a couple of asylum-seekers and their two children for two weeks pending their removal. The applicants argued in particular that their placement in detention had not been a necessary measure in relation to the aim pursued and that the conditions and duration of their detention had constituted a disproportionate interference with their right to a private and family life.
The Court held that there had been a **violation of article 8** (right to respect for private and family life) of the Convention in respect of the children and their parents. It firstly observed that the interference with the applicants' family life because of their two-week detention at the centre had been in accordance with the French Code governing the entry and residence of foreigners and the right of asylum, and pursued the legitimate aim of combating illegal immigration and preventing crime. Then, referring to the broad consensus, particularly in international law, that the children's interests were paramount in all decisions concerning them, the Court noted that France was one of the only three European countries that systematically had accompanied minors placed in detention. In the present case, as there had been no particular risk of the applicants absconding, their detention had not been justified by any pressing social need, especially considering that their placement in a hotel in August 2007 had posed no problem. Yet the French authorities did not appear to have sought any solution other than detention, or to have done everything in their power to have the removal order enforced as promptly as possible. Lastly, after recalling that, in the case of *Muskhadzhiyeva and Others v. Belgium* (see above, under "Conditions of detention" and "Right to liberty and security"), it had rejected a complaint similar to the applicants', the Court considered, however, considering the above factors and the recent case-law developments concerning "the child's best interests" in the context of the detention of child migrants[3], that the child's best interests called not only for families to be kept together but also for the detention of families with young children to be limited. In the applicants' circumstances, the Court

[3] See Rahimi v. Greece, judgment of 5 April 2011.

found that two weeks' detention in a closed facility was disproportionate to the aim pursued.

See also: judgments in the cases of **A.B. and Others v. France** (no. 11593/12) and **R.K. and Others v. France** (no. 68264/14) of 12 July 2016; judgment in the case of **Bistieva and Others v. Poland** of 10 April 2018.

A.M. and Others v. France (no. 24587/12) (see also above, under "Conditions of detention" and "Deprivation of liberty")

12 July 2016

This case concerned the administrative detention of two underage children who were accompanying their mother in the context of a deportation procedure.

The Court held that there had been **no violation of Article 8** (right to respect for private and family life) of the Convention in respect of the children and their mother, finding that they had not sustained a disproportionate interference with their right to respect for their family life. It noted in particular that the detention measure pursued the legitimate aim of combating illegal immigration and controlling the entry and residence of foreigners in France. It served, *inter alia*, to protect national security, law and order and the country's economy and to prevent crime. In the present case, the Court considered that the detention, for a total duration of eight days, did not appear disproportionate to the aim pursued.

See also the judgment delivered by the Court on the same day in the case of **R.C. and V.C. v. France** (no. 76491/14).

Texts and documents

See in particular:

- **Handbook on European law relating to asylum, borders and immigration**, European Union Fundamental Rights Agency / European Court of Human Rights, 2013
- Council of Europe Commissioner for Human Rights **web page** on the thematic work **"**Migration**"**
- Special Representative of the Council of Europe Secretary General on migration and refugees **web page**

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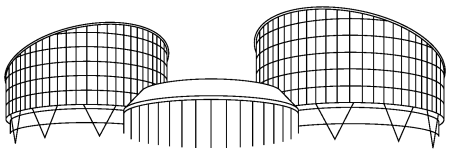

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

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

Immigration

Updated on 30 April 2021

This Guide has been prepared by the Registry and does not bind the Court.

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Note to readers

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

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

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

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

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

Introduction

1. The present document is intended to serve as a reference tool to the Court's case-law in immigration related cases, covering all Convention Articles that could come into play. It is divided into six chapters, in principle corresponding to the sequence of events in chronological order. It primarily refers to, rather than reproduces or elaborates on, the Court's relevant judgments and decisions, including, wherever possible, recent judgments and decisions consolidating the relevant principles. It is thus conceived as an entry point to the Court's case-law on a given matter, not as an exhaustive overview.

2. Few provisions of the Convention and its Protocols explicitly concern "aliens" and they do not contain a right to asylum. As a general rule, States have the right, as a matter of well-established international law and subject to their treaty obligations, to control entry, residence and expulsion of non-nationals. In *Soering v. the United Kingdom* the Court ruled for the first time that the applicant's extradition could raise the responsibility of the extraditing State under Article 3 of the Convention. Since then, the Court has consistently held that the removal of an alien by a Contracting State may give rise to an issue under Articles 2 and 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person in question, if deported, would face a real risk of being subjected to treatment contrary to Articles 2 or 3 in the destination country. The Court also adjudicates cases concerning the compliance, of the removal of migrants from and the refusal of entry into the territory of a Contracting State, with their right to respect for their private and/or family life as guaranteed by Article 8 of the Convention.

3. Many immigration related cases before the Court begin with a request for interim measures under Rule 39 of the Rules of Court, measures most commonly consisting of requesting the respondent State to refrain from removing individuals pending the examination of their applications before the Court (see paragraph 63 below for more details).

I. Access to the territory and procedures

Article 1 of the Convention

"The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of [the] Convention."

Article 3 of the Convention

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

Article 4 of the Convention

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

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

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

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

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

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

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

Article 8 of the Convention

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

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

Article 2 of Protocol No. 4 of the Convention

"1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of ordre public, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society."

Article 4 of Protocol No. 4 of the Convention

"Collective expulsion of aliens is prohibited."

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

A. Application for a visa to enter a country in order to seek asylum there

5. In *M.N. and Others v. Belgium* [GC], the applicants, a Syrian couple and their two children, travelled to Lebanon where they requested the Belgian embassy to deliver short-term visas to allow them to travel to Belgium to apply for asylum given the conflict in Syria, relying on Article 3 of the Convention. Their requests were processed and refused by the Aliens Office in Belgium. Notified by the Belgian embassy of these decisions, the applicants lodged unsuccessful appeals before the Belgian courts. The Court found that the respondent State was not exercising jurisdiction extraterritorially over the applicants by processing their visa applications and that a jurisdictional link had not been created through the applicant's appeals.

B. Access for the purposes of family reunification

6. A State may, under certain circumstances, be required to allow the entry of an individual when it is a pre-condition for his or her exercise of certain Convention rights, in particular the right to respect for family life. The Court summarised the pertinent principles under Article 8 of the Convention concerning family reunification of children of foreign nationality with parents, or a parent, settled in a Contracting State in *I.A.A. and Others v. the United Kingdom* (dec.) (§§ 38-41). The criteria, including notably the best interests of the child, must be sufficiently reflected in the reasoning in the decisions of the domestic authorities (*El Ghatet v. Switzerland*).

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

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

9. As regards the refusal to grant family reunion based on ties with another country and a difference in treatment between persons born with the nationality of the respondent State and those who acquired it later in life, see *Biao v. Denmark* [GC]. In *Schembri v. Malta*, the Court found that Article 8 did not apply to a "marriage of convenience": albeit not in the context of seeking permission to enter, but rather to remain in, the respondent State (see, more generally, paragraphs *47--49* below), the Court found that the refusal to grant a family residence permit to the applicant's same-sex partner breached Article 14 taken in conjunction with Article 8 (*Taddeucci and McCall v. Italy*).

C. Granting visas and Article 4

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

D. Entry and travel bans

11. An entry ban prohibits individuals from entering a State from which they have been expelled. The ban is typically valid for a certain period of time and ensures that individuals who are considered dangerous or non-desirable are not given a visa or otherwise admitted to enter the territory. In respect of states which are part of the Schengen area, entry bans are registered into a database called the Schengen Information System (SIS). In *Dalea v. France* (dec.), the Court found that the applicant's registration on the SIS database did not breach his right to respect for his private life under Article 8 of the Convention. It considered the effects of a travel ban imposed as a result of placing an individual on an UN-administered list of terrorist suspects under Article 8 of the Convention (*Nada v. Switzerland* [GC]), as well as of a travel ban designed to prevent breaches of domestic or foreign immigration laws, under Article 2 of Protocol No. 4 to the Convention (*Stamose v. Bulgaria*).

E. Push backs at sea

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

II. Entry into the territory of the respondent State

Article 3 of the Convention

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

Article 5 of the Convention

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court;

(b) the lawful arrest or detention of a person for non- compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

Article 2 of Protocol No. 4 of the Convention

"1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of ordre public, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society."

Article 4 of Protocol No. 4 of the Convention

"Collective expulsion of aliens is prohibited."

A. Situations at the border

13. The Court has also examined cases under Article 3 alone and in conjunction with Article 13 of the Convention in which border guards prevented persons from entering the respondent State's territory by not allowing them to disembark at a port (*Kebe and Others v. Ukraine*) or at a land border checkpoint (*M.A. and Others v. Lithuania*; *M.K. and Others v. Poland*), and either prevented the applicants from lodging an asylum application or, where they had submitted such applications, refused to accept them and to initiate asylum proceedings. Whereas the applicants in *Ilias and Ahmed v. Hungary* [GC] were able to lodge an asylum application while staying at the land border transit zone between Hungary and Serbia, the Hungarian authorities failed to discharge their procedural obligation under Article 3 when rejecting their asylum requests as inadmissible based on the presumption that Serbia was a safe third country which could examine their asylum requests on the merits (see paragraph 32 below). Where applicants can arguably claim that there is no guarantee that their asylum applications would be seriously examined by the authorities in the neighbouring third country and that their return to their country of origin could violate Article 3 of the Convention, the respondent State is obliged to allow the applicants to remain with its jurisdiction until such time that their claims had been properly reviewed by a competent domestic authority and cannot deny access to its territory to persons presenting themselves at a border checkpoint who allege that they may be subjected to ill-treatment if they remain on the territory of the neighbouring state, unless adequate measures are taken to eliminate such a risk (*M.K. and Others v. Poland*, §§ 178-179).

14. In *N.D. and N.T. v. Spain* [GC] the Court found that Article 4 of Protocol No. 4 was applicable to situations in which the conduct of persons - who cross a land border in an unauthorised manner, deliberately taking advantage of their large numbers and using force - is such as to create a clearly disruptive situation which is difficult to control and endangers public safety. It set out a two-tier test for compliance with Article 4 of Protocol No. 4 in such circumstances: whether the State provided genuine and effective access to means of legal entry, in particular border procedures, to allow all persons who face persecution to submit an application for protection, based in particular on Article 3, under conditions which ensure that the application is processed in a manner consistent with international norms including the Convention. Where the State provided such access but an applicant did not make use of it, it has to be considered whether there were cogent reasons for not doing so which were based on objective facts for which the State was responsible. The absence of such cogent reasons could lead to this being regarded as the consequence of the applicants' own conduct, justifying the lack of individual identification. On the facts of the case, the Court found that there had been no breach of Article 4 of Protocol No. 4, but underlined that this finding did not call into question the obligation and necessity for Contracting States to protect their borders in a manner which complies with Convention guarantees and, in particular, with the prohibition of *refoulement*. In *M.K. and Others v. Poland* the applicants had an arguable claim under Article 3, presented themselves at the border checkpoints and tried to enter the respondent State in a legal manner by making use of the procedure to submit an asylum application that should have been available to them under domestic law. Even though they were interviewed individually by the border guards and received individual decisions refusing them entry into Poland, the Court considered that their statements concerning their wish to apply for asylum were disregarded and that the decisions with which they were issued did not properly reflect the reasons given by the applicants to justify their fear of persecution. Moreover, the applicants were not allowed to consult lawyers and were even denied access to lawyers who were present at the border checkpoint. The Court concluded that the decisions refusing the applicants entry to Poland were not taken with proper regard to their individual situations and were part of a wider policy of refusing to receive asylum applications from persons presenting at the Polish-Belarusian border and of returning those persons to Belarus, and found a breach of Article 4 of Protocol No. 4.

15. In *Sharifi and Others v. Italy and Greece*, the applicants had entered Greece from Afghanistan and subsequently illegally boarded vessels for Italy. Upon arrival in the port of Ancona, the Italian

border police intercepted them and immediately took them back to the ships from which they had just disembarked and deported them back to Greece, without being given the possibility to apply for asylum, to contact lawyers or interpreters or providing them with any information about their rights. The Court found a violation by Italy of Article 3 with a view to their subsequent removal to Afghanistan and the risk of ill-treatment there, of Article 13 taken together with Article 3 of the Convention and of Article 4 of Protocol No. 4.

B. Confinement in transit zones and reception centres

16. In determining the distinction between a restriction on liberty of movement and deprivation of liberty in the context of confinement of foreigners in transit zones and reception centres for the identification and registration of migrants, the factors taken into consideration by the Court may be summarised as follows: i) the applicants' individual situation and their choices; ii) the applicable legal regime of the respective country and its purpose; iii) the relevant duration, especially in the light of the purpose and the procedural protection enjoyed by applicants pending the events; and iv) the nature and degree of the actual restrictions imposed on or experienced by the applicants (*Z.A. and Others v. Russia [GC], § 138; Ilias and Ahmed v. Hungary [GC], §§ 217-218). The Court found Article 5* of the Convention to apply to lengthy confinement in airport transit zones (see *Z.A. and Others v. Russia* [GC]). In respect of stays in land border transit zones, where applicants awaited the outcome of their asylum applications, the Court distinguished cases on their facts. It found Article 5 not to apply to a stay of twenty-three days, which did not exceed the maximum period fixed by domestic law and during which the applicants' asylum requests were processed at administrative and judicial level (*Ilias and Ahmed v. Hungary* [GC], §§ 219-249). By contrast, the Court found Article 5 to apply and to have been violated in a case where the applicants stayed in the transit zone for nearly four months, with domestic law neither providing a strictly defined statutory basis nor a maximum length of detention in the transit zone (*R.R. and Others v. Hungary**, §§ 89-92; see also §§ 48-65 in respect of the living conditions in the transit zone and Article 3, and paragraphs 19 and 25 below). In *J.R. and Others v. Greece*, the applicants, Afghan nationals, arrived on the island of Chios and were arrested and placed in the Vial "hotspot" facility (a migrant reception, identification and registration centre). After one month, that facility became semi-open and the applicants were allowed out during the day. The Court considered that the applicants had been deprived of their liberty within the meaning of Article 5 during the first month of their stay in the facility, but that they were subjected only to a restriction of movement, rather than a deprivation of liberty, once the facility had become semi-open.

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

1. General principles

17. Article 5 § 1(f) of the Convention allows States to control the liberty of aliens in an immigration context in two different situations: the first limb of that provision permits the detention of an asylum-seeker or other immigrant prior to the State's grant of authorisation to enter (for the second limb, see paragraphs *55-57* below). The question as to when the first limb of Article 5 § 1(f) ceases to apply, because the individual has been granted formal authorisation to enter or stay, is largely dependent on national law (*Suso Musa v. Malta*, § 97; see also *O.M. v. Hungary*, where the detention of the asylum-seeking applicant was consequently examined under Article 5 § 1(b), since domestic law created a more favourable position than required by the Convention, with the result that the Court did not consider it necessary to address the lawfulness of the detention under Article 5 § 1(f); and *Muhammad Saqawat v. Belgium*, §§ 47 and 49, as to the impact of EU law on domestic law). Such detention must be compatible with the overall purpose and requirements of Article 5, notably its lawfulness, including the obligation to conform to the substantive and procedural rules of

national law. However compliance with domestic law is not sufficient, since a deprivation of liberty may be lawful in terms of domestic law but still be arbitrary (*Saadi v. the United Kingdom* [GC], § 67). In the case of massive arrivals of asylum-seekers at State borders, subject to the prohibition of arbitrariness, the lawfulness requirement of Article 5 may be considered generally satisfied by a domestic legal regime that provides, for example, for no more than the name of the authority competent to order deprivation of liberty in a transit zone, the form of the order, its possible grounds and limits, the maximum duration of the confinement and, as required by Article 5 § 4, the applicable avenue of judicial appeal (*Z.A. and Others v. Russia* [GC], § 162). The requirement of lawfulness was an issue, for example, where the detention was based on an administrative circular (*Amuur v. France*), where the legal basis was not accessible to the public (*Nolan and K. v. Russia, and Khlaifia and Others v. Italy* [GC]: readmission agreement) or where no maximum period of detention was laid down in legislation (*Mathloom v. Greece*). In *Nabil and Others v. Hungary*, the domestic courts had not duly assessed whether the conditions set out in domestic law for the prolongation of the detention - falling under the second limb of Article 5 § 1(f) - were met.

18. In respect of adults with no particular vulnerabilities, detention under Article 5 § 1(f) is not required to be reasonably necessary. However, it must not be arbitrary. "Freedom from arbitrariness" in the context of the first limb of Article 5 § 1(f) means that such detention must be carried out in good faith; it must be closely connected to the purpose of preventing unauthorised entry of the person to the country; the place and conditions of detention should be appropriate, bearing in mind that the measure is applicable not to those who have committed criminal offences but to aliens who, often fearing for their lives, have fled from their own country; and the length of the detention should not exceed that reasonably required for the purpose pursued (*Saadi v. the United Kingdom* [GC], § 74). If the place and conditions of detention are not appropriate, this may also breach Article 3 of the Convention (see, for example, *M.S.S. v. Belgium and Greece* [GC], §§ 205-234; *S.Z. v. Greece*, and *HA.A. v. Greece*).

2. Vulnerable individuals

19. Additional safeguards against arbitrary detention apply to children and other individuals with specific vulnerabilities, who, to be able to benefit from such protection, should have access to an assessment of their vulnerability and be informed about respective procedures (see *Thimothawes v. Belgium*, and *Abdi Mahamud v. Malta*). Lack of active steps and delays in conducting the vulnerability assessment may be a factor in raising serious doubts as to the authorities' good faith (*Abdullahi Elmi and Aweys Abubakar v. Malta*; *Abdi Mahamud v. Malta*). The detention of vulnerable individuals will not be in conformity with Article 5 § 1(f) if the aim pursued by detention can be achieved by other less coercive measures, requiring the domestic authorities to consider alternatives to detention in the light of the specific circumstances of the individual case (*Rahimi v. Greece*; *Yoh-Ekale Mwanje v. Belgium*, concerning the second limb of the provision). In addition to Article 5 § 1(f), immigration detention of children and other vulnerable individuals can raise issues under Article 3 of the Convention, with particular attention being paid to the conditions of detention, its duration, the person's particular vulnerabilities and the impact of the detention on him or her (in respect of the detention of accompanied children see *Popov v. France* concerning the second limb and the overview of the Court's case-law in *S.F. and Others v. Bulgaria*; in respect of unaccompanied children see *Abdullahi Elmi and Aweys Abubakar v. Malta*; *Rahimi v. Greece*; *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, where the Court found a violation of Article 3 in respect of both the detained child and the child's mother who was in another country, and *Moustahi v. France* concerning the detention of unaccompanied minors by arbitrary association with an unrelated adult; in respect of adults with specific health needs see *Aden Ahmad v. Malta*, and *Yoh-Ekale Mwanje v. Belgium*, and a heavily pregnant woman *Mahmundi and Others v. Greece*; in respect of the living conditions of a pregnant woman with a health condition and her children during their extended stay in the Röszke transit zone, see *R.R. and Others v. Hungary**, §§ 58-65, and paragraph 16 above and 25 below; see

also *O.M. v. Hungary*, § 53, with a view to the assessment of the vulnerability of the applicant, an LGBTI asylum-seeker, under Article 5 § 1(b)). The detention of accompanied children may also raise issues under Article 8 of the Convention in respect of both children and adults (see overview of the Court's case-law in *Bistieva and Others v. Poland*), as may the refusal to allow the reunion of a parent with his children, who were placed *de facto* in administrative detention by arbitrary association with an unrelated adult (*Moustahi v. France*).

3. Procedural safeguards

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

21. Article 5 § 4 entitles a detained person to bring proceedings for review by a court of the procedural and substantive conditions which are essential for the "lawfulness", in the sense of Article 5 § 1, of his or her deprivation of liberty (*Khlaifia and Others v. Italy* [GC], § 131; see, in particular, *A.M. v. France*, §§ 40-41, concerning the required scope of judicial review under Article 5 § 1(f)). Proceedings to challenge the lawfulness under Article 5 § 1(f) of administrative detention pending deportations do not need to have a suspensive effect on the implementation of the deportation order (*ibid.*, § 38). Where deportation is expedited in a manner preventing the detained person or his lawyer from bringing proceedings under Article 5 § 4, that provision is breached (*Čonka v. Belgium*). In cases where detainees had not been informed of the reasons for their deprivation of liberty, their right to appeal against their detention was deprived of all effective substance (*Khlaifia and Others v. Italy* [GC], § 132). The same holds true if the detained person is informed about the available remedies in a language he does not understand and is unable, in practice, to contact a lawyer (*Rahimi v. Greece*, § 120). The proceedings under Article 5 § 4 must be adversarial and ensure equality of arms between the parties (see *A. and Others v. the United Kingdom* [GC], §§ 203 et seq.; and *Al Husin v. Bosnia and Herzegovina (no. 2)* in respect of national security cases). It breaches Article 5 § 4 if the detainee is unable to obtain a substantive judicial decision on the lawfulness of the detention order, and hence his release from detention, because the appeal is deemed to have become "without object" as a new detention order has been issued in the meantime (*Muhammad Saqawat v. Belgium*), or if there is no judicial remedy available to challenge the lawfulness of the detention, even if it is brief (*Moustahi v. France*).

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

D. Access to procedures and reception conditions

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

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

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

2. Reception conditions and freedom of movement

25. Article 3 cannot be interpreted as obliging the High Contracting Parties to provide everyone within their jurisdiction with a home (*Chapman v. the United Kingdom* [GC], § 99). Nor does Article 3 entail any general obligation to give refugees financial assistance to enable them to maintain a certain standard of living (*Tarakhel v. Switzerland* [GC], § 95). However, asylum-seekers are members of a particularly underprivileged and vulnerable population group in need of special protection and there exists a broad consensus at the international and European level concerning this need for special protection, as evidenced by the Geneva Convention, the remit and the activities of the UNHCR and the standards set out in the Reception Directive (*M.S.S. v. Belgium and Greece* [GC], § 251). It may thus raise an issue under Article 3 if the asylum-seekers, including persons intending to lodge an asylum application, are not provided with accommodation and thus forced to live on the streets for months, with no resources or access to sanitary facilities, without any means of providing for their essential needs, in fear of assault from third parties and of expulsion (*ibid.* [GC], §§ 235-264 and *N.H. and Others v. France*, both in respect of adults without health concerns and without children; contrast *N.T.P. and Others v. France*, where the applicants had been accommodated in a privately run shelter funded by the authorities and been given food and medical care and the children had been in school, and *B.G. and Others v. France*, where the applicants had temporarily stayed in a tented camp set up in a car park, with the authorities having taken measures to improve their material living conditions, in particular ensuring medical care, the children's schooling and their subsequent placement in a flat). States are obliged under Article 3 to protect and to take charge of unaccompanied children, which requires the authorities to identify them as such and to take measures to ensure their placement in adequate accommodation, even if the children do not lodge an asylum application in the respondent State, but intend to do so in another State, or to join family members there (see *Khan v. France*, concerning the situation in a makeshift camp in Calais; and *Sh.D. and Others v. Greece, Austria, Croatia, Hungary, North Macedonia, Serbia and Slovenia* in respect of the situation in a makeshift camp in Idomeni; see also *M.D. v. France* regarding the reception of an asylum seeker who had identified himself as an unaccompanied minor, but in respect of whose actual age there were doubts). In *Rahimi v. Greece* (§§ 87-94), the Court also found a breach of Article 3 because the authorities did not offer the applicant, an unaccompanied child asylum-seeker, any assistance with accommodation following his release from detention. In *R.R. and Others v. Hungary**, §§ 48-65, the Court found breaches of Article 3 because the authorities, firstly, had not provided an adult asylum-seeker with sufficient food during his four months stay in the Röszke transit zone and, secondly, because of the living conditions to which his wife, who was pregnant and had a health condition, and their minor children were subjected for such period (see also paragraphs 16 and 19 above).

(26. In *Omwenyeke v. Germany* (dec.), the applicant asylum-seeker had temporary residence for the duration of the asylum procedure, but had lost his lawful status by violating the conditions attached

to his temporary residence – the obligation to stay within the territory of a certain city. The Court found that he could thus not rely on Article 2 of Protocol No. 4.

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

Article 2 of the Convention

"1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection."

Article 3 of the Convention

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

Article 6 of the Convention

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

Article 8 of the Convention

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

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

Article 13 of the Convention

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

Article 4 of Protocol No. 4 of the Convention

"Collective expulsion of aliens is prohibited."

Article 1 of Protocol No. 6 of the Convention

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

Article 1 of Protocol No. 7 of the Convention

"1. An alien lawfully resident in the territory of a State shall not be expelled therefrom except in pursuance of a decision reached in accordance with law and shall be allowed:

(a) to submit reasons against his expulsion,

(b) to have his case reviewed, and

(c) to be represented for these purposes before the competent authority or a person or persons designated by that authority.

2. An alien may be expelled before the exercise of his rights under paragraph 1 (a), (b) and (c) of this Article, when such expulsion is necessary in the interests of public order or is grounded on reasons of national security."

Article 1 of Protocol No. 13 of the Convention

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

A. Articles 2 and 3 of the Convention

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

27. The right to political asylum is not contained in either the Convention or its Protocols and the Court does not itself examine the actual asylum application or verify how the States honour their obligations under the 1951 Geneva Convention or European Union law (*F.G. v. Sweden* [GC], § 117; *Sufi and Elmi v. the United Kingdom*, §§ 212 and 226). However, the expulsion of an alien by a Contracting State may give rise to an issue under Articles 2 and 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person in question, if deported, would face a real risk of being subjected to treatment contrary to Articles 2 or 3 in the destination country. In these circumstances, Articles 2 and 3 imply an obligation not to deport the person in question to that country (*F.G. v. Sweden*, §§ 110-111). Removal cases concerning Article 2 – notably in respect of the risk of the applicant being subjected to the death penalty – typically also raise issues under Article 3 (see paragraph 45 below): because the relevant principles are the same for Article 2 and Article 3 assessments in removal cases, the Court either finds the issues under both Articles indissociable and examines them together (see *F.G. v. Sweden* ([GC], § 110; *L.M. and Others v. Russia*, § 108) or deals with the Article 2 complaint in the context of the related main complaint under Article 3 (see *J.H. v. United Kingdom*, § 37).

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

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

29. As regards the procedural obligations on the part of the authorities, the Court clarified in *F.G. v. Sweden* ([GC], § 127) that, considering the absolute nature of the rights guaranteed under Articles 2 and 3 of the Convention, and having regard to the vulnerable position that asylum-seekers often find themselves in, if a Contracting State is made aware of facts, relating to a specific individual, that could expose him to a risk of ill-treatment in breach of the said provisions upon returning to the country in question, the obligations under Articles 2 and 3 of the Convention entail that the authorities carry out an assessment of that risk of their own motion (see also *Amerkhanov v. Turkey*, §§ 53-58, and *Batyrkhairov v. Turkey*, §§ 46-52). As regards the distribution of the burden of proof, the Court clarified in *J.K. and Others v. Sweden* ([GC], §§ 91-98) that it is the shared duty of an asylum-seeker and the immigration authorities to ascertain and evaluate all relevant facts in asylum proceedings. On the one hand, the burden remains on asylum-seekers as regards their own personal circumstances, although the Court recognised that it was important to take into account all of the difficulties which an asylum-seeker may encounter in collecting evidence. On the other hand, the general situation in another State, including the ability of its public authorities to provide protection, had to be established *proprio motu* by the competent domestic immigration authorities (see, for example, *B and C v. Switzerland* in respect of the domestic authorities' obligation to assess the availability of State protection against harm emanating from non-State actors and the assessment of the risks of ill-treatment in the country of origin for the applicant as a homosexual person). As to the significance of established past ill-treatment contrary to Article 3 in the receiving State, the Court considered that established past ill-treatment contrary to Article 3 would provide a strong indication of a future, real risk of ill-treatment, although the Court conditioned that principle on the applicant having made a generally coherent and credible account of events that is consistent with information from reliable and objective sources about the general situation in the country at issue. In such circumstances, the burden shifted to the Government to dispel any doubts about that risk (*J.K. and Others v. Sweden* ([GC], §§ 99-102).

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

31. Where the risk of ill-treatment emanates from a person's sexual orientation, he or she may not be asked to conceal it in order to avoid ill-treatment, as it concerns a fundamental aspect of a

person's identity (*I.K. v. Switzerland* (dec.); *B and C v. Switzerland*). Similar questions may arise in respect of a person's religious beliefs (see *A. v. Switzerland*).

2. Removal to a third country

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

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

3. Procedural aspects

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

purposes of Article 35 § 1 of the Convention in asylum cases (*A.M. v. the Netherlands*, §§ 65-69; see also *M.K. and Others v. Poland*, §§ 142-148 and 212-220, in respect of an immediate removal at a border crossing point). In respect of asylum-seekers the Court has found, in particular, that individuals need to have adequate information about the asylum procedure to be followed and their entitlements in a language they understand, and have access to a reliable communication system with the authorities: the Court also has regard to the availability of interpreters, whether the interviews are conducted by trained staff, whether asylum-seekers have access to legal aid, and requires that asylum-seekers be given the reasons for the decision (see *M.S.S. v. Belgium and Greece* [GC], §§ 300-302, 304, and 306-310; see also *Abdolkhani and Karimnia v. Turkey*; and *Hirsi Jamaa and Others v. Italy* [GC], § 204).

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

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

37. Where there is no "arguable complaint" that a removal would expose an individual to a real risk of treatment contrary to Articles 2 or 3 of the Convention, the remedy required by Article 13 of the Convention in conjunction with Article 8 of the Convention and/or Article 4 of Protocol No. 4 does not have to have automatic suspensive effect (*Khlaifia and Others v. Italy* [GC], §§ 276-281; *De Souza Ribeiro v. France* [GC], §§ 82-83). However, there is a breach of Article 13 taken in conjunction with Article 8 if the time between the ordering of a the removal and its implementation is so short to preclude any possibility for an action to be meaningfully brought before a court, still less for that court to properly examine the circumstances and legal arguments under the Convention (*De Souza Ribeiro v. France* [GC], §§ 86-100; *Moustahi v. France*, §§ 156-164, the latter also in conjunction with Article 4 of Protocol No. 4). In respect of the requirements under Article 13 taken in conjunction with Article 4 of Protocol No. 4, see also *Hirsi Jamaa and Others v. Italy* [GC]*; Sharifi and Others v. Italy and Greece*; and *Čonka v. Belgium*.

4. Cases relating to national security

38. The Court has often dealt with cases concerning the removal of individuals deemed to be a threat to national security (see, for example, *A.M. v. France*). It has repeatedly held that Article 3 is absolute and that it is not possible to weigh the risk of ill-treatment against the reasons put forward for the expulsion (*Saadi v. Italy* [GC], §§ 125 and 138; *Othman (Abu Qatada) v. the United Kingdom*, §§ 183-185). The relevant Convention test, notably the requirement to carry out a full and *ex nunc* assessment whether the individual would run a real risk of treatment contrary to Article 3 in the receiving State if he or she were removed there, was considered to remain unchanged by the revocation of the person's refugee status, in accordance with the relevant rules of EU law, following a criminal conviction for acts of terrorism and the finding that the individual constituted a danger to the host State's society (see *K.I. v. France**). The Court cannot rely on the findings of the domestic

authorities if they did not have all essential information before them – for example for reasons of national security – when rendering the expulsion decisions (see *X v. Sweden*).

5. Extradition

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

40. Articles 2 and 3 of the Convention as well as Article 1 of Protocol No. 6 or Article 1 of Protocol No. 13 (see paragraph 45 below) prohibit the extradition, deportation or other transfer of an individual to another State where substantial grounds have been shown for believing that he or she would face a real risk of being subjected to the death penalty there (*Al-Saadoon and Mufdhi v. the United Kingdom*, §§ 123 and 140-143; *A.L. (X.W.) v. Russia*, §§ 63-66; *Shamayev and Others v. Georgia and Russia*, § 333). It may similarly breach Article 3 to extradite or transfer an individual to a State where he faces a whole life sentence without a de facto or de jure possibility of release (see *Babar Ahmad and Others and Others v. the United Kingdom* and *Trabelsi v. Belgium*; see also *Murray v. the Netherlands* [GC], and *Hutchinson v. the United Kingdom* [GC], in respect of whole life sentences and Article 3). Ill-treatment contrary to Article 3 in the requesting State may take various forms, including poor conditions of and ill-treatment inflicted in detention (see *Allanazarova v. Russia*) or conditions of detention that are inadequate for the specific vulnerabilities of the individual concerned (*Aswat v. the United Kingdom*, concerning the extradition of a mentally-ill individual).

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

42. In the specific context of surrenders in execution of European Arrest Warrants for the purpose of serving custodial sentences in a country in which detention conditions are a systemic problem, the Court found that the presumption of equivalent protection in the legal system of the European Union applied (*Bivolaru and Moldovan v. France**). However, it found that presumption to have been rebutted because the protection of Convention rights was considered to be manifestly deficient in the particular circumstances of one applicant's case, but not in respect of the other. The Court considered that the executing judicial authority had had sufficient factual information before it to find that the execution of the European Arrest Warrant would entail a real and individual risk that one applicant would be exposed to treatment contrary to Article 3 in view of the conditions of their detention in the issuing State, but that it did not have sufficient factual information to that effect in respect of the other applicant. In so doing, the Court set out how an executing judicial authority is to approach the assessment of an individualised real risk of treatment contrary to Article 3 in the case

of a systemic problem (conditions of detention) in the State issuing the European Arrest Warrant as well as the corresponding obligation on an applicant to substantiate such risk.

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

6. Expulsion of seriously ill persons

44. The Court summarised and clarified the relevant principles as to when humanitarian considerations will or will not outweigh other interests when considering the expulsion of seriously ill individuals in *Paposhvili v. Belgium* [GC]. The applicant, a Georgian national, faced deportation and a ban on re-entering Belgium for 10 years on public interest grounds (criminal convictions). Whilst in prison, he was diagnosed and treated for serious illnesses (chronic lymphocytic leukaemia, hepatitis C and tuberculosis). Other than the imminent death situation in *D. v. the United Kingdom*, the later *N. v. the United Kingdom* [GC] judgment referred to "other very exceptional cases" which could give rise to an issue under Article 3 in such contexts. In *Paposhvili v. Belgium*, the Grand Chamber indicated how "other very exceptional cases" was to be understood, referring to "situations involving the removal of a seriously ill person in which substantial grounds have been shown for believing that he or she, although not at imminent risk of dying, would face a real risk, on account of the absence of appropriate treatment in the receiving country or the lack of access to such treatment, of being exposed to a serious, rapid and irreversible decline in his or her state of health resulting in intense suffering or to a significant reduction in life expectancy" (*ibid.*, § 183). The Grand Chamber also clarified that that obligation to protect was to be fulfilled primarily through appropriate domestic procedures reflecting, in particular, the following elements (*ibid.*, §§ 185-193): the applicants should adduce evidence "capable of demonstrating that there are substantial grounds for believing" that they would be exposed to a real risk of treatment contrary to Article 3, noting that a certain degree of speculation was inherent in the preventive purpose of Article 3 and that applicants were not required to provide clear proof of their claim. Where such evidence was adduced, it was for the authorities of the returning State to dispel any doubts raised by it. The impact of removal on the persons concerned was to be assessed by comparing his or her state of health prior to removal and how it would evolve after removal. In this respect, the State had to consider inter alia (a) whether the care generally available in the receiving State "is sufficient and appropriate in practice for the treatment of the applicant's illness so as to prevent him or her being exposed to treatment contrary to Article 3", the Grand Chamber specifying that the benchmark is not the level of care existing in the returning State; and (b) the extent to which the individual would actually have access to such care in the receiving State (the associated costs, the existence of a social and family network, and the distance to be travelled to access the required care, all being relevant in this respect). If "serious doubts" persisted as to the impact of removal on the person concerned, the authorities had to obtain "individual and sufficient assurances" from the receiving State, as a precondition to removal, that appropriate treatment will be available and accessible to the person concerned. The proposed deportation of a person suffering from serious illness to his country of origin in the face of doubts as to the availability of appropriate medical treatment may also breach Article 8 (*ibid.*, §§ 221-226).

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

45. Protocols No. 6 and 13 to the Convention, which have been ratified by almost all member States of the Council of Europe, contributed to the interpretation of Article 2 of the Convention as prohibiting the death penalty in all circumstances so that there is no longer any bar to considering the death penalty – which caused not only physical pain but also intense psychological suffering as a result of the foreknowledge of death – as inhuman and degrading treatment or punishment within

the meaning of Article 3 (see *Al-Saadoon and Mufdhi v. the United Kingdom*, §§ 115 et seq.). At the same time, the Court has found that Article 1 of Protocol No. 13 prohibits the extradition or deportation of an individual to another State where substantial grounds have been shown for believing that he or she would face a real risk of being subjected to the death penalty there (*ibid.*, § 123). Yet, in *Al-Saadoon and Mufdhi v. the United Kingdom*, which concerned the handover by the authorities of the United Kingdom operating in Iraq of Iraqi civilians to the Iraqi criminal administration under circumstances where the civilians faced capital charges, the Court, after finding a breach of Article 3, did not consider it necessary to examine whether there had also been violations of the applicants' rights under Article 2 of the Convention and Article 1 of Protocol No. 13 (*ibid.*, §§ 144-145). In *Al Nashiri v. Poland*, which concerned the extraordinary rendition to the US naval base in Guantanamo of a suspected terrorist facing the death penalty, the Court found that at the time of the applicant's transfer from Poland there was a substantial and foreseeable risk that he could be subjected to the death penalty following his trial before a military commission, in breach of Articles 2 and 3 of the Convention taken together with Article 1 of Protocol No. 6 (*ibid.*, §§ 576-579).

C. Flagrant denial of justice: Articles 5 and 6

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

D. Article 8

1. Expulsion

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

48. The Court has applied these criteria in numerous cases since *Üner v. the Netherlands* [GC], although the weight to be attached to each criterion will vary according to the specific circumstances of the case (*Maslov v. Austria* [GC], § 70). Importantly, the fact that the offence committed by an applicant was at the more serious end of the criminal spectrum is not in and of itself determinative of a case; rather, it is just one factor which has to be weighed in the balance, together with the other criteria (*Unuane v. the United Kingdom*, § 87). Conversely, the Court has found that the fact that an adult "alien" had been born and had lived all his life in the respondent State from which he was to be expelled did not bar his expulsion (*Kaya v. Germany*, § 64). However, very serious reasons are required to justify expulsion in cases concerning settled migrants, who have lawfully spent all or the major part of their childhood and youth in the host country (*Levakovic v. Denmark*, § 45). In respect of expulsions of young adults who had been convicted of criminal offences committed as a juvenile, see *Maslov v. Austria* [GC], and *A.A. v. the United Kingdom*. Where there is a significant lapse of time between the denial of the residence permit – or the final decision on the expulsion order – and the actual deportation, the developments during that period of time may be taken into account (*Ejimson v. Germany*, § 61). In *Hasanbasic v. Switzerland*, the Court dealt with a scenario where the refusal of a residence permit and the expulsion order primarily related to the economic well-being of the country, rather than the prevention of disorder and crime. In recent cases concerning expulsion of "settled migrants" and Article 8, the Court emphasised that, where the domestic courts have carefully examined the facts, applying the Convention case-law, and adequately balanced the applicant's personal interests against the more general public interest in the case, it is not for the Court to substitute its own assessment of the merits (including, in particular, its own assessment of the factual details of proportionality) for that of the competent national authorities, except where there are strong reasons for doing so (*Ndidi v. the United Kingdom*, § 76; *Levakovic v. Denmark*). By contrast, where the domestic courts do not adequately motivate their decisions and examine the proportionality of the expulsion order in a superficial manner, preventing the Court from exercising its subsidiary role, an expulsion based on such decision would breach Article 8 (*I.M. v. Switzerland*; see also *M.M. v. Switzerland*, § 54, in respect of the requirement of judicial review of the proportionality of an expulsion order, including in situations where the legislature may seek to suggest situations of "mandatory" expulsion). This also holds true where the domestic courts do not take all relevant facts into consideration, such as an applicant's paternity of a child in the respondent State (*Makdoudi v. Belgium*). In respect of a revocation of a residence permit on the basis of undisclosed information and the existence of sufficient procedural guarantees in the specific context of national security, see *Gaspar v. Russia*.

2. Residence permits and possibility to regularise one's legal status

49. In addition to the scenarios concerning access to the territory for the purposes of family reunification (see paragraphs *6-9* above), the Court has examined cases under Article 8 concerning the denial of – and whether there was a positive obligation to grant – a residence permit to individuals already present in the territory of the respondent State (see *Jeunesse v. the Netherlands* [GC]; *Rodrigues da Silva and Hoogkamer v. the Netherlands*; see also *Ejimson v. Germany*, in respect of a person who had been convicted of criminal offences). The Court also examined, in connection with administrative charges to be paid as a precondition for the processing of the request for a residence permit, whether a foreigner had effective access to the administrative procedure by which he might, subject to fulfilling the conditions prescribed by domestic law, obtain a residence permit which would allow him to reside lawfully in the respondent State (*G.R. v. the Netherlands*). As regards the protection of a migrant's private-life interests in so far as they are affected by the uncertainty of his status and stay in a foreign country, see *Abuhmaid v. Ukraine* (see also *B.A.C. v. Greece* in respect of an asylum-seeker). In *Hoti v. Croatia* and in *Sudita Keita v. Hungary*, the Court found breaches of Article 8 because of the protracted difficulties for the applicants, stateless persons, to regularise their legal and residence status and the corresponding adverse effects on their private life. Determining an application for a residence permit based on an applicant's health status

is discriminatory and breaches Article 14 taken in conjunction with Article 8 (*Kiyutin v. Russia*; *Novruk and Others v. Russia*, concerning the denial of residence permits because the applicants were HIV-positive).

3. Nationality

50. Article 8 does not guarantee a right to acquire a particular nationality or citizenship, but an arbitrary denial of citizenship might in certain circumstances raise an issue under Article 8 of the Convention because of the impact of such a denial on the private life of the individual (*Slivenko and Others v. Latvia* (dec.) [GC], § 77; *Genovese v. Malta*, § 30). The same holds true for the revocation of citizenship already obtained, with the test requiring an assessment of whether the revocation was arbitrary and of the consequences of revocation were for the applicant (see *Ramadan v. Malta*, § 85, with regard to a person who nonetheless remained in the respondent country; and *K2 v. the United Kingdom* (dec.), who was, while abroad, deprived of citizenship and excluded from the territory of the respondent State because he was considered to be a threat to national security). The relevant principles also apply to the seizure of, and refusal to exchange, passports (*Alpeyeva and Dzhalagoniya v. Russia*, concerning the practice of invalidating passports issued to former Soviet Union Nationals). In *Usmanov v. Russia* the Court recapitulated the various approaches in its case-law in this area and opted for a consequence-based approach to determine whether the annulment of the applicant's citizenship constituted an interference with his rights under Article 8 of the Convention: it examined (i) what the consequences of the impugned measure were for the applicant and then (ii) whether the measure in question was arbitrary (§§ 53 and 58 et seq.).

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

E. Article 1 of Protocol No. 7

52. Being aware that Article 6 of the Convention did not apply to procedures for the expulsion of aliens, States adopted Article 1 of Protocol No. 7, which defines the procedural safeguards applicable to this type of procedure (*Maaouia v. France* [GC], § 36). In the recent Grand Chamber judgment *Muhammad and Muhammad v. Romania* [GC], §§ 114 et seq., the Court recapitulated its case-law on the provision, which is applicable in the event of expulsion of "aliens lawfully resident in the territory of a State". Its first basic safeguard is that the person concerned may be expelled only "in pursuance of a decision reached in accordance with law". In addition to this general condition of legality, Article 1 § 1 of Protocol No. 7 provides for three specific procedural safeguards: aliens must be able to submit reasons against their expulsion, to have their case reviewed and, lastly, to be represented for these purposes before the competent authority. Article 1 § 2 of Protocol No. 7 provides for an exception, enabling States to expel an alien who is lawfully resident on its territory even before he or she has exercised the rights afforded under Article 1 § 1, in cases where such expulsion is necessary in the interests of public order or for reasons of national security. On the facts of the case, the Court found that the deportation of the applicants, Pakistani nationals living in Romania on student visas, on national security grounds was in breach of Article 1 of Protocol No. 7: the applicants neither had access to the classified documents on which that decision was based nor were they provided with any specific information as to the underlying facts and grounds for deportation. They had thus suffered a significant limitation of their right to be informed of the factual elements submitted in support of their expulsion and of the content of the relevant documents, a limitation which had not been counterbalanced in the domestic proceedings. Article 1 of Protocol No. 7 is applicable even if the decision ordering the applicant to leave has not been enforced to-date (see *Ljatifi v. the former Yugoslav Republic of Macedonia*). For a detailed analysis of the Court's case-law on this provision, please see the Guide to Article 1 of Protocol No. 7.

F. Article 4 of Protocol No. 4

53. Apart from push backs at sea or removals at or near borders described above (see paragraphs *12-15* above), the Court has dealt with collective expulsions of aliens who had been present in the territory of the respondent State (asylum-seekers in *Čonka v. Belgium* and *Sultani v. France*; migrants in *Georgia v. Russia (I)* [GC], § 170), irrespective of whether they were lawfully resident in the respondent State or not. In *Čonka v. Belgium* and *Georgia v. Russia (I)* [GC], in which the Court found violations of Article 4 of Protocol No. 4, the individuals targeted for expulsion in each case had the same origin (Roma families from Slovakia in the former and Georgian nationals in the latter).

IV. Prior to the removal and the removal itself

Article 3 of the Convention

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

Article 5 of the Convention

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court;

(b) the lawful arrest or detention of a person for non- compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

Article 8 of the Convention

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

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

Rule 39 of the Rules of Court

1. The Chamber or, where appropriate, the President of the Section or a duty judge appointed pursuant to paragraph 4 of this Rule may, at the request of a party or of any other person concerned, or of their own motion, indicate to the parties any interim measure which they consider should be adopted in the interests of the parties or of the proper conduct of the proceedings.

2. Where it is considered appropriate, immediate notice of the measure adopted in a particular case may be given to the Committee of Ministers.

3. The Chamber or, where appropriate, the President of the Section or a duty judge appointed pursuant to paragraph 4 of this Rule may request information from the parties on any matter connected with the implementation of any interim measure indicated.

4. The President of the Court may appoint Vice-Presidents of Sections as duty judges to decide on requests for interim measures.

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

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

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

migrant who was considered a security threat to have been in conformity with Article 5 § 1(f), see *K.G. v. Belgium*).

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

57. The indication of an interim measure by the Court under Rule 39 of the Rules of Court (see paragraph 63 below) does not in itself have any bearing on whether the deprivation of liberty to which that individual may be subject complies with Article 5 § 1 of the Convention (*Gebremedhin [Gaberamadhien] v. France*, § 74). Where the respondent States refrained from deporting applicants in compliance with the interim measure indicated by the Court, the Court was, in a number of cases, prepared to accept that deportation or extradition proceedings were temporarily suspended but nevertheless were "in progress", and that therefore no violation of Article 5 § 1(f) had occurred (see *Azimov v. Russia*, § 170). At the same time, the suspension of the domestic proceedings due to the indication of an interim measure by the Court should not result in a situation where the applicant languishes in prison for an unreasonably long period (*ibid.*, § 171). Article 5 § 1(f) does not contain maximum time-limits; the question whether the length of deportation proceedings could affect the lawfulness of detention under this provision thus depends solely on the particular circumstances of each case (*Auad v. Bulgaria*, § 128, and *J.N. v. the United Kingdom*). The Court has also held that automatic judicial review of immigration detention is not an essential requirement of Article 5 § 1 of the Convention (*J.N. v. the United Kingdom*, § 96). Where the authorities make efforts to organise removal to a third country in view of an interim measure indicated by the Court, detention may fall within the scope of Article 5 § 1(f) (*M and Others v. Bulgaria*, § 73).

58. As regards the detention of persons with specific vulnerabilities, the same considerations apply under the second limb of Article 5 § 1(f) as apply under the provision's first limb (see paragraph 19 above, and, by way of example, *Rahimi v. Greece* and *Yoh-Ekale Mwanje v. Belgium*). As regards medical treatment during a hunger strike in detention pending deportation, see *Ceesay v. Austria*.

59. As regards the procedural safeguards under Article 5 §§ 2 and 4, see paragraphs *20-22* above. There are, however, a number of cases relating specifically to the shortcomings of domestic law as regards the effectiveness of judicial review of detention pending expulsion and the requirements of Article 5 § 4 (see, for example, *S.D. v. Greece*, §§ 68-77; *Louled Massoud v. Malta*, §§ 29-47; and *A.B. and Others v. France*, §§ 126-138).

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

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

C. The forced removal itself

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

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

62. In *N.A. v. Finland* the Court dealt with a situation where the applicant´s father had agreed to a so-called "assisted voluntary return" to the country of origin after his asylum request had been rejected. He left when the removal order was enforceable and was subsequently killed in the country of origin. The Court saw no reason to doubt that the applicant´s father would not have returned there under the scheme of "assisted voluntary return" had it not been for the enforceable removal order issued against him. Consequently, his departure had not been "voluntary" in terms of his free choice. The facts complained of were thus not incapable of engaging the respondent State's jurisdiction under Article 1 of the Convention (§§ 53-57). Moreover, the absence of a genuinely free choice rendered invalid the supposed waiver of his rights under Article 2 and 3 by the applicant´s father, and the removal thus had to be considered as a forced return engaging the responsibility of the respondent State (§§ 58-60). In *M.A. v. Belgium* the Court similarly found that the applicant, against whom there was an enforceable removal order and who was held with a view to deportation and accompanied by the police to the airplane, had not waived his Article 3 rights and had not lost his victim status by signing a "voluntary return" document at the airport, without the assistance of an interpreter (§§ 60-61).

E. Rule 39 / Interim measures[1]

63. When the Court receives an application, it may indicate to the respondent State under Rule 39 of the Rules of Court certain interim measures which it considers should be adopted pending the Court's examination of the case. According to its well-established case-law and practice, the Court indicates interim measures only where there is a real and imminent risk of serious and irreparable harm. These measures most commonly consist of requesting a State to refrain from removing individuals to countries where it is alleged that they would face death or torture or other ill-treatment, and may include requesting the respondent State to receive and examine asylum applications of persons presenting themselves at a border checkpoint (*M.K. and Others v. Poland*, § 235.). In many cases, interim measures concern asylum-seekers or persons who are to be extradited whose claims have been finally rejected and who do not have any further appeal with suspensive effect at the domestic level at their disposal to prevent their removal or extradition (see paragraph 34 above). The Court has, however, also indicated interim measures in other kinds of immigration related cases, including with regard to the detention of children. Failure by the respondent State to comply with any Rule 39 measure indicated by the Court amounts to a breach of Article 34 of the Convention (see *Mamatkulov and Askarov v. Turkey* [GC], §§ 99-129; see also *Savriddin Dzhurayev v. Russia* and *M.A. v. France*).

1. *Rule 39 / Interim measures*

V. Other case scenarios

Article 4 of the Convention

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

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

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

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

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

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

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

Article 8 of the Convention

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

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

Article 12 of the Convention

"Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right."

Article 14 of the Convention

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

A. Economic and social rights

64. Other than in the context of reception conditions and assistance to be provided to persons due to be removed (see paragraphs 25 and 60 above), the Court has dealt with a number of cases concerning the economic and social rights of migrants, asylum-seekers and refugees, primarily under the angle of Article 14 in view of the fact that, where a Contracting State decides to provide social benefits, it must to do so in a way that is compliant with Article 14. In this respect, the Court found that a State may have legitimate reasons for curtailing the use of resource-hungry public services - such as welfare programmes, public benefits and health care - by short-term and illegal immigrants, who, as a rule, do not contribute to their funding and that it may also, in certain circumstances, justifiably differentiate between different categories of aliens residing in its territory (*Ponomaryovi v. Bulgaria*, § 54).

65. Differential treatment based on the immigration status of the child of an alien, whose application for refugee status had been rejected but who had been granted indefinite leave to

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

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

B. Trafficking in human beings

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

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

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

VI. Procedural aspects of applications before the Court

Article 37 of the Convention

"1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that

(a) the applicant does not intend to pursue his application; or

(b) the matter has been resolved; or

(c) for any other reason established by the Court, it is no longer justified to continue the examination of the application.

However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires.

2. The Court may decide to restore an application to its list of cases if it considers that the circumstances justify such a course."

A. Applicants in poor mental health

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

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

70. While the date of the final domestic decision providing an effective remedy is normally the starting-point for the calculation of the six-month time-limit for which Article 35 § 1 of the Convention provides, the responsibility of a sending State under Article 2 or Article 3 of the Convention is, as a rule, incurred only when steps are taken to remove the individual from its territory. The date of the State's responsibility under Article 2 or 3 corresponds to the date when that six-month time-limit starts to run for the applicant. Consequently, if a decision ordering a removal has not been enforced and the individual remains on the territory of the State wishing to remove him or her, the six-month time-limit has not yet started to run (see *M.Y.H. and Others v. Sweden*, §§ 38-41). The same would apply to removals concerning a sending State's responsibility for an alleged risk of a flagrant denial of rights under Article 5 and 6 in the receiving State (see paragraph 46 above).

C. Absence of an imminent risk of removal

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

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

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

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

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

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

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

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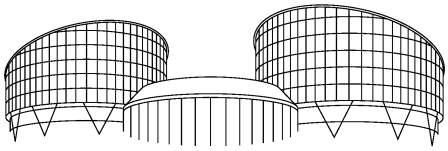

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Guide on Article 8 of the European Convention on Human Rights

Right to respect for private and family life, home and correspondence

Updated on 31 December 2020

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

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Note to readers

This Guide is part of the series of Guides on the Convention published by the European Court of Human Rights (hereafter "the Court", "the European Court" or "the Strasbourg Court") to inform legal practitioners about the fundamental judgments and decisions delivered by the Strasbourg Court. This particular Guide analyses and sums up the case-law on Article 8 of the European Convention on Human Rights (hereafter "the Convention" or "the European Convention"). Readers will find herein the key principles in this area and the relevant precedents.

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

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

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

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

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

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

I. The structure of Article 8

Article 8 of the Convention– Right to respect for private and family life

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

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

HUDOC keywords

Expulsion (8) – Extradition (8) – Positive obligations (8)

Respect for private life (81) – Respect for family life (81) – Respect for home (81) – Respect for correspondence (81)

Public authority (82) – Interference (82) – In accordance with the law (82) – Accessibility (82) – Foreseeability (82) – Safeguards against abuse (82) – Necessary in a democratic society (82) – National security (82) – Public safety (82) – Economic wellbeing of the country (82) – Prevention of disorder (82) – Prevention of crime (82) – Protection of health (82) – Protection of morals (82) – Protection of the rights and freedoms of others (82)

1. In order to invoke Article 8, an applicant must show that his or her complaint falls within at least one of the four interests identified in the Article, namely: private life, family life, home and correspondence. Some matters, of course, span more than one interest. First, the Court determines whether the applicant's claim falls within the scope of Article 8. Next, the Court examines whether there has been an interference with that right or whether the State's positive obligations to protect the right have been engaged. Conditions upon which a State may interfere with the enjoyment of a protected right are set out in paragraph 2 of Article 8, namely in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others. Limitations are allowed if they are "in accordance with the law" or "prescribed by law" and are "necessary in a democratic society" for the protection of one of the objectives set out above. In the assessment of the test of necessity in a democratic society, the Court often needs to balance the applicant's interests protected by Article 8 and a third party's interests protected by other provisions of the Convention and its Protocols.

A. The scope of Article 8

2. Article 8 encompasses the right to respect for private and family life, home and correspondence. In general, the Court has defined the scope of Article 8 broadly, even when a specific right is not set out in the Article. The scope of each of the four rights will be addressed in more detail below.

3. In some cases, the four interests identified in Article 8 might overlap and thus are referred to in more than one of the four chapters.

B. Should the case be assessed from the perspective of a negative or positive obligation?

4. The primary purpose of Article 8 is to protect against arbitrary interferences with private and family life, home, and correspondence by a public authority (*Libert v. France*, §§ 40-42). This obligation is of the classic negative kind, described by the Court as the essential object of Article 8 (*Kroon and Others v. the Netherlands*, § 31). However, Member States also have positive obligations to ensure that Article 8 rights are respected even as between private parties (*Bărbulescu v. Romania* [GC], §§ 108-111 as to the actions of a private employer). In particular, although the object of Article 8 is essentially that of protecting the individual against arbitrary interference by the public authorities, it does not merely compel the State to abstain from such interference: in addition to this primarily negative undertaking, there may be positive obligations inherent in an effective respect for private life (*Lozovyye v. Russia*, § 36). These obligations may involve the adoption of measures designed to secure respect for private life even in the sphere of the relations of individuals between themselves (see, for example, *Evans v. the United Kingdom* [GC], § 75, although the principle was first set out in *Marckx v. Belgium.*

5. The principles applicable to assessing a State's positive and negative obligations under the Convention are similar. Regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole, the aims in the second paragraph of Article 8 being of a certain relevance (*Hämäläinen v. Finland* [GC], § 65; *Gaskin v. the United Kingdom*, § 42; *Roche v. the United Kingdom* [GC], § 157). Where the case concerns a negative obligation, the Court must assess whether the interference was consistent with the requirements of Article 8 paragraph 2, namely in accordance with the law, in pursuit of a legitimate aim, and necessary in a democratic society. This is analysed in more detail below.

6. In the case of a positive obligation, the Court considers whether the importance of the interest at stake requires the imposition of the positive obligation sought by the applicant. Certain factors have been considered relevant for the assessment of the content of positive obligations on States. Some of them relate to the applicant. They concern the importance of the interests at stake and whether "fundamental values" or "essential aspects" of private life are in issue or the impact on an applicant of a discordance between the social reality and the law, the coherence of the administration and legal practices within the domestic system being regarded as an important factor in the assessment carried out under Article 8. Other factors relate to the impact of the alleged positive obligation at stake on the State concerned. The question is whether the alleged obligation is narrow and precise or broad and indeterminate (*Hämäläinen v. Finland* [GC], § 66).

7. As in the case of negative obligations, in implementing their positive obligations under Article 8, the States enjoy a certain margin of appreciation. A number of factors must be taken into account when determining the breadth of that margin. Where a particularly important facet of an individual's existence or identity is at stake, the margin allowed to the State will be restricted (for example, *X and Y v. the Netherlands*, §§ 24 and 27; *Christine Goodwin v. the United Kingdom* [GC], § 90; *Pretty v. the United Kingdom*, § 71). Where, however, there is no consensus within the Member States of the Council of Europe, either as to the relative importance of the interest at stake or as to the best means of protecting it, particularly where the case raises sensitive moral or ethical issues, the margin will be wider (*X, Y and Z v. the United Kingdom*, § 44; *Fretté v. France*, § 41; *Christine Goodwin v. the United Kingdom* [GC], § 85). There will also often be a wider margin if the State is required to strike a balance between competing private and public interests or Convention rights (*Fretté v. France*, § 42; *Odièvre v. France* [GC], §§ 44-49; *Evans v. the United Kingdom* [GC], § 77; *Dickson v. the United Kingdom* [GC], § 78; *S.H. and Others v. Austria* [GC], § 94).

8. While the choice of the means to secure compliance with Article 8 in the sphere of protection against acts of individuals is, in principle, within the State's margin of appreciation, effective deterrence against grave acts, where fundamental values and essential aspects of private life are at stake,

requires efficient criminal law provisions. The State therefore has a positive obligation inherent in Articles 3 and 8 of the Convention to enact criminal law provisions effectively punishing rape and to apply them in practice through effective investigation and prosecution (*M.C. v. Bulgaria*). Children and other vulnerable individuals, in particular, are entitled to effective protection (*X and Y v. the Netherlands*, §§ 23-24 and 27; *August v. the United Kingdom* (dec.); *M.C. v. Bulgaria*). In this regard, the Court has, for example, held that the State has an obligation to protect a minor against malicious misrepresentation (*K.U. v. Finland*, §§ 45-49). The Court has also found the following acts to be both grave and an affront to human dignity: an intrusion into the applicant's home in the form of unauthorised entry into her flat and installation of wires and hidden video cameras inside the flat; a serious, flagrant and extraordinarily intense invasion of her private life in the form of unauthorised filming of the most intimate aspects of her private life, which had taken place in the sanctity of her home, and subsequent public dissemination of those video images; and receipt of a letter threatening her with public humiliation. Furthermore, the applicant is a well-known journalist and there was a plausible link between her professional activity and the aforementioned intrusions, whose purpose was to silence her (*Khadija Ismayilova v. Azerbaijan*, § 116).

9. The State's positive obligation under Article 8 to safeguard the individual's physical integrity may extend to questions relating to the effectiveness of a criminal investigation (*Osman v. the United Kingdom*, § 128; *M.C. v. Bulgaria*, § 150; *Khadija Ismayilova v. Azerbaijan*, § 117). In the latter case, the Court held that where the Article 8 interference takes the form of threatening behaviour towards an investigative journalist highly critical of the government, it is of the utmost importance for the authorities to investigate whether the threat was connected to the applicant's professional activity and by whom it had been made (*Khadija Ismayilova v. Azerbaijan*, §§ 119-120).

10. In respect of less serious acts between individuals, which may violate psychological integrity, the obligation of the State under Article 8 to maintain and apply in practice an adequate legal framework affording protection does not always require that an efficient criminal law provision covering the specific act be in place. The legal framework could also consist of civil law remedies capable of affording sufficient protection (*ibid.*, § 47; *X and Y v. the Netherlands*, §§ 24 and 27; *Söderman v. Sweden* [GC], § 85; *Tolić and Others v. Croatia* (dec.), §§ 94-95 and § 99). Moreover, as regards the right to health, the Member States have a number of positive obligations in this respect under Articles 2 and 8 (*Vasileva v. Bulgarie*, §§ 63-69; *İbrahim Keskin v. Turkey*, § 61).

11. In sum, the State's positive obligations under Article 8 implying that the authorities have a duty to apply criminal-law mechanisms of effective investigation and prosecution concern allegations of serious acts of violence by private parties. Nevertheless, only significant flaws in the application of the relevant mechanisms amount to a breach of the State's positive obligations under Article 8. Accordingly, the Court will not concern itself with allegations of errors or isolated omissions since it cannot replace the domestic authorities in the assessment of the facts of the case; nor can it decide on the alleged perpetrators' criminal responsibility (*B.V. and Others v. Croatia* (dec.), § 151). Previous cases in which the Court found that Article 8 required an effective application of criminal-law mechanisms, in relations between private parties, concerned the sexual abuse of a mentally handicapped individual; allegations of a physical attack on the applicant; the beating of a thirteen-year-old by an adult man, causing multiple physical injuries; the beating of an individual causing a number of injuries to her head and requiring admission to hospital; and serious instances of domestic violence (*ibid.*, § 154, with further references therein). In contrast, as far as concerns less serious acts between individuals which may cause injury to someone's psychological well-being, the obligation of the State under Article 8 to maintain and apply in practice an adequate legal framework affording protection does not always require that an efficient criminal-law provision covering the specific act be in place. The legal framework could also consist of civil-law remedies capable of affording sufficient protection (*Noveski v. the former Yugoslav Republic of Macedonia* (dec.), § 61).

12. The Court has also articulated the State's procedural obligations under Article 8, which are particularly relevant in determining the margin of appreciation afforded to the member State. The Court's analysis includes the following considerations: whenever discretion capable of interfering with the enjoyment of a Convention right is conferred on national authorities, the procedural safeguards available to the individual will be especially material in determining whether the respondent State has, when fixing the regulatory framework, remained within its margin of appreciation. Indeed it is settled case-law that, whilst Article 8 contains no explicit procedural requirements, the decision-making process leading to measures of interference must be fair and such as to afford due respect to the interests safeguarded to the individual by Article 8 (*Buckley v. the United Kingdom*, § 76; *Tanda-Muzinga v. France*, § 68; *M.S. v. Ukraine*, § 70). This requires, in particular, that the applicant be involved in that process (*Lazoriva v. Ukraine*, § 63).

13. In some cases, when the applicable principles are similar, the Court does not find it necessary to determine whether the impugned domestic decision constitutes an "interference" with the exercise of the right to respect for private or family life or is to be seen as one involving a failure on the part of the respondent State to comply with a positive obligation (*Nunez v. Norway*, § 69; *Osman v. Denmark*, § 53; *Konstatinov v. the Netherlands*, § 47).

C. In the case of a negative obligation, was the interference conducted "in accordance with the law"?

14. The Court has repeatedly affirmed that any interference by a public authority with an individual's right to respect for private life and correspondence must be with in accordance with the law (see notably *Klaus Müller v. Germany,* §§ 48-51). This expression does not only necessitate compliance with domestic law but also relates to the quality of that law, requiring it to be compatible with the rule of law (*Halford v. the United Kingdom*, § 49).

15. The national law must be clear, foreseeable, and adequately accessible (*Silver and Others v. the United Kingdom*, § 87). It must be sufficiently foreseeable to enable individuals to act in accordance with the law (*Lebois v. Bulgaria*, §§ 66-67 with further references therein, as regards internal orders in prison), and it must demarcate clearly the scope of discretion for public authorities. For example, as the Court articulated in the surveillance context, the law must be sufficiently clear in its terms to give citizens an adequate indication of the conditions and circumstances in which the authorities are empowered to resort to any measures of secret surveillance and collection of data (*Shimovolos v. Russia*, § 68). In *Vukota-Bojić v. Switzerland* the Court found a violation of Article 8 due to the lack of clarity and precision in the domestic legal provisions that had served as the legal basis of the applicant's surveillance by her insurance company after an accident.

16. The clarity requirement applies to the scope of discretion exercised by public authorities. Domestic law must indicate with reasonable clarity the scope and manner of exercise of the relevant discretion conferred on the public authorities so as to ensure to individuals the minimum degree of protection to which they are entitled under the rule of law in a democratic society (*Piechowicz v. Poland*, § 212). The fact that the applicant's case is the first of its kind under the applicable legislation and that the court has sought guidance from the CJEU on the interpretation of the relevant European law does not render the domestic courts' interpretation and application of the legislation arbitrary or unpredictable (*Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], § 150).

17. With regard to foreseeability, the phrase "in accordance with the law" thus implies, inter alia, that domestic law must be sufficiently foreseeable in its terms to give individuals an adequate indication as to the circumstances in which, and the conditions on which, the authorities are entitled to resort to measures affecting their rights under the Convention (*Fernández Martínez v. Spain* [GC], § 117). Foreseeability need not be certain. In *Slivenko v. Latvia* [GC], the applicants must have been able to foresee to a reasonable degree, at least with the advice of legal experts, that they would be regarded as covered by the law (see also *Dubská and Krejzová v. the Czech Republic* [GC], § 171).

Absolute certainty in this matter could not be expected (§ 107). It should also be noted that the applicant's profession may be a factor to consider as it provides an indication as to his or her ability to foresee the legal consequences of his or her actions (*Versini-Campinchi and Crasnianski v. France*, § 55). In determining whether the applicable law could be considered as foreseeable in its consequences and as enabling the applicant to regulate his conduct in his specific case, the Court may be confronted with a situation of divergences in the case-law of different courts at the same level of jurisdiction (*Klaus Müller v. Germany,* §§ 54-60).

18. Lawfulness also requires that there be adequate safeguards to ensure that an individual's Article 8 rights are respected. A State's responsibility to protect private and family life often includes positive obligations that ensure adequate regard for Article 8 rights at the national level. The Court, for example, found a violation of the right to private life due to the absence of clear statutory provisions criminalising the act of covertly filming a naked child (*Söderman v. Sweden* [GC], § 117).

19. Even when the letter and spirit of the domestic provision in force at the time of the events were sufficiently precise, its interpretation and application by the domestic courts to the circumstances of the applicant's case must not be manifestly unreasonable and thus not foreseeable within the meaning of Article 8 § 2. For instance, in the case of *Altay v. Turkey (no. 2)*, the extensive interpretation of the domestic provision did not comply with the Convention requirement of lawfulness (§ 57).

20. A finding that the measure in question was not "in accordance with the law" suffices for the Court to hold that there has been a violation of Article 8 of the Convention. It is not therefore necessary to examine whether the interference in question pursued a "legitimate aim" or was "necessary in a democratic society" (*M.M. v. the Netherlands*, § 46; *Solska and Rybicka v. Poland*, § 129). In *Mozer v. the Republic of Moldova and Russia* [GC], the Court found that, regardless of whether there was a legal basis for the interference with the applicant's rights, the interference did not comply with the other conditions set out in Article 8 § 2 (§ 196). The interference can also be considered not to be "in accordance with the law", as a result of an unlawful measure under Article 5 § 1 (*Blyudik v. Russia*, § 75).

D. Does the interference further a legitimate aim?

21. Article 8 § 2 enumerates the legitimate aims which may justify an infringement upon the rights protected in Article 8: "in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others". The Court has however observed that its practice is to be quite succinct when it verifies the existence of a legitimate aim within the meaning of the second paragraphs of Articles 8 to 11 of the Convention (*S.A.S. v. France* [GC], § 114). It is for the respondent Government to demonstrate that the interference pursued a legitimate aim (*Mozer v. the Republic of Moldova and Russia* [GC], § 194; *P.T. v. the Republic of Moldova*, § 29).

22. The Court has found, for example, that immigration measures may be justified by the preservation of the country's economic wellbeing within the meaning of paragraph 2 of Article 8 rather than the prevention of disorder if the government's purpose was, because of the population density, to regulate the labour market (*Berrehab v. the Netherlands*, § 26). The Court has also found both economic wellbeing and the protection of the rights and freedom of others to be the legitimate aim of large governments projects, such as the expansion of an airport (*Hatton and Others v. the United Kingdom* [GC], § 121 – for the preservation of a forest/environment and the protection of the "rights and freedoms of others", see *Kaminskas v. Lithuania*, § 51).

23. The Court found that a ban on fullface veils in public places served a legitimate aim taking into account the respondent State's point that the face plays an important role in social interaction. It was therefore able to accept that the barrier raised against others by a veil concealing the face was

perceived by the respondent State as breaching the right of others to live in a space of socialisation which makes living together easier (*S.A.S. v. France* [GC], § 122).

24. In *Toma v. Romania*, however, the Court found that the Government had provided no legitimate justification for allowing journalists to publish images of a person detained before trial, when there was no public safety reason to do so (§ 92). In *Aliyev v. Azerbaijan*, the Court did not find that a search and seizure at the applicant's home and office had pursued any legitimate aims enumerated in Article 8 § 2 (§§ 183-188).

25. In some cases, the Court found that the impugned measure did not have a rational basis or connection to any of the legitimate aims foreseen in Article 8 § 2, which was in itself sufficient for a violation of the Article. Nevertheless, the Court considered that the interference raised such a serious issue of proportionality to any possible legitimate aim that it also examined this aspect (*Mozer v. the Republic of Moldova and Russia* [GC], §§ 194-196; *P.T. v. the Republic of Moldova*, §§ 30-33).

E. Is the interference "necessary in a democratic society"?

26. In order to determine whether a particular infringement upon Article 8 is "necessary in a democratic society" the Court balances the interests of the Member State against the right of the applicant. In an early and leading Article 8 case, the Court clarified that "necessary" in this context does not have the flexibility of such expressions as "useful", "reasonable", or "desirable" but implies the existence of a "pressing social need" for the interference in question. It is for national authorities to make the initial assessment of the pressing social need in each case; accordingly, a margin of appreciation is left to them. However their decision remains subject to review by the Court. A restriction on a Convention right cannot be regarded as "necessary in a democratic society" – two hallmarks of which are tolerance and broadmindedness – unless, amongst other things, it is proportionate to the legitimate aim pursued (*Dudgeon v. the United Kingdom*, §§ 51-53).

27. Subsequently, the Court has affirmed that in determining whether the impugned measures were "necessary in a democratic society", it will consider whether, in the light of the case as a whole, the reasons adduced to justify them were relevant and sufficient and whether the measures were proportionate to the legitimate aims pursued (*Z v. Finland*, § 94). The Court has further clarified this requirement, stating that the notion of "necessity" for the purposes of Article 8 means that the interference must correspond to a pressing social need, and, in particular, must remain proportionate to the legitimate aim pursued. When determining whether an interference was "necessary" the Court will consider the margin of appreciation left to the State authorities, but it is a duty of the respondent State to demonstrate the existence of a pressing social need behind the interference (*Piechowicz v. Poland*, § 212). The Court reiterated the guiding principles on the margin of appreciation in *Paradiso and Campanelli v. Italy* [GC], §§ 179-184 and *Klaus Müller v. Germany*, § 66.

28. With regard to general measures taken by the national government, it emerges from the Court's case-law that, in order to determine the proportionality of a general measure, the Court must primarily assess the legislative choices underlying it. The quality of the parliamentary and judicial review of the necessity of the measure is of particular importance in this respect, including to the operation of the relevant margin of appreciation. The procedural safeguards available to the individual will be especially material in determining whether the respondent State has, when fixing the regulatory framework, remained within its margin of appreciation. In particular, the Court must examine whether the decision-making process leading to measures of interference was fair and such as to afford due respect to the interests safeguarded to the individual by Article 8 (*A.-M.V. v. Finland*, §§ 82-84).

F. Relation between Article 8 and other provisions of the Convention and its Protocols

29. The Court is the master of the characterisation to be given in law to the facts of the case and is not bound by the characterisation given by the applicant or the Government (*Soares de Melo v. Portugal*, § 65; *Mitovi v. the former Yugoslav Republic of Macedonia*, § 49; *Macready v. the Czech Republic*, § 41; *Havelka and Others v. the Czech Republic*, § 35). Thus, the Court will consider under which Article(s) the complaints should be examined (*Radomilja and Others v. Croatia* [GC], § 114; *Sudita Keita v. Hungary*, § 24).

1. Private and family life

a. Article 2 (right to life)[1] and Article 3 (prohibition of torture)[2]

30. Regarding the protection of the physical and psychological integrity of an individual from the acts of other persons, the Court has held that the authorities' positive obligations – in some cases under Articles 2 or 3 and in other instances under Article 8 taken alone or in combination with Article 3 of the Convention (*Buturugă v. Romania*, § 44) – may include a duty to maintain and apply in practice an adequate legal framework affording protection against acts of violence by private individuals (see, inter alia, *Söderman v. Sweden* [GC], § 80 with further references therein) or against medical negligence (see § 127 in *Nicolae Virgiliu Tănase v. Romania* [GC] with further references therein). However, in a case of a road-traffic accident in which an individual sustained unintentional life-threatening injuries, the Grand Chamber did not find Article 3 or 8 applicable but rather it applied Article 2 (*ibid.*, §§ 128-32).

31. In its case-law on Articles 3 and 8, the Court emphasised the importance to children and the other vulnerable members of society of benefiting from State protection where their physical and mental well-being were threatened (*Wetjen and Others v. Germany*, § 74, *Tlapak and Others v. Germany*, § 87; *A and B v. Croatia*, §§ 106-113). In the two cases against Germany the Court reiterated that the fact of regularly caning one's children was liable to attain the requisite level of severity to fall foul of Article 3 (*Wetjen and Others v. Germany*, § 76; *Tlapak and Others v. Germany*, § 89). Accordingly, in order to prevent any risk of ill-treatment under Article 3, the Court considered it commendable if Member States prohibited in law all forms of corporal punishment of children. However, in order to ensure compliance with Article 8, such a prohibition should be implemented by means of proportionate measures so that it was practical and effective and did not remain theoretical (*Wetjen and Others v. Germany*, §§ 77-78; *Tlapak and Others v. Germany*, §§ 90-91).

32. The Court has stated that when a measure falls short of Article 3 treatment, it may nevertheless fall foul of Article 8 (*Wainwright v. the United Kingdom*, § 43, as regards strip-search). In particular, conditions of detention may give rise to an Article 8 violation where they do not attain the level of severity necessary for a violation of Article 3 (*Raninen v. Finland*, § 63). The Court has frequently found a violation of Article 3 of the Convention on account of poor conditions of detention where the lack of a sufficient divide between the sanitary facilities and the rest of the cell was just one element of those conditions (*Szafrański v. Poland*, §§ 24 and 38). In *Szafrański v. Poland*, the Court found that the domestic authorities failed to discharge their positive obligation of ensuring a minimum level of privacy for the applicant and had therefore violated Article 8 where the applicant had

[1] See the Guide on *Article 2 (Right to life)*.
[2] See the Guide on Article 3 (Prohibition of torture) – Currently being processed.

to use the toilet in the presence of other inmates and was thus deprived of a basic level of privacy in his everyday life (§§ 39-41).

33. Similarly, even though the right to health is not a right guaranteed by the Convention and the Protocols thereto, the Member States have a number of positive obligations in that connection under Articles 2 and 8. They must, first of all, lay down regulations requiring public and private hospitals to adopt appropriate measures to protect the physical integrity of their patients, and secondly, make available to victims of medical negligence a procedure capable of providing them, if need be, with compensation for damage. Those obligations apply under Article 8 in the event of injury which falls short of threatening the right to life as secured under Article 2 (*Vasileva v. Bulgaria*, §§ 63-69; *İbrahim Keskin v. Turkey*, § 61; and *Mehmet Ulusoy and Others v. Turkey*, §§ 92-94).

34. Procedural obligations under Article 2 to carry out an effective investigation into alleged breaches of the right to life may come into conflict with a State's obligations under Article 8 (*Solska and Rybicka v. Poland*, §§ 118-119). State authorities are required to find a due balance between the requirements of an effective investigation under Article 2 and the protection of the right to respect for private and family life (under Article 8) of persons affected by the investigation (§ 121). The case of *Solska and Rybicka v. Poland* concerned the exhumation, in the context of criminal proceedings, of the remains of deceased persons against the wishes of their families; Polish domestic law did not provide a mechanism to review the proportionality of the decision ordering exhumation. As a consequence, the Court found that the interference was not "in accordance with the law" and thus amounted to a violation of Article 8 (§§ 126-128).

b. Article 6 (right to a fair trial)[3]

35. The procedural aspect of Article 8 is closely linked to the rights and interests protected by Article 6 of the Convention. Article 6 affords a procedural safeguard, namely the "right to a court" in the determination of one's "civil rights and obligations", whereas the procedural requirement of Article 8 does not only cover administrative procedures as well as judicial proceedings, but it is also ancillary to the wider purpose of ensuring proper respect for, inter alia, family life (*Tapia Gasca and D. v. Spain*, §§ 111-113; *Bianchi v. Switzerland*, § 112; *McMichael v. the United Kingdom*, § 91; *B. v. the United Kingdom*, §§ 63-65; *Golder v. the United Kingdom*, § 36). The difference between the purpose pursued by the respective safeguards afforded by Articles 6 and 8 may, in the light of the particular circumstances, justify the examination of the same set of facts under both Articles (compare *O. v. the United Kingdom*, §§ 65-67; *Golder v. the United Kingdom*, §§ 41-45; *Macready v. the Czech Republic*, § 41; *Bianchi v. Switzerland*, § 113).

36. However, in some cases where family life is at stake and the applicants invoked Articles 6 and 8, the Court has decided to examine the facts solely under Article 8. According to the Court, the procedural aspect of Article 8 requires the decision-making process leading to measures of interference to be fair and to afford due respect to the interests safeguarded by the Article (*Soares de Melo v. Portugal*, § 65; *Santos Nunes v. Portugal*, § 56; *Havelka and Others v. the Czech Republic*, §§ 34-35; *Wallová and Walla v. the Czech Republic*, § 47; *Kutzner v. Germany*, § 56; *McMichael v. the United Kingdom*, § 87; and *Mehmet Ulusoy and Others v. Turkey*, § 109). Therefore, the Court may also have regard, under Article 8, to the form and length of the decision-making process (*Macready v. the Czech Republic*, § 41) Also, the State has to take all appropriate measures to reunite parents and children (*Santos Nunes v. Portugal*, § 56).

[3] See the Guides on Article 6 (Right to a fair trial) - *Civil limb* and *Criminal limb*.

37. For example, whether a case has been heard within a reasonable time – as is required by Article 6 § 1 of the Convention – also forms part of the procedural requirements implicit in Article 8 (*Ribić v. Croatia*, § 92). Also, the Court has examined a complaint about the failure to enforce a decision concerning the applicants' right to have contact only under Article 8 (*Mitovi v. the former Yugoslav Republic of Macedonia*, § 49). Likewise, the Court decided to examine under Article 8 solely the inactivity and lack of diligence of the State and the excessive length of the proceedings for the execution of the decision to grant the applicant the custody of the child (*Santos Nunes v. Portugal*, §§ 54-56).

38. Moreover, in several cases where a close link was found between the complaints raised under Article 6 and Article 8, the Court has considered the complaint under Article 6 as being part of the complaint under Article 8 (*Anghel v. Italy*, § 69; *Diamante and Pelliccioni v. San Marino*, § 151; *Kutzner v. Germany*, § 57; *Labita v. Italy* [GC], § 187). In *G.B. v. Lithuania*, the Court did not consider it necessary to examine separately whether there had been a violation of Article 6 § 1 given that the Court had found that the applicant's procedural rights had been respected when examining her complaints under Article 8 (§ 113).

39. In *Y. v. Slovenia*, the Court examined whether the domestic trial court struck a proper balance between the protection of the applicant's right to respect for private life and personal integrity and the defence rights of the accused where the applicant had been crossexamined by the accused during criminal proceedings concerning alleged sexual assaults (§§ 114-116).

40. In cases concerning a person's relationship with his or her child there is a duty to exercise exceptional diligence in view of the risk that the passage of time may result in a de facto determination of the matter. This duty, which is decisive in assessing whether a case has been heard within a reasonable time as required by Article 6 § 1 of the Convention, also forms part of the procedural requirements implicit in Article 8 (*Süß v. Germany*, § 100; *Strömblad v. Sweden*, § 80; *Ribić v. Croatia*, § 92).

41. It the case of *Altay v. Turkey (no. 2)*, §§ 47-52 and § 56, the Court's view of the nature of the lawyer-client relationship – which falls within the scope of "private life" - weighed heavily in its assessment of whether the proceedings in which the applicant challenged the restriction on his right to communicate in confidentiality with his lawyer in prison were governed by the "civil" limb of Article 6 (§ 68).

c. Article 9 (freedom of thought, conscience and religion)[4]

42. Although Article 9 governs freedom of thought, conscience, and religious matters, the Court has established that disclosure of information about personal religious and philosophical convictions may engage Article 8 as well, as such convictions concern some of the most intimate aspects of private life (*Folgerø and Others v. Norway* [GC], § 98, where imposing an obligation on parents to disclose detailed information to the school authorities about their religious and philosophical convictions could constitute a violation of Article 8 of the Convention, even though in the case itself there was no obligation as such for parents to disclose their own convictions).

d. Article 10 (freedom of expression)[5]

43. In cases which require the right to respect for private life to be balanced against the right to freedom of expression, the Court considers that the outcome of the application should not, in theo-

[4] See the Guide on *Article 9 (freedom of thought, conscience and religion)*.
[5] See the *Guide on Article 10 (Freedom of expression)*.

ry, vary according to whether it has been lodged with the Court under Article 8 of the Convention by the person who was the subject of the news report, or under Article 10 by the publisher. Indeed, as a matter of principle these rights deserve equal respect (*Couderc and Hachette Filipacchi Associés v. France* [GC], § 91; *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], § 123; *Medžlis Islamske Zajednice Brčko and Others v. Bosnia and Herzegovina* [GC], § 77). Accordingly, the margin of appreciation should in theory be the same in both cases. The relevant criteria defined by the case-law are as follows: contribution to a debate of public interest, the degree of notoriety of the person affected, the subject of the news report, the prior conduct of the person concerned, the content, form and consequences of the publication, and, where appropriate, the circumstances in which the photographs were taken (*Couderc and Hachette Filipacchi Associés v. France* [GC], §§ 90-93; *Von Hannover v. Germany (no. 2)* [GC], §§ 108-113; *Axel Springer AG v. Germany* [GC], §§ 89-95). Furthermore, in the context of an application lodged under Article 10, the Court examines the way in which the information was obtained and its veracity, and the gravity of the penalty imposed on the journalists or publishers (*Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], § 165). Some of these criteria may have more or less relevance given the particular circumstances of the case (see, for a case concerning the mass collection, processing and publication of tax data, *ibid.*, § 166), and according to the context, other criteria may also apply (*Medžlis Islamske Zajednice Brčko and Others v. Bosnia and Herzegovina* [GC], § 88). With regard to the way in which the information was obtained, the Court has held that the press should normally be entitled to rely on the content of official reports without further verification of the facts presented in the document (*Bladet Tromsø and Stensaas v. Norway* [GC], § 68; *Mityanin and Leonov v. Russia*, § 109).

44. The Court ruled on the scope of the right to respect for private life safeguarded by Article 8 in relation to the freedom of expression secured by Article 10 to information society service providers such as Google Inc. in *Tamiz v. the United Kingdom* (dec.) and to Internet archives managed by media in *M.L. and W.W. v. Germany*.

e. Article 14 (prohibition of discrimination)[6]

45. On many occasions, Article 8 has been read in conjunction with Article 14.

46. For instance, concerning same-sex couples, the Court has attached importance to the continuing international movement towards the legal recognition of same-sex unions (*Oliari and Others v. Italy*, §§ 178 and 180-185), but leaves open the option for States to restrict access to marriage to different-sex couples (*Schalk and Kopf v. Austria*, § 108).

47. In *Beizaras and Levickas v. Lithuania*, the applicants, two young men, posted a photograph of themselves kissing on a public Facebook page. This online post received hundreds of virulently homophobic comments. Although the applicants requested it, the prosecutors and domestic courts refused to prosecute, finding that the applicants' behaviour had been "eccentric" and did not correspond to "traditional family values" in the country. The Court stated that the hateful comments against the applicants and the homosexual community in general were instigated by a bigoted attitude towards that community and that the very same discriminatory state of mind was at the core of the failure on the part of the relevant public authorities to discharge their positive obligation to investigate in an effective manner whether those comments constituted incitement to hatred and violence. The Court concluded that the applicants had suffered discrimination on the ground of their sexual orientation (§§ 106-116, § 129).

[6] See the *Guide on Article 14 (Prohibition of discrimination)*.

48. With regard to gender-based discrimination, the Court has noted that the advancement of gender equality is today a major goal for the Member States of the Council of Europe and very weighty reasons would have to be put forward before such a difference of treatment could be regarded as compatible with the Convention. In particular, references to traditions, general assumptions or prevailing social attitudes in a particular country are insufficient justification for a difference in treatment on the grounds of sex. For example, in a case concerning the bearing of a woman's maiden name after marriage, the Court found that the importance attached to the principle of non-discrimination prevented States from imposing traditions deriving from the man's primordial role and the woman's secondary role in the family (*Ünal Tekeli v. Turkey*, § 63). The Court has also held that the issue with stereotyping of a certain group in society lies in the fact that it prohibits the individualised evaluation of their capacity and needs (*Carvalho Pinto de Sousa Morais v. Portugal*, § 46 with further references therein).

49. In *Alexandru Enache v. Romania* the applicant, who had been sentenced to seven years' imprisonment, wanted to look after his child, who was only a few months old. However, his applications to defer his sentence were dismissed by the courts on the grounds that such a measure, which was available to convicted mothers up to their child's first birthday, was to be interpreted strictly and that the applicant, as a man, could not request its application by analogy. The Court found that the applicant could claim to be in a similar situation to that of a female prisoner (§§ 68-69). However, referring to international law, it observed that motherhood enjoyed special protection, and held that the authorities had not breached Article 14 in conjunction with Article 8 (§ 77).

50. Concerning the difference in treatment on the ground of birth out of or within wedlock, the Court has stated that very weighty reasons need to be put forward before such difference in treatment can be regarded as compatible with the Convention (*Sahin v. Germany* [GC], § 94; *Mazurek v. France*, § 49; *Camp and Bourimi v. the Netherlands*, §§ 37-38). The same is true for a difference in the treatment of the father of a child born of a relationship where the parties were living together out of wedlock as compared with the father of a child born of a marriagebased relationship (*Sahin v. Germany* [GC], § 94).

51. The Court has found a violation of Article 14 read in conjunction with Article 8 as a result of the authorities' refusal to let a binational couple keep their own surnames after marriage (*Losonci Rose and Rose v. Switzerland*, § 26). A violation was also found as regards a ban on adoption of Russian children by US nationals in *A.H. and Others v. Russia*. Where the State had gone beyond its obligations under Article 8 and created a right to adopt in its domestic law, it could not, in applying that right, take discriminatory measures within the meaning of Article 14. According to the Court, the applicants' right to apply for adoption, and to have their applications considered fairly, fell within the general scope of private life under Article 8.

52. Where withdrawal of parental authority had been based on a distinction essentially deriving from religious considerations, the Court held that there had been a violation of Article 8 in conjunction with Article 14 (*Hoffmann v. Austria*, § 36, concerning the withdrawal of parental rights from the applicant after she divorced the father of their two children because she was a Jehovah's Witness).

53. In a case where police had failed to protect Roma residents from a pre-planned attack on their homes by a mob motivated by anti-Roma sentiment, the Court found that there had been a violation of Article 8 taken in conjunction with Article 14 (*Burlya and Others v. Ukraine*, §§ 169-170).

54. The Court has also found a violation of Article 8 taken in conjunction with Article 14 where convicted prisoners could have four-hour short visits and long visits lasting days whereas remand prisoners were allowed to have three-hour short visits and no long visits (*Chaldayev v. Russia*, §§ 69-83.

55. In *Cînța v. Romania*, the domestic courts had placed restrictions on the applicant's contact-rights in respect of his daughter. The Court found a violation of Article 14 in conjunction with Article 8 be-

cause the domestic courts had based their decisions on the applicant's mental disorder, without assessing the impact of the mental illness on his caring skills or the child's safety.

2. Home and correspondence

a. Article 2 (right to life)[7]

56. As concerns interferences with the home, the Court has established parallels between the State's positive obligations under Article 8 of the Convention, Article 1 of Protocol No. 1 and Article 2 of the Convention (*Kolyadenko and Others v. Russia*, § 216).

b. Article 6 (fair trial)[8]

57. As concerns intercepted correspondence, the Court has distinguished between the question of whether Article 8 has been violated in respect of investigative measures and the question of possible ramifications of a finding to that effect on rights guaranteed under Article 6 (see, for example, *Dragoş Ioan Rusu v. Romania*, § 52 and *Dumitru Popescu v. Romania (no. 2)*, § 106, with further references).

c. Article 10 (freedom of expression)[9]

58. Although surveillance or telephone tapping is generally examined under Article 8 alone, such a measure may be so closely linked to an issue falling under Article 10 – for example, if special powers were used to circumvent the protection of a journalistic source – that the Court examines the case under the two Articles concurrently (*Telegraaf Media Nederland Landelijke Media B.V. and Others v. the Netherlands*). In the case cited, the Court found a violation of both Articles. It held that the law had not afforded adequate safeguards in relation to the surveillance of journalists with a view to discovering their sources.

d. Article 13 (right to an effective remedy)[10]

59. In a case concerning home searches, the Court found that the mere possibility of disciplinary proceedings against the police officers who had carried out the searches did not constitute an effective remedy for the purposes of the Convention. In the case of interference with the right to respect for the home, a remedy is effective if the applicant has access to a procedure enabling him or her to contest the lawfulness of searches and seizures and obtain redress where appropriate (*Posevini v. Bulgaria*, § 84).

60. As regards the interception of telephone conversations, in the *İrfan Güzel v. Turkey* judgment (§§ 94-99), after finding that there had been no violation of Article 8 on account of the tapping of the applicant's telephone calls in the course of the criminal proceedings against him, the Court held that there had been a violation of Article 13 in conjunction with Article 8 (see also the references to the *Roman Zakharov v. Russia* [GC] judgment). In the sphere of secret surveillance, where abuses are potentially easy and could have harmful consequences for democratic society as a whole, it is in principle desirable to entrust supervisory control to a judge, judicial oversight offering the best guarantees of independence, impartiality and a proper procedure (*Roman Zakharov v. Russia* [GC], § 233;

[7] See the *Guide on Article 2 (right to life)*.
[8] See the *Guide on Article 6 (Fair trial)*.
[9] See the *Guide on Article 10 (Freedom of expression)*.
[10] See the *Guide on Article 13 (Right to an effective remedy)*.

İrfan Güzel v. Turkey, § 96). It is advisable to notify the person concerned after the termination of surveillance measures, as soon as notification can be carried out without jeopardising the purpose of the restriction (*Roman Zakharov v. Russia* [GC], §§ 287 et seq.; *İrfan Güzel v. Turkey*, § 98). In order to be able to challenge the decision forming the basis for the interception of communications, the applicant must be provided with a minimum amount of information about the decision, such as the date of its adoption and the authority that issued it (*Roman Zakharov v. Russia* [GC], §§ 291 et seq.; *İrfan Güzel v. Turkey*, § 105). Ultimately, an "effective remedy" for the purposes of Article 13 in the context of secret surveillance must mean "a remedy that is as effective as can be having regard to the restricted scope for recourse inherent in any system of secret surveillance" (*İrfan Güzel v. Turkey*, § 99).

e. Article 14 (prohibition of discrimination)[11]

61. In *Larkos v. Cyprus* [GC] the Court held that the disadvantageous situation of tenants renting State-owned property in relation to tenants renting from private landlords as regards eviction breached Article 14 of the Convention taken in conjunction with Article 8. In *Strunjak and Others v. Croatia* (dec.), it did not find it discriminatory that only tenants occupying State-owned flats had the possibility of purchasing them, whereas tenants of privately owned flats did not. In *Bah v. the United Kingdom* it examined the conditions of access to social housing. In *Karner v. Austria* it considered the issue of the right to succeed to a tenancy within a homosexual couple (see also *Kozak v. Poland* and compare with *Korelc v. Slovenia*, where it was impossible for an individual who had provided daily care to the person he lived with to succeed to the tenancy on the latter's death). Other cases concern Articles 14 and 8 in conjunction (*Gillow v. the United Kingdom*, §§ 64-67; *Moldovan and Others v. Romania (no. 2)*).

f. Article 34 (individual applications)[12]

62. In cases concerning the interception of a letter addressed to or received by the Court, Article 34 of the Convention, which prevents any hindrance of the effective exercise of the right of individual petition, may also be applicable (*Yefimenko v. Russia*, §§ 152-165; *Kornakovs v. Latvia*, § 157; *Chukayev v. Russia*, § 130). As a matter of fact, for the operation of the system of individual petition instituted by Article 34 of the Convention to be effective, applicants or potential applicants must be able to communicate freely with the Court without being subjected to any form of pressure from the authorities to withdraw or modify their application (*Salman v. Turkey* [GC], § 130). Delay by the prison authorities in posting letters to the Court forms an example of hindrance prohibited by the second sentence of Article 34 of the Convention (*Poleshchuk v. Russia*, § 28), as does the authorities' refusal to send the Court the initial letter from an applicant in detention (*Kornakovs v. Latvia*, §§ 165-167).

g. Article 1 of Protocol No. 1 (protection of property)[13]

63. There may be a significant overlap between the concept of "home" and that of "property" under Article 1 of Protocol No. 1, but the existence of a "home" is not dependent on the existence of a right or interest in respect of real property (*Surugiu v. Romania*, § 63). An individual may have a property right over a particular building or land for the purposes of Article 1 of Protocol No. 1, with-

[11] See the *Guide on Article 14 (prohibition of discrimination)*.
[12] See also Prisoners' correspondence and the *Practicle Guide on admissibility criteria*.
[13] See the *Guide on Article 1 of Protocol No 1 (Protection of property)*.

out having sufficient ties with the property for it to constitute his or her "home" within the meaning of Article 8 (*Khamidov v. Russia*, § 128).

64. In view of the crucial importance of the rights secured under Article 8 to the individual's identity, self-determination and physical and mental integrity, the margin of appreciation afforded to States in housing matters is narrower in relation to the rights guaranteed by Article 8 than to those protected by Article 1 of Protocol No. 1 (*Gladysheva v. Russia*, § 93). Some measures that constitute a violation of Article 8 will not necessarily lead to a finding of a violation of Article 1 of Protocol No. 1 (*Ivanova and Cherkezov v. Bulgaria*, §§ 62-76). The judgment in *Ivanova and Cherkezov v. Bulgaria* highlights the difference between the interests protected by the two Articles and hence the disparity in the extent of the protection they afford, particularly when it comes to applying the proportionality requirements to the facts of a particular case (§ 74).

65. A violation of Article 8 may accompany a finding of a violation of Article 1 of Protocol No. 1 (*Doğan and Others v. Turkey*, § 159; *Chiragov and Others v. Armenia* [GC], § 207; *Sargsyan v. Azerbaijan* [GC], §§ 259-260; *Cyprus v. Turkey* [GC], §§ 175 and 189; *Khamidov v. Russia*, §§ 139 and 146; *Rousk v. Sweden*, §§ 126 and 142; and *Kolyadenko and Others v. Russia*, § 217). Alternatively, the Court may find a violation of one of the two Articles only (*Ivanova and Cherkezov v. Bulgaria*, §§ 62 and 76). It may also consider it unnecessary to rule separately on one of the two complaints (*Öneryıldız v. Turkey* [GC], § 160; *Surugiu v. Romania*, § 75).

66. Some measures touching on enjoyment of the home should, however, be examined under Article 1 of Protocol No. 1, particularly in standard expropriation cases (*Mehmet Salih and Abdülsamet Çakmak v. Turkey*, § 22; *Mutlu v. Turkey*, § 23).

h. Article 2 § 1 of Protocol No. 4 (freedom of movement)

67. Although there is some interplay between Article 2 § 1 of Protocol No. 4, which guarantees the right to liberty of movement within the territory of a State and freedom to choose one's residence there, and Article 8, the same criteria do not apply in both cases. Article 8 cannot be construed as conferring the right to live in a particular location (*Ward v. the United Kingdom* (dec.); *Codona v. the United Kingdom* (dec.)), whereas Article 2 § 1 of Protocol No. 4 would be devoid of all meaning if it did not in principle require the Contracting States to take account of individual preferences in this sphere (*Garib v. the Netherlands* [GC], §§ 140-141).

II. Private life

A. Sphere of private life

1. Applicability in general

68. Private life is a broad concept incapable of exhaustive definition (*Niemietz v. Germany*, § 29; *Pretty v. the United Kingdom*, § 61; *Peck v. the United Kingdom*, § 57). It covers the physical and psychological integrity of a person and may "embrace multiple aspects of the person's physical and social identity" (*Denisov v. Ukraine* [GC], § 95; *S. and Marper v. the United Kingdom* [GC], § 66). However, through its case-law, the Court has provided guidance as to the meaning and scope of private life for the purposes of Article 8 (*Paradiso and Campanelli v. Italy* [GC], § 159). Moreover, the generous approach to the definition of personal interests has allowed the case-law to develop in line with social and technological developments.

69. The notion of private life is not limited to an "inner circle" in which the individual may live his own personal life as he chooses and exclude the outside world (*Denisov v. Ukraine* [GC], § 96). Article 8 protects the right to personal development, whether in terms of personality or of personal autonomy, which is an important principle underlying the interpretation of the Article 8 guarantees. It encompasses the right for each individual to approach others in order to establish and develop relationships with them and with the outside world, that is, the right to a "private social life" (*Bărbulescu v. Romania* [GC], § 71; *Botta v. Italy*, § 32). However, Article 8 does not guarantee the right as such to establish a relationship with one particular person, especially if the other person does not share the wish for contact and if the person with whom the applicant wishes to maintain contact has been the victim of behaviour which has been deemed detrimental by the domestic courts (*Evers v. Germany*, § 54).

70. There is a zone of interaction of a person with others, even in a public context, which may fall within the scope of"private life" (see, among other authorities, *Peck v. the United Kingdom*, § 62; *Uzun v. Germany*, § 43; *Von Hannover v. Germany (no. 2)* [GC], § 95; *Altay v. Turkey (no. 2)*, § 49) or not (*Nicolae Virgiliu Tănase v. Romania* [GC], §§ 128-32). However, there is nothing in the Court's established case-law which suggests that the scope of private life extends to activities "which are of an essentially public nature" (*ibid.*, § 128; see also *Centre for Democracy and the Rule of Law v. Ukraine* as concerns the disclosure of information about political leaders' education and work history, §§ 114-116). Everyone has the right to live privately, away from unwanted attention (*Khadija Ismayilova v. Azerbaijan*, § 139). The home address of a person constitutes personal information that is a matter of private life and, as such, enjoys the protection afforded in that respect by Article 8 (*Alkaya v. Turkey*, § 30).

71. The applicability of Article 8 has been determined, in some contexts, by a severity test: see the relevant case-law on environmental issues[14], an attack on a person's reputation in *Denisov v. Ukraine* [GC], §§ 111-112 and 115-117 with further references therein; acts or measures of a private individual which adversely affect the physical and psychological integrity of another in *Nicolae Virgiliu Tănase v. Romania* [GC], § 128; and an individual's psychological well-being and dignity in *Beizaras and Levickas v. Lithuania*, §§ 109 and 117. Once a measure is found to have seriously affected the applicant's private life, the complaint will be compatible *ratione materiae* with the Convention and an issue of the "right to respect for private life" will arise. In this regard, the question of

[14]. See chapter on *Environmental issues*.

applicability and the existence of interference with the right to respect for private life are often inextricably linked (*Vučina v. Croatia* (dec.), § 32).

72. In *Vučina v. Croatia* (dec.), the applicant's photograph had been published in a magazine and she was erroneously identified as the then Mayor's wife. The Court declared the application inadmissible *ratione materiae*. Although it accepted that the applicant might have been caused some distress, it considered that the level of seriousness associated with the erroneous labelling of her photograph and the inconvenience that she suffered did not give rise to an issue – either in the context of the protection of her image or her honour and reputation – under Article 8 (§§ 42-51).

73. In the case of access to a private beach by a person with disabilities, the Court held that the right asserted concerned interpersonal relations of such broad and indeterminate scope that there could be no conceivable direct link between the measures the State was being urged to take in order to make good the omissions of the private bathing establishments and the applicant's private life. Accordingly Article 8 was not applicable (*Botta v. Italy*, § 35).

74. Additionally, the Court found that Article 8 was not engaged in a case regarding a conviction for professional misconduct because the offence in question had no obvious bearing on the right to respect for "private life". On the contrary it concerned professional acts and omissions by public officials in the exercise of their duties. Neither had the applicant pointed to any concrete repercussions on his private life which had been directly and causally linked to his conviction for that specific offence (*Gillberg v. Sweden* [GC], § 70; see also *Denisov v. Ukraine* [GC], §§ 115-117). However, in the case of a police investigator who had been found guilty of a serious breach of his professional duties for having solicited and accepted bribes in return for discontinuing criminal proceedings and who had wished to practise as a trainee advocate after serving his sentence, the Court found that restrictions on registration as a member of certain professions which could to a certain degree affect that person's ability to develop relationships with the outside world fell within the sphere of his or her private life (*Jankauskas v. Lithuania (no. 2)*, §§ 57-58).

75. In *Nicolae Virgiliu Tănase v. Romania* [GC], the applicant was seriously injured as a result of a traffic accident. However, the Grand Chamber found that such personal injury did not raise an issue relating to his private life within the meaning of Article 8 since his injuries resulted from his having voluntarily engaged in an activity that took place in public, and the risk of serious harm was minimised by traffic regulations aimed at ensuring road safety for all road users. Furthermore, the accident did not occur as the result of an act of violence intended to cause harm to the applicant's physical and psychological integrity, nor could it be assimilated to any of the other types of situations where the Court has previously found the State's positive obligation to protect physical and psychological integrity engaged (§§ 125-132).

76. In *Ahunbay and Others v. Turkey* (dec.), the Court did not recognize a universal individual right to the protection of a particular cultural heritage (§§ 24-25). Although the Court was prepared to consider that there was a European and international community of opinion on the need to protect the right of access to cultural heritage, it indicated that such protection was generally aimed at situations and regulations concerning the right of minorities to freely enjoy their own culture and the right of indigenous peoples to conserve, control and protect their cultural heritage. Thus, in the current state of international law, the rights related to cultural heritage appeared to be intrinsic to the specific status of individuals who benefitted from the exercise of minority and indigenous rights.

77. *Denisov v. Ukraine* [GC] elaborated on the importance of the seriousness of the impugned interference in analysing whether Article 8 is in play in different types of cases (§§ 110-114). The applicability of Article 8 has been determined in some contexts by a severity test: see, for example, the relevant case-law on environmental issues, an attack on a person's reputation, dismissal, demotion, non-admission to a profession or other similarly unfavourable measures, in *Denisov v. Ukraine* [GC], (§§ 111-112 and 115-117 with further references therein (see also *Polyakh and Others v. Ukraine*, §§ 207-211; *Vučina v. Croatia* (dec.), §§ 44-50; *Convertito and Others v. Romania*; *Platini v. Switzer-*

land (dec.)); acts or measures of a private individual which adversely affect the physical and psychological integrity of another (*Nicolae Virgiliu Tănase v. Romania* [GC], § 128, in relation to a road-traffic accident); and individual psychological well-being and dignity in *Beizaras and Levickas v. Lithuania*, §§ 109 and 117.

78. Article 8 cannot be relied on in order to complain of personal, social, psychological and economic suffering which is a foreseeable consequence of one's own actions, such as the commission of a criminal offence or similar misconduct (*Denisov v. Ukraine* [GC], § 98; *Evers v. Germany*, § 55).

79. There is a general acknowledgment in the Court's case-law under Article 8 of the importance of privacy and the values to which it relates. These values include, among others, well-being and dignity (*Beizaras and Levickas v. Lithuania*, § 117), personality development (*Von Hannover v. Germany* (no. 2) [GC], § 95), physical and psychological integrity (*Söderman v. Sweden*, [GC], § 80), relations with other human beings (*Couderc and Hachette Filipacchi Associés v. France* [GC], § 83), the protection of personal data (*M.L. and W.W. v. Germany*, § 87) and a person's image (*Reklos and Davourlis v. Greece,* § 38).

80. Given the very wide range of issues which private life encompasses, cases falling under this notion have been grouped into three broad categories (sometimes overlapping) to provide some means of categorisation, namely: (i) a person's physical, psychological or moral integrity, (ii) his privacy and (iii) his identity and autonomy. These categories will be considered in greater detail below.

2. Professional and business activities

81. Since Article 8 guarantees the right to a "private social life", it may, under certain circumstances, include professional activities (*Fernández Martínez v. Spain* [GC], § 110; *Bărbulescu v. Romania* [GC], § 71; *Antović and Mirković v. Montenegro*, § 42; *Denisov v. Ukraine* [GC], §§ 100 with further references therein and *López Ribalda and Others v. Spain* [GC], §§ 92-95), and commercial activities (*Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], § 130).

82. While no general right to employment, right of access to the civil service or a right to choose a particular profession, can be derived from Article 8, the notion of "private life" does not exclude, in principle, activities of a professional or business nature (*Bărbulescu v. Romania* [GC], § 71; *Jankauskas v. Lithuania (no. 2)*, § 56-57; *Fernández Martínez v. Spain* [GC], §§ 109-110). Indeed, private life encompasses the right for an individual to form and develop relationships with other human beings, including relationships of a professional or business nature (*C. v. Belgium*, § 25; *Oleksandr Volkov v. Ukraine*, § 165). It is, after all, in the course of their working lives that the majority of people have a significant opportunity of developing relationships with the outside world (*Niemietz v. Germany*, § 29; *Bărbulescu v. Romania* [GC], § 71 and references cited therein; *Antović and Mirković v. Montenegro*, § 42)[15].

83. Therefore, restrictions imposed on access to a profession have been found to affect "private life" (*Sidabras and Džiautas v. Lithuania*, § 47; *Bigaeva v. Greece*, §§ 22-25; see also *Jankauskas v. Lithuania (no. 2)*, § 56 and *Lekavičienė v. Lithuania* § 36, concerning restrictions on registration with the Bar Association as a result of a criminal conviction) and the same goes for the loss of employment (*Fernández Martínez v. Spain* [GC], § 113). Likewise, dismissal from office has been found to interfere with the right to respect for private life (*Özpınar v. Turkey*, §§ 43-48). In *Oleksandr Volkov v. Ukraine*, the Court found that a judge's dismissal for professional misconduct constituted

[15] See the chapter on *Correspondence of private individuals, professionals and companies*.

an interference with his right to respect for "private life" within the meaning of Article 8 (§§ 165-167). The Court has also found a violation of Article 8 where the applicant was transferred to a more minor role in a city which was less important in administrative terms, following a report that he had particular religious beliefs and that his wife wore an Islamic veil (*Sodan v. Turkey*, §§ 57-60; see also *Yılmaz v. Turkey*, §§ 43-49, in which the applicant's appointment to an overseas teaching post was opposed by the authorities because his wife wore a veil). Another violation was found in a case in which the applicant was removed from his teaching post following a change affecting the equivalence of the degree he obtaind abroad (*Şahin Kuş v. Turkey*, §§ 51-52).

84. More recently, in *Denisov v. Ukraine* [GC], the Court, recalling a number of relevant precedents (§§ 101, 104-105, 108 and 109), set out the principles by which to assess whether employment-related disputes fall within the scope of "private life" under Article 8 (§§ 115-117; see also *J.B. and Others v. Hungary* (dec.), §§ 127-129). The Court held that there are some typical aspects of private life which may be affected in such disputes by dismissal, demotion, non-admission to a profession or other similarly unfavourable measures. In this case, the applicant was dismissed from his post as the president of a court on the basis of a failure to perform his administrative duties (managerial skills) properly. Whilst he was dismissed as president, he remained a judge in the same court. The Court did not find Article 8 applicable in this case. This was because, according to the Court, the decision concerned only his managerial skills while his professional role as a judge was not touched upon. Further, the decision did not affect his future career as a judge and neither did the decision call into question the moral or ethical aspect of his personality and character. In summary, in this situation, the dismissal had limited negative effects on the applicant's private life and did not cross the "threshold of seriousness" for an issue to be raised under Article 8 (*Denisov v. Ukraine* [GC], §§ 126-133; see also *Camelia Bogdan v. Romania*, §§ 83-92, in which the Court found that the temporary suspension of a judge pending an appeal against disciplinary sanctions did not reach the "threshold of seriousness" required to engage Article 8). Following *Denisov*, employment-related disputes will generally only engage Article 8 either where a person loses a job because of something he of she did in private life (reason-based approach) or when the loss of job impacts on private life (consequence-based approach) (§§ 115-117).

85. The reasons-based approach was used in *Mile Novaković v. Croatia*. The applicant, who was of Serbian ethnic origin, was dismissed from his post at a secondary school for failing to use the standard Croatian language when teaching. He was 55 at the time and had given 29 years of service. In the Court's view, the crucial reason for the applicant's dismissal was closely related to his Serbian ethnic origin and his age and had therefore been sufficiently linked to his private life. Consequently, Article 8 was applicable (§§ 48-49). The Court went on to find a violation of Article 8 as the measure in question had not been proportionate to the legitimate aim pursued, in part because no alternatives to dismissal had ever been contemplated (§§ 57-70).

86. In *Polyakh and Others v. Ukraine*, the Court used the consequence-based approach to determine the applicability of Article 8 in the context of lustration proceedings (§§ 207-211). The applicants were dismissed from the civil service, they were banned from occupying positions in the civil service for ten years and their names were entered into the publicly accessible online Lustration Register. The Court considered that the combination of these measures had very serious consequences for the applicants' capacity to establish and develop relationships with others and their social and professional reputations and affected them to a very significant degree.

87. *Bagirov v. Azerbaijan* is an example of the consequence-based approach where as lawyer was suspended from the practice of law and subsequently disbarred for public criticism of police brutality and disrespectful remarks about a judge and the functioning of the judicial system (§§ 91-104; with regard to the applicability of Article 8, see § 87). The Court especially took into account that the disbarment sanction constituted the harshest disciplinary sanction in the legal profession, having irreversible consequences on the professional life of a lawyer, and that lawyers play a central role in the administration of justice and in the protection of fundamental rights (§§ 99, 101).

88. In *Pişkin v. Turkey*, the applicant had been dismissed from his employment with a local Development Agency pursuant to an Emergency Legislative Decree on account of allegations that he was affiliated with a terrorist organisation. In the Court's view, the grounds of dismissal affected the applicant's private life and there was no evidence to suggest that the termination of the employment contract had been the "foreseeable consequence of the applicant's own actions". Moreover, the fact that he had been stigmatised as a terrorsist made it very difficult for him to find alternative employment and had serious consequences for his professional and personal reputation. The Court therefore accepted that the "threshold of seriousness" had been met (§§ 179-188). The Court proceeded to find that Article 8 had been violated as judicial review of the impugned measure had been wholly inadequate and as such th applicant had not benefitted from the minimum degree of protection against arbitrary interference (§§ 216-229).

89. In *Platini v. Switzerland* (dec.), the Court used the consequence-based approach for the first time in the professional context of sport (§§ 54-58). The applicant had received a four-year suspension from any football-related professional activity, and the Court found that the threshold of severity had been attained on account of the repercussions of the suspension on his private life. In particular, the applicant was barred from earning a living from football (his sole source of income throughout his life) and the suspension interfered with the possibility of establishing and developing social relations with others as well as negatively impacting his reputation. However, the Court subsequently found that there were sufficient institutional and procedural guarantees available, namely a system of private (CAS) and State (Federal Court) bodies and that these bodies carried out a genuine weighing of the relevant interests at stake and responded to all of the applicant's grievances in duly reasoned decisions. Therefore, taking into account the considerable margin of appreciation enjoyed by the State, Switzerland had not failed to fulfil its obligations under Article 8 of the Convention.

90. In *Convertito and Others v. Romania*, the Court, citing *Denisov v. Ukraine* [GC], considered Article 8 applicable to the annulment of the applicants' university qualifications due to administrative flaws during the first-year registration procedure (§ 29). The annulment of their qualifications, for which they had studied for six years, had consequences not only for the way in which they had forged their social identity through the development of relations with others, but also for their professional life in so far as their level of qualification was called into question and their intention to embark on an envisaged career was suddenly frustrated.

91. Communications from business premises may also be covered by the notions of "Private life" and "Correspondence" within the meaning of Article 8 (*Bărbulescu v. Romania* [GC], § 73; *Libert v. France*, §§ 23-25 and references cited therein) or the storage of private data on employees' work computers (*ibid.*, § 25). In order to ascertain whether those notions are applicable, the Court has on several occasions examined whether individuals had a reasonable expectation that their privacy would be respected and protected. In that context, it has stated that a reasonable expectation of privacy is a significant though not necessarily conclusive factor. Interestingly, in *Bărbulescu v. Romania* [GC], the Court decided to leave open the question of whether the applicant had a reasonable expectation of privacy because, in any event, "an employer's instructions cannot reduce private social life in the workplace to zero. Respect for private life and for the privacy of correspondence continues to exist, even if these may be restricted in so far as necessary". Article 8 therefore applied. In sum, whether or not an individual had a reasonable expectation of privacy, communications in the workplace are covered by the concepts of private life and correspondence (§ 80). In this case, the Court set down a detailed list of factors regarding States' positive obligation under Article 8

of the Convention when it comes to communications of a non-professional nature in the workplace (§§ 121-122)[16]. In *Libert v. France*, concerning the opening by a public employer of personal data on a work computer without the employee's knowledge and in his absence, the Court found that the domestic authorities had not overstepped their margin of appreciation and relied notably on the clear guidelines contained in the employer's Computer Charter (§§ 52-53).

92. Further, in *Antović and Mirković v. Montenegro*, the Court emphasised that video-surveillance of employees at their workplace, whether covert or not, constituted a considerable intrusion into their "private life" (§ 44). This case concerned the installation of video surveillance equipment in auditoriums at a university. *López Ribalda and Others v. Spain* [GC] concerned covert video-surveillance of employees throughout their working day in a supermarket. The Court found Article 8 ("private life") applicable because even in public places the systematic or permanent recording and the subsequent processing of images could raise questions affecting the private life of the individuals concerned (§ 93). The Court used the principles established in *Bărbulescu* and *Köpke* by listing the factors which must be taken into account when assessing the competing interests and the proportionality of the video-surveillance measures (§§ 116-117). The applicants' right to respect for their private life needs to be balanced with their employer's interest in the protection of its property rights, with a margin of appreciation being accorded to the State.

93. Any criminal proceedings entail certain consequences for the private life of an individual who has committed a crime. These are compatible with Article 8 of the Convention provided that they do not exceed the normal and inevitable consequences of such a situation (*Jankauskas v. Lithuania (no. 2)*, § 76). Article 8 cannot be relied on in order to complain about a loss of reputation which is the foreseeable consequence of one's own actions, such as, for example, the commission of a criminal offence (*Sidabras and Džiautas v. Lithuania*, § 49 and contrast *Pişkin v. Turkey*, §§ 180-183). This principle is valid not only for criminal offences but also for other misconduct entailing a measure of legal responsibility with foreseeable negative effects on "private life" (*Denisov v. Ukraine* [GC], § 98 with further references therein).

B. Physical, psychological or moral integrity

94. The Court indicated for the first time that the concept of private life covered the physical and moral integrity of the person in *X and Y v. the Netherlands*, § 22. That case concerned the sexual assault of a mentally disabled sixteen-year old girl and the absence of criminal law provisions to provide her with effective and practical protection. Regarding the protection of the physical and psychological integrity of an individual from other persons, the Court has held that the authorities' positive obligations – in some cases under Articles 2 or 3 of the Convention and in other instances under Article 8 taken alone or in combination with Article 3 (*ibid.*) – may include a duty to maintain and apply in practice an adequate legal framework affording protection against acts of violence by private individuals (*Osman v. the United Kingdom*, §§ 128-130; *Bevacqua and S. v. Bulgaria*, § 65; *Sandra Janković v. Croatia*, § 45; *A v. Croatia*, § 60; *Đorđević v. Croatia*, §§ 141-143; *Söderman v. Sweden* [GC], § 80). For a recapitulation of the case-law and the limits of the applicability of Article 8 in this context, see *Nicolae Virgiliu Tănase v. Romania* [GC], §§ 125-132. In this case, the Court found Article 8 not applicable to a road-traffic accident which did not occur as the result of an act of violence intended to cause harm to the applicant's physical and psychological integrity (§§ 129-132).

[16] See also *Correspondence*.

95. The Court has found that Article 8 imposes on States a positive obligation to secure to their citizens the right to effective respect for their physical and psychological integrity (*Milićević v. Montenegro*, § 54; *Nitecki v. Poland* (dec.); *Sentges v. the Netherlands* (dec.); *Odièvre v. France* [GC], § 42; *Glass v. the United Kingdom*, §§ 74-83; *Pentiacova and Others v. Moldova*). This obligation may involve the adoption of specific measures, including the provision of an effective and accessible means of protecting the right to respect for private life (*Airey v. Ireland*, § 33; *McGinley and Egan v. the United Kingdom*, § 101; *Roche v. the United Kingdom* [GC], § 162). Such measures may include both the provision of a regulatory framework of adjudicatory and enforcement machinery protecting individuals' rights and the implementation, where appropriate, of these measures in different contexts (*A, B and C v. Ireland* [GC], § 245). For example, in *Hadzhieva v. Bulgaria*, the authorities had arrested the applicant's parents in her presence when she was fourteen years old, leaving the young applicant to her own devices. Even though the applicable domestic law provided for the adoption of protective measures in such situations, the Court noted that the authorities had failed in their positive obligation to ensure that the applicant was protected and cared for in the absence of her parents, having regard to the risks to her well-being (§§ 62-66). As to the positive obligation to protect physical integrity during the course of compulsory military service, see, for instance, *Demir v. Turkey*, §§ 29-40, with further references therein.

1. Victims of violence

96. The Court has long held that the State has an affirmative responsibility to protect individuals from violence by third parties. This has been particularly true in cases involving children and victims of domestic violence. While there are often violations of Articles 2 and 3 in such cases, Article 8 is also applied because violence threatens bodily integrity and the right to a private life (*Milićević v. Montenegro*, §§ 54-56; and *E.S. and Others v. Slovakia*, § 44). In particular, under Article 8 the States have a duty to protect the physical and moral integrity of an individual from other persons (including cyberbullying by a person's intimate partner (*Buturugă v. Romania*, §§ 74, 78-79). To that end they are to maintain and apply in practice an adequate legal framework affording protection against acts of violence by private individuals (*Sandra Janković v. Croatia*, § 45). The national courts' dismissal of a claim by a victim of domestic violence to evict her husband from their shared social housing has also been found to breach her rights under Article 8 (*Levchuk v. Ukraine*, § 90).

97. In respect of children, who are particularly vulnerable, the measures applied by the State to protect them against acts of violence falling within the scope of Article 8 must also be effective. This should include reasonable steps to prevent ill-treatment of which the authorities had, or ought to have had, knowledge and effective deterrence against such serious breaches of personal integrity (*Z and Others v. the United Kingdom* [GC], § 73; *M.P. and Others v. Bulgaria*, § 108; *A and B v. Croatia*, §§ 106-113). Such measures must be aimed at ensuring respect for human dignity and protecting the best interests of the child (*Pretty v. the United Kingdom*, § 65; *C.A.S. and C.S. v. Romania*, § 82). In *Wetjen and Others v. Germany*, the Court found that the risk of systematic and regular caning constituted a relevant reason to withdraw parts of the parents' authority and to take the children into care (§ 78) (see also *Tlapak and Others v. Germany*, § 91).

98. Regarding serious acts such as rape and sexual abuse of children, where fundamental values and essential aspects of private life are at stake, it falls to the Member States to ensure that efficient criminal law provisions are in place (*X and Y v. the Netherlands*, § 27; *M.C. v. Bulgaria*, § 150 and § 185, in which the approach taken by the investigator and the prosecutors in the case fell short of the requirements inherent in the States' positive obligations; *M.G.C. v. Romania*, § 74; *A and B v. Croatia*, § 112) as well as effective criminal investigations (*C.A.S. and C.S. v. Romania*, § 72; *M.P. and Others v. Bulgaria*, §§ 109-110; *M.C. v. Bulgaria*, § 152; *A, B and C v. Latvia*, § 174; and *Y v. Bulgaria*, §§ 95-96) and the possibility to obtain reparation and redress (*C.A.S. and C.S. v. Romania*, § 72). However, there is no absolute right to obtain the prosecution or conviction of any particular

person where there were no culpable failures in seeking to hold perpetrators of criminal offences accountable (*Brecknell v. the United Kingdom*, § 64; *Szula v. the United Kingdom* (dec.)).

99. In cases of domestic violence, the Court also holds States responsible for protecting victims, particularly when the risks of violence are known by State officers and when officers fail to enforce measures designed to protect victims of violence (*Levchuk v. Ukraine*; *Bevacqua and S. v. Bulgaria*; *A v. Croatia*; *Hajduová v. Slovakia*; *Kalucza v. Hungary*; *B. v. Moldova*). The State also has a positive responsibility to protect children from witnessing domestic violence in their homes (*Eremia v. the Republic of Moldova*). The Court will also apply its child custody and care jurisprudence (see below), with particular deference to removal decisions based on patterns of domestic violence in the home (*Y.C. v. the United Kingdom*). In *Buturugă v. Romania*, the Court emphasised the need to comprehensively address the phenomenon of domestic violence in all its forms. In examining the applicant's' allegations of cyberbullying and her request to have the family computer searched, it found that the national authorities had been overly formalistic in dismissing any connection with the domestic violence which she had already reported to them. The applicant had been obliged to submit a new complaint alleging a breach of the confidentiality of her correspondence. In dealing with it separately, the authorities had failed to take into consideration the various forms that domestic violence could take.

100. In *Y. v. Slovenia*, the Court found that in the criminal proceedings concerning alleged sexual assaults against the applicant, the State did not afford sufficient protection to her right to respect for private life, and especially for her personal integrity when being cross-examined by the accused (§§ 114-116).

101. States should also provide adequate protection for dangerous situations, such as for a woman attacked in her home or for a woman who had acid thrown on her face (*Sandra Janković v. Croatia*; *Ebcin v. Turkey*). This is particularly true when the State should have known of a particular danger. For example, the Court found a violation when a woman was attacked by stray dogs in an area where such animals were a common problem (*Georgel and Georgeta Stoicescu v. Romania*, § 62).

102. However, the Court does require a connection between the State and the injury suffered. If there is no clear link between State action (or inaction) and the alleged harm, such as fighting between school children, then the Court may declare the case inadmissible (*Đurđević v. Croatia*).

103. Conditions of detention may give rise to an Article 8 violation, in particular where the conditions do not attain the level of severity necessary for a violation of Article 3 (*Raninen v. Finland*, § 63 ; *Szafrański v. Poland*, § 39). Also, the requirement to undergo a strip search will generally constitute an interference under Article 8 (*Milka v. Poland*, § 45).

2. Reproductive rights[17]

104. The Court has found that the prohibition of abortion when sought for reasons of health and/or wellbeing falls within the scope of the right to respect for one's private life and accordingly within Article 8 (*A, B and C v. Ireland* [GC], §§ 214 and 245). In particular, the Court held in this context that the State's obligations include both the provision of a regulatory framework of adjudication and enforcement machinery protecting individuals' rights, and the implementation, where appropriate, of specific measures (*ibid.*, § 245; *Tysiąc v. Poland*, § 110; *R.R. v. Poland*, § 184). Indeed, once the

[17] See also Medically assisted procreation/right to become genetic parents under Family life.

State, acting within its limits of appreciation, adopts statutory regulations allowing abortion in some situations, the legal framework derived for this purpose should be shaped in a coherent manner which allows the different legitimate interests involved to be taken into account adequately and in accordance with the obligations deriving from the Convention (*A, B and C v. Ireland* [GC], § 249; *R. R. v. Poland*, § 187; *P. and S. v. Poland*, § 99; *Tysiąc v. Poland*, § 116).

105. In *P. and S. v. Poland*, the Court reiterated that the notion of private life within the meaning of Article 8 applies both to decisions to become and not to become a parent (see also *Evans v. the United Kingdom* [GC], § 71; *R.R. v. Poland*, § 180; *Dickson v. the United Kingdom* [GC], § 66; *Paradiso and Campanelli v. Italy* [GC], §§ 163 and 215). In fact, the concept of "private life" does not exclude the emotional bonds created and developed between an adult and a child in situations other than the classic situations of kinship. This type of bond also pertains to individuals' life and social identity. In certain cases involving a relationship between adults and a child where there are no biological or legal ties the facts may nonetheless fall within the scope of "private life" (*Paradiso and Campanelli v. Italy* [GC], § 161).

106. The circumstances of giving birth incontestably form part of one's private life for the purposes of Article 8 (*Ternovszky v. Hungary*, § 22). The Court found in that case that the applicant was in effect not free to choose to give birth at home because of the permanent threat of prosecution faced by health professionals and the absence of specific and comprehensive legislation on the subject. However, national authorities have considerable room for manoeuvre in cases which involve complex matters of healthcare policy and allocation of resources. Given that there is currently no consensus among Member States of the Council of Europe in favour of allowing home births, a State's policy to make it impossible in practice for mothers to be assisted by a midwife during their home births did not lead to a violation of Article 8 (*Dubská and Krejzová v. the Czech Republic* [GC]).

107. The right of a couple to conceive a child and to make use of medically assisted procreation for that purpose is protected by Article 8, as such a choice is a form of expression of private and family life (*S.H. and Others v. Austria* [GC], § 82; *Knecht v. Romania*, § 54). The same applies for preimplantation diagnosis when artificial procreation and termination of pregnancy on medical grounds are allowed (*Costa and Pavan v. Italy*). The latter case concerned an Italian couple who were healthy carriers of cystic fibrosis and wanted, with the help of medically-assisted procreation and genetic screening, to avoid transmitting the disease to their offspring. In finding a violation of Article 8, the Court noted the inconsistency in Italian law that denied the couple access to embryo screening but authorised medically-assisted termination of pregnancy if the foetus showed symptoms of the same disease. The Court concluded that the interference with the applicants' right to respect for their private life and family life had been disproportionate.

With regard to prenatal medical tests, the Court found a violation of Article 8 in its procedural aspect where the domestic courts failed to investigate fully the applicant's claim that she had been denied adequate and timely medical care in the form of an antenatal screening test which would have indicated the risk of her foetus having a genetic disorder and would have allowed her to choose whether to continue the pregnancy (*A.K. v. Latvia*, §§ 93-94).

108. Where applicants who, acting outside any standard adoption procedure, had brought to Italy from abroad a child who had no biological tie with either parent, and who had been conceived – according to the domestic courts – through assisted reproduction techniques that were unlawful under Italian law, the Court found that there was no family life between the applicants and the child. It considered, however, that the impugned measures pertained to the applicants' private life, but found no violation of Article 8 since the public interest at stake weighed heavily in the balance, while comparatively less weight was to be attached to the applicants' interest in their personal development by continuing their relationship with the child (*Paradiso and Campanelli v. Italy* [GC], §§ 165 and 215). The facts of the case touched on ethically sensitive issues – adoption, the taking of a child

into care, medically assisted reproduction and surrogate motherhood – in which Member States enjoyed a wide margin of appreciation (§§ 182-184 and 194).[18]

109. Article 8 also applies to sterilisation procedures. As it concerns one of the essential bodily functions of human beings, sterilisation bears on manifold aspects of the individual's personal integrity, including his or her physical and mental wellbeing and emotional, spiritual and family life (*V.C. v. Slovakia*, § 106). The Court has determined that States have a positive obligation to ensure effective legal safeguards to protect women from non-consensual sterilisation, with a particular emphasis on the protection of reproductive health for women of Roma origin. In several cases, the Court has found that Roma women required protection against sterilisation because of a history of non-consensual sterilisation against this vulnerable ethnic minority (*ibid.*, §§ 154-155; *I.G. and Others v. Slovakia*, §§ 143-146). This jurisprudence also applies to inadvertent sterilisation, when the doctor fails to perform adequate checks or obtain informed consent during an abortion procedure (*Csoma v. Romania*, §§ 65-68).

110. The Court also found that the ability of an applicant to exercise a conscious and considered choice regarding the fate of her embryos concerned an intimate aspect of her personal life, of her right to selfdetermination, and thus of her private life (*Parrillo v. Italy* [GC], § 159). The margin of appreciation of the Member States on this matter is, however, wide, given the lack of a European consensus (§§ 180-183). A statutory prohibition on the donation to research of cryopreserved embryos which had been created following the applicant's in vitro fertilisation treatment was therefore not considered to be in violation of the applicant's right to private life.

3. Forced medical treatment and compulsory medical procedures

111. The Court has also addressed the implications of Article 8 for other cases involving forced medical treatment or medical injury (in addition to sterilisations). On some occasions, the Convention organs have found that relatively minor medical tests, which are compulsory (*Acmanne and Others v. Belgium*, Commission decision; *Boffa and Others v. San Marino*, Commission decision; *Salvetti v. Italy* (dec.)) or authorised by court order (*X v. Austria*, Commission decision; *Peters v. the Netherlands*, Commission decision), may constitute a proportionate interference with Article 8 even without the consent of the patient.

112. Conversely, the Court has held that a doctor's decision to treat a severely disabled child contrary to a parent's express wishes, and without the opportunity for judicial review of the decision, violated Article 8 (*Glass v. the United Kingdom*). The Court similarly found that doctors taking blood tests and photographs of a child who presented symptoms consistent with abuse without the consent of the child's parents violated the child's right to physical integrity under Article 8 (*M.A.K. and R.K. v. the United Kingdom*). On the other hand, in *Gard and Others v. the United Kingdom* (dec.), the Court found that the withdrawal of treatment from a terminally ill infant against the wishes of his parents did not violate their rights under Article 8. The Court also found that the State's decision to submit a woman in police custody to a noncustodial gynaecological examination was not performed in accordance with the law and violated Article 8 (*Y.F. v. Turkey*, §§ 41-44).

113. The Court further determined that there were Article 8 violations when a State failed to provide adequate information to divers about the health risks associated with decompression tables

[18] See also Medically assisted procreation/right to become genetic parents under Family life.

(*Vilnes and Others v. Norway*, § 244) and when another State failed to provide adequate means of ensuring compensation for injuries caused by State medical errors (*Codarcea v. Romania*). The Court, however, declared inadmissible a case against Turkey concerning the failure to compensate individuals who were injured by a non-compulsory vaccine (*Baytüre and Others v. Turkey* (dec.)).

114. In the context of taking evidence in criminal proceedings, the taking of a blood and saliva sample against a suspect's will constitutes a compulsory medical procedure which, even if it is of minor importance, must consequently be considered as an interference with his right to privacy (*Jalloh v. Germany* [GC], § 70; *Schmidt v. Germany* (dec.)). However, the Convention does not, as such, prohibit recourse to such a procedure in order to obtain evidence of a suspect's involvement in the commission of a criminal offence (*Jalloh v. Germany* [GC], § 70). In *Caruana v. Malta* (dec.), the Court considered that the taking of a buccal swab, was not a priori prohibited in order to obtain evidence related to the commission of a crime when the subject of the test was not the offender, but a relevant witness (§ 32).

4. Mental illness[19]

115. With regard to the positive obligations that Member States have in respect of vulnerable individuals suffering from mental illness, the Court has affirmed that mental health must also be regarded as a crucial part of private life associated with the aspect of moral integrity. The preservation of mental stability is in that context an indispensable precondition to effective enjoyment of the right to respect for private life (*Bensaid v. the United Kingdom*, § 47).

116. The Court has long held that an individual's right to refuse medical treatment falls within the scope of Article 8 (see above). This includes the rights of mentally ill patients to refuse psychiatric medication. A medical intervention in defiance of the subject's wishes will give rise to an interference with his or her private life and in particular his or her right to physical integrity (*X. v. Finland*, § 212). In some circumstances forced medication of a mentally ill patient may be justified, in order to protect the patient and/or others. However, such decisions must be made against the background of clear legal guidelines and with the possibility of judicial review (*ibid.*, § 220; *Storck v. Germany*, §§ 164-169; *Shopov v. Bulgaria*, § 47).

117. The Court has also found that States have an obligation under Article 8 to provide protection for a mentally ill person's right to private and family life, particularly when the children of a mentally ill person are taken into State care. States must ensure that mentally ill or disabled individuals are able to participate effectively in proceedings regarding the placement of their children (*B. v. Romania (no. 2)*, § 117; *K. and T. v. Finland* [GC]). Such cases are also linked to the Article 8 right to family life (see below), particularly, for example, when a mentally disabled mother was not informed about her son's adoption and was unable to participate in, or to contest, the adoption process (*A.K. and L. v. Croatia*). The case of *S.S. v. Slovenia* concerned the withdrawal of parental rights from a mentally-ill mother based on her inability to take care of her child. It contains a recapitulation of the case-law on the rights of mentally ill persons in the context of deprivation of parental responsibilities and subsequent adoption of the child (§§ 83-87).

118. In cases where legal incapacity is imposed on mentally ill individuals, the Court has articulated procedural requirements necessary to protect Article 8 rights. The Court often addresses these Article 8 violations in conjunction with Articles 5 and 6. The Court emphasises the quality of the deci-

[19] See also other chapters of the Guide for further references.

sion-making procedure (*Salontaji-Drobnjak v. Serbia*, §§ 144-145). The Court has held that the deprivation of legal capacity undeniably constitutes a serious interference with the right to respect for a person's private life protected under Article 8. In *A.N. v. Lithuania*, the Court considered a domestic court decision depriving an applicant of his capacity to act independently in almost all areas of his life. At the relevant time he was no longer able to sell or buy any property on his own, work, choose a place of residence, marry, or bring a court action in Lithuania. The Court found that this amounted to an interference with his right to respect for his private life (§ 111). In incapacitation proceedings, decisions regarding placement in a secure facility, decisions regarding the disposition of property, and procedures related to children (see above), the Court has held that States must provide adequate safeguards to ensure that mentally ill individuals are able to participate in the process and that the process is sufficiently individualised to meet their unique needs (*Zehentner v. Austria*, § 65; *Shtukaturov v. Russia*, §§ 94-96; *Herczegfalvy v. Austria*, § 91). For instance, in proceedings concerning legal incapacity the medical evidence of the mental illness needs to be sufficiently recent (*Nikolyan v. Armenia*, § 124). Furthermore, in *Nikolyan v. Armenia* (§ 122), the Court found that the existence of a mental disorder, even a serious one, could not be the sole reason to justify a full deprivation of legal capacity. By analogy with the cases concerning deprivation of liberty, in order to justify full deprivation of legal capacity the mental disorder had to be "of a kind or degree" warranting such a measure.

119. As regards the choice of place of residence for a person with intellectual disabilities, the Court has noted the need to reach a fair balance between respect for the dignity and selfdetermination of the individual and to protect and safeguard his or her interests, especially where the individual's capacities or situation place him or her in a particularly vulnerable position (*A.-M.V. v. Finland*, § 90). The Court has emphasised the importance of existing procedural safeguards (§§ 82-84). In the case cited it observed that there had been effective safeguards in the domestic proceedings to prevent abuse, as required by the standards of international human rights law. These safeguards had ensured that the applicant's rights, will and preferences were taken into account. The applicant had been involved at all stages of the proceedings, had been heard in person and had been able to express his wishes. The fact that the authorities had not complied with the applicant's wishes, in the interests of protecting his health and wellbeing, was found not to have breached Article 8.

5. Health care and treatment[20]

120. Although the right to health is not as such among the rights guaranteed under the Convention or its Protocols, the High Contracting Parties have, parallel to their positive obligations under Article 2 of the Convention, a positive obligation under Article 8, firstly, to have in place regulations compelling both public and private hospitals to adopt appropriate measures for the protection of their patients' physical integrity and, secondly, to provide victims of medical negligence access to proceedings in which they could, in appropriate cases, obtain compensation for damage (*Vasileva v. Bulgaria*, § 63; *Jurica v. Croatia*, § 84, and *Mehmet Ulusoy and Others v. Turkey*, § 82). Positive obligations are therefore limited to the duty to establish an effective regulatory framework obliging hospitals and health professionals to adopt appropriate measures to protect the integrity of patients. Consequently, even where medical negligence has been established, the Court will not normally find a violation of the substantive aspect of Article 8 - or of Article 2. However, in very exceptional circumstances State responsibility may be engaged because of the actions and omissions of health care providers. Such exceptional circumstances may arise where a patient's life is knowingly

[20] See also Disability issues.

endangered by the denial of access to life-saving treatment; and where a patient did not have access to such treatment because of systemic or structural dysfunction in hospital services, and where the authorities knew or ought to have known of this risk and did not take the necessary measures to prevent it from being realized (*Mehmet Ulusoy and Others v. Turkey*, §§ 83-84, citing *Lopes de Sousa Fernandes v. Portugal*). Those principles emerging from the Court's Article 2 case-law also apply under Article 8 in the event of injury which falls short of threatening the right to life as secured under Article 2 (*İbrahim Keskin v. Turkey*, § 61).

121. The Court's task is to verify the effectiveness of the remedies used by the applicants and thus to determine whether the judicial system ensured the proper implementation of the legislative and statutory framework designed to protect patients' physical integrity (*İbrahim Keskin v. Turkey*, § 68 and *Mehmet Ulusoy and Others v. Turkey*, § 90). In all cases, the system put in place to determine the cause of the violation of the integrity of the person under the responsibility of health professionals must be independent. This presupposes not only a lack of a hierarchical or institutional link, but also the formal as well as the concrete independence of all the parties responsible for assessing the facts in the context of the procedure to establish the cause of the impugned infringement (*Mehmet Ulusoy and Others v. Turkey*, § 93). There is a requirement of promptness and reasonable diligence in the context of medical negligence (*Eryiğit v. Turkey*, § 49). For example, proceedings lasting almost seven years are incompatible with Article 8 (*İbrahim Keskin v. Turkey*, §§ 69-70).

122. The objectivity of expert opinions in cases of medical negligence cannot automatically be called into doubt on account of the fact that the experts are medical practitioners working in the domestic health-care system. Moreover, the very fact that an expert is employed in a public medical institution specially designated to provide expert reports on a particular issue and financed by the State does not in itself justify the fear that such experts will be unable to act neutrally and impartially in providing their expert opinions. What is important in this context is that the participation of an expert in the proceedings is accompanied by adequate procedural safeguards securing his or her formal and de facto independence and impartiality (*Jurica v. Croatia*, § 93). Furthermore, in view of the fact that medical expertise belongs to a technical field beyond the knowledge of judges, and is therefore likely to have a predominant influence on their assessment of the facts, the extent to which the parties are permitted to comment on that evidence, and the extent to which the courts take their comments into account, will be crucial (*Mehmet Ulusoy and Others v. Turkey*, §§ 109-110).

123. When it comes to access to health services, the Court has been cautious to extend Article 8 in a manner that would implicate extensive State resources because in view of their familiarity with the demands made on the healthcare system as well as with the funds available to meet those demands, the national authorities are in a better position to carry out this assessment than an international court (*Pentiacova and Others v. Moldova* (dec.)).

124. The Court ruled that an application against a decision by UK authorities not to implement a needle exchange programme for drug users in prisons was inadmissible (*Shelley v. the United Kingdom* (dec.)). In that case the Court held that there was no authority that placed any obligation under Article 8 on a Contracting State to pursue any particular preventive health policy. It also found that there was no violation of Article 8 as a result of Bulgaria's refusal to allow terminally ill patients to use unauthorised, experimental drugs (*Hristozov and Others v. Bulgaria*; *Durisotto v. Italy* (dec.)) and rejected an application challenging legislation on the prescription of cannabis-based medication (*A.M. and A.K.v. Hungary* (dec.)), while referring to the State's obligations in this area (§§ 46-47). In *Abdyusheva and Others v. Russia*, the Court ruled that a lack of access to replacement therapy with methadone or buprenorphine for opioid addicts did not violate Article 8 because it was within the State's margin of appreciation to assess the risks of replacement therapy for public health and the applicant's individual situation.

125. Regarding access to health care for people with disabilities, the Court declared a case inadmissible in which a severely disabled individual sought a robotic arm to assist his mobility (*Sentges v. the*

Netherlands (dec.)). The Court did, however, find that reducing the level of care given to a woman with limited mobility violated Article 8, but only for a limited period during which the UK did not comply with its own laws (*McDonald v. the United Kingdom*).

126. In *Gard and Others v. the United Kingdom* (dec.) the Court rejected the arguments submitted by the parents of a seriously ill child that the question of their son's treatment was not a matter for the courts to decide, holding on the contrary that it had been appropriate for the treating hospital to turn to the courts in the event of conflict between the parents and the hospital (§ 117).

6. End of life issues

127. In *Pretty v. the United Kingdom*, the Court first concluded that the right to decide the manner of one's death is an element of private life under Article 8 (§ 67). Later case-law has articulated that an individual's right to decide the way in which and at which point his or her life should end, provided that he or she is in a position to freely form his or her own judgement and to act accordingly, is one of the aspects of the right to respect for private life within the meaning of Article 8 of the Convention (*Haas v. Switzerland*, § 51).

128. The Court has found that Member States have a wide margin of appreciation in respect of questions of assisted suicide. Permissible laws include the requirement that lifeending drugs be provided only by prescription by a physician (*Haas v. Switzerland*, § 52). Indeed the Court distinguished *Haas v. Switzerland* from *Pretty v. the United Kingdom*. Unlike the Pretty case, in *Haas v. Switzerland* the applicant alleged not only that his life was difficult and painful, but also that, if he did not obtain the substance in question, the act of suicide itself would be stripped of dignity. In addition, and again in contrast to the Pretty case, the applicant could not in fact be considered infirm, in that he was not at the terminal stage of an incurable degenerative disease which would prevent him from taking his own life.

129. In *Koch v. Germany* the applicant complained that the domestic courts' refusal to examine the merits of his complaint about the Federal Institute's refusal to authorise his wife to acquire a lethal dose of pentobarbital of sodium had infringed his right to respect for private and family life under Article 8 of the Convention. The Court found a violation of Article 8 on account of the domestic courts' refusal to examine the merits of his motion.

130. The Court does not consider it appropriate to extend Article 8 so as to impose on the Contracting States a procedural obligation to make available a remedy requiring the domestic courts to decide on the merits of the claim that the ban on assisted suicide would violate the right to private and family life (*Nicklinson and Lamb v. the United Kingdom* (dec.), § 84).

131. In *Gard and others v. the United Kingdom* (dec.), doctors had sought to withdraw life-sustaining treatment from an infant child suffering from a fatal genetic disease. This decision, taken against the parents' wishes, was not found by the Court to amount to arbitrary or disproportionate interference in breach of Article 8, following a thorough examination of the procedure and the reasons given by the domestic authorities for their decisions (§§ 118-124).

7. Disability issues[21]

132. The 2006 UN Convention on the Rights of Persons with Disabilities lays down the principle of "full and effective participation and integration in society" for persons with disabilities. However, Article 8 is only applicable in exceptional cases where the lack of access to establishments open to the public prevented applicants from leading their lives in breach of their right to personal development as well as the right to establish and develop relationships with other human beings and the outside world (*Glaisen v. Switzerland* (dec.), §§ 43-46, with further references therein; see also *Zehnalova and Zehnal v. the Czech Republic* (dec.); *Botta v. Italy* and *Mółka v. Poland* (dec.).

133. The Court found that the decision to remove children from two blind parents due to a finding of inadequate care was not justified by the circumstances and violated the parents' Article 8 right to family life (*Saviny v. Ukraine*). On the other hand, the Court found no violation of Article 8 with regard to a statutory scheme developed in France to compensate parents for the costs of disabled children, even when the parents would have chosen not to have the child in the absence of a mistake by the State hospital regarding the diagnosis of a genetic defect (*Maurice v. France* [GC]; *Draon v. France* [GC]). The Court also provides a wide margin for States to determine the amount of aid given to parents of disabled children (*La Parola and Others v. Italy* (dec.)), and has held that when a State provides adequate domestic remedies for disabilities caused by inadequate care at the birth of a child, then there is no Article 8 violation (*Spyra and Kranczkowski v. Poland*, §§ 99-100).

134. The case of *Kholodov v. Ukraine* (dec.) concerned the suspension of a driving licence for a traffic offence concerning an applicant with a physical disability (multiple ailments of his joints) who alleged an excessive penalty given his medical condition. The Court admitted that the nine-month driving ban had repercussions on the applicant's everyday life. In that sense it could be admitted that such a penalty constituted an 'interference' with the applicant's right under Article 8.

8. Issues concerning burial and deceased persons

135. The exercise of Article 8 rights concerning family and private life pertains, predominantly, to relationships between living human beings. However, the Court has found that the way in which the body of a deceased relative is treated, as well as issues regarding the ability to attend the burial and pay respects at the grave of a relative, come within the scope of the right to respect for family or private life (*Solska and Rybicka v. Poland*, §§ 104-108 and the references cited therein).

136. The case of *Lozovyye v. Russia*, for instance, concerned a murder victim who had been buried before his parents had been informed of his death. In that case, the Court reiterated that everyone had a right to access to information relating to their private and/or family life (§ 32), and that a person's right to attend the funeral of a member of his family fell under Article 8. Where the authorities, but not other family members, are aware of a death, there is an obligation for the relevant authorities to at least undertake reasonable steps to ensure that members of the family are informed (§ 38). The Court considered that the relevant domestic law and practice lacked clarity, but that that was not sufficient in itself to find a violation of Article 8 (§ 42). On the other hand, it concluded that the authorities had not acted with reasonable diligence to comply with the aforementioned positive obligation, given the information that was available to the domestic authorities in order to identify, locate and inform the deceased's parents (§ 46).

[21] See also Health care and treatment.

137. In *Hadri-Vionnet v. Switzerland*, the Court found that the municipality's failure to inform the mother about the location and time of the burial of her stillborn son was not authorised by law and violated her right to private and family life under Article 8 (*Pannullo and Forte v. France*). Similarly, in *Zorica Jovanović v. Serbia*, the Court held that the hospital's failure to give information to the applicant regarding the death of her infant son and the subsequent disappearance of his body violated Article 8, even though the child had died in 1983, because of the State's ongoing failure to provide information about what had happened. The Court also held that Russia's refusal to allow a stillborn baby to take the name of its biological father, because of the legal presumption that the mother's husband was the father, violated the mother's Article 8 rights to bury her child with the name of his true father (*Znamenskaya v. Russia*).

138. Family members have also challenged the length of time between death and burial and the treatment of the deceased's body before its return to the family. For example, the Court found that an extended delay in returning samples taken from the applicants' daughter's body by police, which prevented them from burying her in a timely manner, violated their Article 8 right to private and family life (*Girard v. France*). The Court also found that a hospital's removal of a deceased person's organs without informing his mother and without seeking her consent was not done in accordance with law and violated her right to private life under Article 8 (*Petrova v. Latvia*, §§ 97-98). In line with this case-law, the Court found a violation of Article 8 in the removal of tissue from a deceased person without the knowledge and consent of his spouse because of the lack of clarity in the domestic law and the absence of legal safeguards against arbitrariness (*Elberte v. Latvia*, § 115).

139. However, in *Elli Poluhas Dödsbo v. Sweden*, the Court found that Sweden's refusal to transfer an urn from one burial plot to another in order to locate a deceased person's remains with his family did not violate Article 8 because the decision was made with due consideration to the interests of the deceased's wife and fell within the wide margin of appreciation available in such cases. Interestingly, the Court did not determine whether such a refusal involved the notions of "family life" or "private life" but instead only proceeded on the assumption of an interference (§ 24). In *Drašković v. Montenegro*, the Court found that a request by a close family relative to exhume the remains of a deceased family member for transfer to a new resting place fell in principle under both "private life" and "family life" However, the Court made it clear that the nature and scope of this right, and the extent of the State's obligations under the Convention in cases of this type, will depend on the particular circumstances and the facts adduced (§ 48). Although States are afforded a wide margin of appreciation in such an important and sensitive issue (§ 52), the Court found that the lack of a substantive examination by the national courts of the applicant's claim in civil proceedings against a third party violated Article 8. The Court also found that the representative of a deceased person who sought to prevent the State from using DNA of the deceased in a paternity suit did not have a claim that fell within the scope of private life and could not bring a suit on behalf of the deceased (*Estate of Kresten Filtenborg Mortensen v. Denmark* (dec.)).

140. The Court has also addressed a State's policy of refusing to return the bodies of accused terrorists for burial. While recognising that the State has an interest in protecting public safety, particularly when national security is implicated, the Court found that the absolute ban on returning the bodies of alleged terrorists did not strike a proper balance between the State and the Article 8 rights of the family members of the deceased (*Sabanchiyeva and Others v. Russia*, § 146).

141. In *Solska and Rybicka v. Poland*, the Court held that Article 8 applied to the exhumation of deceased persons against the will of their families in the context of criminal proceedings (§§ 107-108). With regard to the prosecutorial decision ordering exhumation, the Court found that the domestic law did not provide sufficient safeguards against arbitrariness. The applicants were thus deprived of the minimum degree of protection to which they were entitled, in violation of Article 8 (§§ 124-127).

9. Environmental issues[22]

142. Although there is no explicit right to a healthy environment under the Convention (*Hatton and Others v. the United Kingdom* [GC], § 96), the Court has decided various cases in which the quality of an individual's surrounding environment is at issue, reasoning that an individual's wellbeing may be negatively impacted by unsafe or disruptive environmental conditions (*Cordella and Others v. Italy*, §§ 157-160). However, an issue under Article 8 only arises if individuals are directly and seriously affected by the nuisance in question and able to prove the direct impact on their quality of life (*Çiçek and Others v. Turkey* (dec.), § 32 and §§ 22-29 for a summary of the relevant case-law in the context of air pollution; *Fadeyeva v. Russia*, §§ 68-69, where the Court stated that a certain minimum level of adverse effects of pollution on the individual's health or quality of life must be demonstrated to engage Article 8). Article 8 may apply in environmental cases whether the pollution is directly caused by the State or whether State responsibility arises from the failure to regulate private sector activities properly. The applicability of Article 8 has been determined by a severity test: see the relevant case-law on environmental issues in *Denisov v. Ukraine* [GC], §§ 111. In *Hudorovič and Others v. Slovenia*, the Court made clear that even though access to safe drinking water is not, as such, a right protected by Article 8, "a persistent and long-standing lack of access to safe drinking water" can have adverse consequences for health and human dignity effectively eroding the core of private life. Therefore, when these stringent conditions are fulfilled, a State's positive obligation might be triggered, depending on the specific circumstances of the case (§ 116).

143. On the merits, regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole; and the State enjoys a certain margin of appreciation in determining the steps to be taken to ensure compliance with the Convention (*Powell and Rayner v. the United Kingdom*; *López Ostra v. Spain*, § 51; *Giacomelli v. Italy*, § 78).

144. In *López Ostra v. Spain*, § 51, the Court ruled that severe environmental pollution could interfere with the right to respect for private and family life (and home) by potentially affecting individuals' wellbeing and preventing them from enjoying their homes, thus adversely affecting their private and family life. The applicant claimed that the family home was subject to serious pollution from a private tannery reprocessing plant built with State subsidies on municipal land 12 metres from applicant's flat. In *Giacomelli v. Italy*, §§ 97-98, pollution from a privately owned toxic waste treatment plant 30 metres from the applicant's home was found to constitute a violation of Article 8, as well as in *Fadeyeva v. Russia*, §§ 133-134, where domestic authorities violated the right to home and private life of a woman by failing to offer her any effective solution to help her move away from a dangerous "sanitary security zone" around Russia's largest iron smelter in which there was high pollution and dangerous chemical emissions.

145. In several cases, the failure to provide information about environmental risks or hazards was found to constitute a violation of Article 8 (*Tătar v. Romania*, § 97, where authorities failed to carry out an adequate risk assessment of environmental hazards caused by a mining company; *Guerra and Others v. Italy*, where the local population was not provided with essential information that would have enabled them to assess the risks they and their families might run if they continued to live near a chemical factory, right up until the production of fertilisers ceased in 1994).

146. The national authorities' attempts to achieve decontamination of a polluted region which had not so far produced the desired results was considered a violation of Article 8 in *Cordella and Others*

[22] See also Home.

v. Italy, §§ 167-172, concerning air pollution by steelworks to the detriment of the surrounding population's health. In this case, despite official scientific studies proving the environmental pollution endangering the health of the applicants, the situation had persisted for years and the population living in the areas at risk remained without information as to progress in the clean-up operation.

147. The Court has also found offensive smells from a refuse tip near a prison that reached a prisoner's cell, regarded as the only "living space" available to him for several years, to fall under the right to private and family life (*Brânduşe v. Romania*, §§ 64-67), as well as the prolonged failure by authorities to ensure the collection, treatment and disposal of rubbish (*Di Sarno and Others v. Italy*, § 112).

148. The Court has established that the decision-making process leading to measures of interference must be fair and afford due respect to the interests of the individual as safeguarded by Article 8 (*Taşkın and Others v. Turkey*, § 118, where administrative authorities failed to provide applicants with effective procedural protection concerning the operation of a goldmine site; *Hardy and Maile v. the United Kingdom*, § 217).

149. The Court declared Article 8 applicable where the quality of the applicant's private life and the scope for enjoying the amenities of his home had been adversely affected by the noise generated by aircraft using Heathrow Airport (*Powell and Rayner v. the United Kingdom*, § 40). Ultimately, however, the Court concluded that the failure of the government to reduce night flights from Heathrow Airport in the interests of the economic wellbeing of the country did not breach the Article 8 rights of those living beneath the flight path, taking into account the small number of people afflicted by sleep disturbance (see also *Hatton and Others v. the United Kingdom* [GC], §§ 129-130).

150. In several later noise pollution cases, the Court found that the respondent State had failed to discharge its positive obligation to guarantee the applicant's right to respect for his or her home and private life. For example, failing to regulate the noise levels of a nightclub near the applicant's home in Valencia was in breach of Article 8 of the Convention (*Moreno Gómez v. Spain*, §§ 62-63), as was failing to address excessive noise disturbance from heavy traffic on the applicant's street resulting from traffic changes (*Deés v. Hungary*, § 23), or concerning noise nuisance caused by a computer club in a block of flats (*Mileva and Others v. Bulgaria*, § 97).

10. Sexual orientation and sexual life[23]

151. The Court has held that elements such as gender identification, name and sexual orientation and sexual life are important elements of the personal sphere protected by Article 8 (*Sousa Goucha v. Portugal*, § 27; *B. v. France*, § 63; *Burghartz v. Switzerland*, § 24; *Dudgeon v. the United Kingdom*, § 41; *Laskey, Jaggard and Brown v. the United Kingdom*, § 36; *P.G. and J.H. v. the United Kingdom*; *Beizaras and Levickas v. Lithuania*, § 109). Legislation criminalising sexual acts between consenting homosexuals was found to breach Article 8 (*A.D.T. v. the United Kingdom*, §§ 36-39; *Dudgeon v. the United Kingdom*, § 41). Moreover, the relationship of a same-sex couple falls within the notion of "private life" within the meaning of Article 8 (*Orlandi and Others v. Italy*, § 143). However, Article 8 does not prohibit criminalisation of all private sexual activity, such as incest (*Stübing v. Germany*), or sadomasochistic sexual activities (*Laskey, Jaggard and Brown v. the United Kingdom*).

[23] See Same-sex couples
and the *Guide on Data protection*.

152. In a series of cases, the Court held that any ban on the employment of homosexuals in the military constituted a breach of the right to respect for private life as protected by Article 8 (*Lustig-Prean and Beckett v. the United Kingdom*; *Smith and Grady v. the United Kingdom*; *Perkins and R. v. the United Kingdom*; *Beck and Others v. the United Kingdom*).

C. Privacy[24]

153. As the Court has consistently held, the concept of private life extends to aspects relating to personal identity, such as a person's name, photo, or physical and moral integrity; the guarantee afforded by Article 8 of the Convention is primarily intended to ensure the development, without outside interference, of the personality of each individual in his relations with other human beings. There is thus a zone of interaction of a person with others, even in a public context, which may fall within the scope of private life (*Von Hannover v. Germany (no. 2)* [GC], § 95). Furthermore, the concept of "private life" is a broad term not susceptible to exhaustive definition, which covers the physical and psychological integrity of a person and can therefore embrace multiple aspects of a person's identity, such as gender identification and sexual orientation, name or elements relating to a person's right to their image. It covers personal information which individuals can legitimately expect should not be published without their consent (*Axel Springer AG v. Germany* [GC], § 83). The concept of "private life" also encompasses the right to confidential information relating to the adoption of a child (*X and Others v. Russia*, §§ 62-67, as regards the publication on the Internet of a judicial decision, mentioning the applicants' names and the names of their adopted children).

154. With respect to surveillance and the collection of private data by agents of the State, such information, when systematically collected and stored in a file held by agents of the State, falls within the scope of "private life" for the purposes of Article 8 § 1 of the Convention. That was all the more so in a case where some of the information had been declared false and was likely to injure the applicant's reputation (*Rotaru v. Romania* [GC], § 44). In applying this principle, the Court has explained that there are a number of elements relevant to consideration of whether a person's private life is concerned by measures that take place outside a person's home or private premises. Since there are occasions when people knowingly or intentionally involve themselves in activities which are or may be recorded or reported in a public manner, a person's reasonable expectations as to privacy may be a significant, although not necessarily conclusive, factor (*Benedik v. Slovenia*, § 101). A person who walks down the street will, inevitably, be visible to any member of the public who is also present. Monitoring by technological means of the same public scene (for example, a security guard viewing through closed circuit television) is of a similar character. Private life considerations may arise, however, once any systematic or permanent record comes into existence of such material from the public domain. It is for this reason that files gathered by security services on a particular individual fall within the scope of Article 8, even where the information has not been gathered by any intrusive or covert method (*P.G. and J.H. v. the United Kingdom*, § 57).

155. As regards online activities, information associated with specific dynamic IP addresses facilitating the identification of the author of such activities, constitutes, in principle, personal data which are not accessible to the public. The use of such data may therefore fall within the scope of Article 8 (*Benedik v. Slovenia*, §§ 107-108). In that regard, the fact that the applicant had not concealed his dynamic IP address had not been a decisive factor for assessing whether his expectation of privacy

[24] See also the *Guide on Data protection*.

had been reasonable (§ 116). Conversely, the anonymity linked to online activities is an important factor which must be taken into account (§ 117).

1. Right to one's image and photographs; the publishing of photos, images, and articles[25]

156. Regarding photographs, the Court has stated that a person's image constitutes one of the chief attributes of his or her personality, as it reveals the person's unique characteristics and distinguishes the person from his or her peers. The right to the protection of one's image is thus one of the essential components of personal development (*López Ribalda and Others v. Spain* [GC], §§ 87-91 and the references cited therein). Although freedom of expression includes the publication of photographs, the Court has nonetheless found that the protection of the rights and reputation of others takes on particular importance in this area, as photographs may contain very personal or even intimate information about an individual or his or her family (*Von Hannover v. Germany (no. 2)* [GC], § 103). Even a neutral photograph accompanying a story portraying an individual in a negative light constitutes a serious intrusion into the private life of a person who does not seek publicity (*Rodina v. Latvia*, § 131). The Court has articulated the key factors to consider when balancing the right to reputation under Article 8 and freedom of expression under Article 10 as follows: contribution to a debate of general interest; how well known is the person concerned and what is the subject of the report?; prior conduct of the person concerned; content, form and consequences of the publication; circumstances in which the photos were taken; and severity of the sanction imposed (*ibid.*, §§ 108-113; *Axel Springer AG v. Germany* [GC], §§ 89-95; *Couderc and Hachette Filipacchi Associés v. France* [GC], §§ 90-93; *Dupate v. Latvia*, §§ 49-76; *Rodina v. Latvia*, § 104).

157. Thus, everyone, including people known to the public, has a legitimate expectation that his or her private life will be protected (*Von Hannover v. Germany (no. 2)* [GC], §§ 50-53 and 95-99; *Sciacca v. Italy*, § 29; *Reklos and Davourlis v. Greece*, § 40; *Alkaya v. Turkey*, protecting the private address of a famous actress). However, this is not necessarily a conclusive factor (*Bărbulescu v. Romania* [GC], §§ 73). The Court's case-law mainly presupposes the individual's right to control the use of their image, including the right to refuse publication thereof (*Reklos and Davourlis v. Greece*, §§ 40 and 43, in which photographs of a newborn baby were taken in a private clinic without the parents' prior consent and the negatives retained; *Von Hannover v. Germany (no. 2)* [GC], § 96; *Dupate v. Latvia*, §§ 49-76, in which a magazine had published covertly-taken photographs of the applicant, who was the partner of a public figure, when she was leaving hospital following the birth of their child).

158. The State has positive obligations to ensure that efficient criminal or civil law provisions are in place to prohibit filming without consent. *Söderman v. Sweden* [GC] concerned the attempted covert filming of a 14 year old girl by her stepfather while she was naked, and her complaint that the Swedish legal system, which at the time did not prohibit filming without someone's consent, had not protected her against the violation of her personal integrity. *Khadija Ismayilova v. Azerbaijan*, on the other hand, concerned the covert filming of a journalist inside her home and the subsequent public dissemination of the videos. In that case, the acts in question were punishable under criminal law, and criminal proceedings were in fact initiated. However, the Court found that the authorities failed to comply with their positive obligation to ensure the adequate protection of the applicant's private life by carrying out an effective criminal investigation into the very serious interferences with her private life.

[25] See also the *Guide on Data protection*.

159. The Court has found video surveillance of public places where the visual data are recorded, stored and disclosed to the public to fall under Article 8 (*Peck v. the United Kingdom*, §§ 57-63). In particular, the disclosure to the media for broadcast use of video footage of an applicant whose suicide attempt was caught on surveillance television cameras was found to be a serious interference with the applicant's private life, notwithstanding that he was in a public place at the time (*ibid.*, § 87). Video-surveillance in a supermarket by an employer (*López Ribalda and Others v. Spain* [GC], § 93) and in a university amphitheatre (*Antović and Mirković v. Montenegro*) also fall within the scope of Article 8 of the Convention.

160. In the case of persons arrested or under criminal prosecution, the Court has held on various occasions that the recording of a video in the law enforcement context or the release of the applicants' photographs by police authorities to the media constituted an interference with their right to respect for private life. The Court has found violations of Article 8 where police made applicants' photographs from the official file available to the press without their consent (*Khuzhin and Others v. Russia*, §§ 115-118; *Sciacca v. Italy*, §§ 29-31; *Khmel v. Russia*, § 40; *Toma v. Romania*, §§ 90-93), and where the posting of an applicant's photograph on the wanted board was not in accordance with domestic law (*Giorgi Nikolaishvili v. Georgia*, §§ 129-131).

161. In *Gaughran v. the United Kingdom*, the applicant's custody photograph was taken on his arrest; it was to be held indefinitely on a local database for use by the police and the police were able to apply facial recognition and facial mapping techniques to it. Therefore, the Court found that the taking and retention of the applicant's photograph amounted to an interference with the right to one's image (§ 70). It went on to find that the interference was not necessary in a democratic society (§ 97). However, the Court found that the five-year retention of a photograph of a repeat offender did not constitute a violation of Article 8 because the duration of the retention was limited, the domestic courts had conducted an individualised assessment of whether it was likely that the applicant might reoffend in the future and there existed the possibility of review of the necessity of further retention of the data in question (*P.N. v. Germany*, §§ 76-90). In addition, the Court found that the taking and retention of a photograph of a suspected terrorist without her consent was not disproportionate to the legitimate terrorist-prevention aims of a democratic society (*Murray v. the United Kingdom*, § 93).

162. Article 8 does not necessarily require monetary compensation to the victim if other redress mechanisms are put in place (*Kahn v. Germany*, § 75). In this case, no award of damages was made against the publisher for breaching an injunction not to publish photographs of the two children of a former goalkeeper with the German national football team (see also *Egill Einarsson v. Iceland (no. 2)*, §§ 36-37, and § 39 and the references cited therein).

2. Protection of individual reputation; defamation

163. Reputation is protected by Article 8 of the Convention as part of the right to respect for private life (*Axel Springer AG v. Germany* [GC], § 83; *Chauvy and Others v. France*, § 70; *Pfeifer v. Austria*, § 35; *Petrina v. Romania*, § 28; *Polanco Torres and Movilla Polanco v. Spain*, § 40).

164. In order for Article 8 to come into play, an attack on a person's reputation must attain a certain level of seriousness and be made in a manner causing prejudice to personal enjoyment of the right to respect for private life (*Axel Springer AG v. Germany* [GC], § 83; *Bédat v. Switzerland* [GC], § 72; *Medžlis Islamske Zajednice Brčko and Others v. Bosnia and Herzegovina* [GC], § 76; *Denisov v. Ukraine* [GC], § 112; *Balaskas v. Greece*, § 40; *Vučina v. Croatia* (dec.), § 31; *Miljević v. Croatia*, §§ 61-62). This requirement pertains to both social and professional reputation (*Denisov v. Ukraine* [GC], § 112). There must also be a sufficient link between the applicant and the alleged attack on his or her reputation (*Putistin v. Ukraine*, § 40). In cases that concerned allegations of criminal conduct, the Court also took into account the fact that under Article 6 § 2 of the Convention, individuals have

a right to be presumed innocent of any criminal offence until proven guilty (*Jishkariani v. Georgia*, § 41).

165. The Court did not find a violation of Article 8 in a case concerning an audiovisual recording which was partly broadcast without the applicant's consent, because among other things, it criticised the commercial practices in a certain industry, rather than the applicant himself (*Haldimann and Others v. Switzerland*, § 52). On the other hand, a television report that described the applicant as a "foreign pedlar of religion" constituted a violation of Article 8 (*Bremner v. Turkey*, §§ 72 and 84).

166. The Court takes into account how well-known an applicant was at the time of the alleged defamatory statements, the extent of acceptable criticism in respect of a public figure being wider than in respect of ordinary citizens, and the subject-matter of the statements (*Jishkariani v. Georgia*). University professors specialising in human rights appointed as experts by the public authorities, in a public body responsible for advising the Government on human rights issues, could not be compared to politicians who had to display a greater degree of tolerance (*Kaboğlu and Oran v. Turkey*, § 74). However, indivdiduals who are not public figures may nevertheless expose themselves to journalistic criticism by publicly expressing ideas or beliefs likely to give rise to considerable controversy (*Balaskas v. Greece*, § 50). A private person can also enter the public domain by virtue of his or association with a public person, and thereby become susceptible to certain exposure, but the domestic courts should exercise a degree of caution where a partner of a public person attracts media attention merely on account of his or her private or family life relations (*Dupate v. Latvia*, §§ 54-57).

167. The Convention cannot be interpreted to require individuals to tolerate being publicly accused of criminal acts by Government officials, who are expected by the public to possess verifiable information concerning those accusations, without such statements being supported by facts (*idem*, §§ 59-62). In the same vein, *Egill Einarsson v. Iceland*, a well-known figure in Iceland had been the subject of an offensive comment on Instagram, an online picture-sharing application, in which he had been called a "rapist" alongside a photograph. The Court held that a comment of this kind was capable of constituting interference with the applicant's private life in so far as it had attained a certain level of seriousness (§ 52). It pointed out that Article 8 was to be interpreted to mean that even where they had prompted heated debate on account of their behaviour and public comments, public figures should not have to tolerate being publicly accused of violent criminal acts without such statements being supported by facts (§ 52).

168. At the same time, the case-law under Article 8 does not require States as a general rule to provide a right-of-reply procedure for redressing grievances (*Gülen v. Turkey* (dec.), § 64). In that case, the Court held that the exercise of the right of reply, as stipulated in Turkish law, was part of an exceptional emergency procedure. The applicant, having used that remedy to challenge an alleged breach of his right to reputation, instead of bringing a claim for compensation, was found not to have exhausted domestic remedies.

169. In the context of the Internet, the Court has emphasised that the test of the level of seriousness is important (*Tamiz v. the United Kingdom* (dec.), §§ 80-81). After all, millions of Internet users post comments online every day and many of these users express themselves in ways that might be regarded as offensive or even defamatory. However, the majority of comments are likely to be too trivial in character, and/or the extent of their publication is likely to be too limited, for them to cause any significant damage to another person's reputation. In this particular case, the applicant complained that his reputation had been damaged as a result of comments on a blog. In deciding whether that threshold had been met, the Court was inclined to agree with the national courts that while the majority of comments about which the applicant complained were undoubtedly offensive, in large part they were little more than "vulgar abuse" of a kind – albeit belonging to a low register of style – which was common in communication on many Internet portals. Furthermore, many of the comments complained of, which made more specific – and potentially injurious – allegations would,

in the context in which they were written, likely be understood by readers as conjecture which should not be taken seriously.

170. In *Tamiz v. the United Kingdom* (dec.) the Court ruled on the scope of the right to respect for private life safeguarded by Article 8 in relation to the freedom of expression secured by Article 10 to information society service providers such as Google Inc. (§§ 83-84). It found that the State concerned had a wide margin of appreciation and emphasised the important role that such service providers performed on the Internet in facilitating access to information and debate on a wide range of political, social and cultural topics (§ 90). As regards third-party comments on a blog, the Court has emphasised that Article 8 encompasses a positive obligation on the Contracting States to ensure the effective protection of the right to respect for reputation to those within their jurisdiction (*Pihl v. Sweden* (dec.), § 28; see also *Høiness v. Norway*). In *Egill Einarsson v. Iceland (no. 2)*, the domestic courts declared defamatory statements on Facebook null and void, but, having regard to the circumstances of the case, declined to award the applicant damages or costs. For the Court, the decision not to grant compensation does not in itself amount to a violation of Article 8. Among other factors, the fact that the statements were published as a comment on a Facebook page amongst hundreds or thousands of other comments, and the fact that they had been removed by their author as soon as the applicant had so requested, were taken into account to examine the sufficiency of protection of the applicant's right to reputation (§§ 38-39).

171. In the context of employment disputes, *Denisov v. Ukraine* [GC] set out the existing guiding case-law principles on "professional and social reputation" (§§ 115-117 and see above 'professional or business activites').

172. Article 8 cannot be relied on in order to complain of a loss of reputation which is the foreseeable consequence of one's own actions. In *Gillberg v. Sweden* [GC], §§ 67-68, the applicant maintained that a criminal conviction in itself affected the enjoyment of his "private life" by prejudicing his honour and reputation. However this line of reasoning was not accepted by the Court (see also, inter alia, *Sidabras and Džiautas v. Lithuania*, § 49; *Mikolajová v. Slovakia*, § 57; *Medžlis Islamske Zajednice Brčko and Others v. Bosnia and Herzegovina* [GC], § 76). A criminal conviction in itself does not amount to an interference with the right to respect for "private life" and this also relates to other misconduct entailing a measure of legal responsibility with foreseeable negative effects on "private life" (*Denisov v. Ukraine* [GC], § 98 and see above 'professional or business activites'). By contrast, in *Vicent Del Campo v. Spain*, the applicant was not a party to proceedings, unaware of them and was not summoned to appear. Nevertheless, the judgment in those proceedings referred to him by name and to details of harassment he allegedly committed. The Court noted that this could not be considered to be a foreseeable consequence of his own doing and that it was not supported by any cogent reasons. Hence, the interference was disproportionate (§§ 39-42 and 48-56).

173. The Court has also found that any negative stereotyping of a group, when it reaches a certain level, is capable of impacting the group's sense of identity and the feelings of self-worth and self-confidence of members of the group. In this sense it can be seen as affecting the private life of members of the group (*Aksu v. Turkey* [GC], §§ 58-61, where the applicant, who is of Roma origin, felt offended by certain passages of the book "The Gypsies of Turkey", which focused on the Roma community; and *Király and Dömötör v. Hungary*, § 43, which concerned anti-Roma demonstrations not involving violence but rather verbal intimidation and threats). The Court also held the principle of negative stereotyping applicable when it came to the defamation of former Mauthausen prisoners, who, as survivors of the Holocaust, could be seen as constituting a (heterogeneous) social group (*Lewit v. Austria*, § 46).

174. When balancing privacy rights under Article 8 with other Convention rights, the Court has found that the State is called upon to guarantee both rights and if the protection of one leads to an interference with the other, to choose adequate means to make this interference proportionate to the aim pursued (*Fernández Martínez v. Spain* [GC], § 123). This case concerned the right to pri-

vate/family life and the right of religious organisations to autonomy. The Court found that the refusal to renew the contract of a teacher of Catholic religion and morals after he publicly revealed his position as a "married priest" did not violate Article 8 (§ 89). As for a parent suspected of child abuse, the Court found that a failure to adequately investigate the unauthorised disclosure of confidential information or to protect the applicant's reputation and right to be presumed innocent (Article 6 § 2) violated Article 8 (*Ageyevy v. Russia*, § 155).

175. When balancing freedom of expression protected by Article 10 and the right to respect for private life enshrined in Article 8, the Court has applied several criteria. They include the contribution to a debate of general interest; how well known is the person concerned and what is the subject of the report; his or her prior conduct; the method of obtaining the information and its veracity; the content, form and consequences of the publication; and the severity of the sanction imposed (*Axel Springer AG v. Germany* [GC], § 89-95). These criteria are not exhaustive and should be transposed and adapted in the light of the particular circumstances of the case (*Axel Springer SE and RTL Television GmbH v. Germany*, § 42; *Jishkariani v. Georgia*, § 46).

176. Although the press must not overstep certain bounds, regarding in particular protection of the reputation and rights of others (*Kaboğlu and Oran v. Turkey*, § 74), its duty is nevertheless to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest, which the public has a right to receive, including reporting and commenting on court proceedings (*Axel Springer AG v. Germany* [GC], § 79). The Court has also stressed the importance of the proactive role of the press, namely to reveal and bring to the public's attention information capable of eliciting such interest and of giving rise to such a debate within society (*Couderc and Hachette Filipacchi Associés v. France* [GC], § 114). When covering certain events, journalists have the duty to show prudence and caution (§ 140).

In *Tamiz v. the United Kingdom* (dec.) the Court ruled on the scope of the right to respect for private life safeguarded by Article 8 in relation to the freedom of expression secured by Article 10 to information society service providers such as Google Inc. (§§ 83-84). It found that the State concerned had a wide margin of appreciation and emphasised the important role that such service providers performed on the Internet in facilitating access to information and debate on a wide range of political, social and cultural topics (§ 90). As regards third-party comments on a blog, the Court has emphasised that Article 8 encompasses a positive obligation on the Contracting States to ensure the effective protection of the right to respect for reputation to those within their jurisdiction (*Pihl v. Sweden* (dec.), § 28). In *Egill Einarsson v. Iceland (no. 2)*, the domestic courts declared defamatory statements on Facebook null and void, but, having regard to the circumstances of the case, declined to award the applicant damages or costs. For the Court, the decision not to grant compensation does not in itself amount to a violation of Article 8. Among other factors, the fact that the statements were published as a comment on a Facebook page amongst hundreds or thousands of other comments, and the fact that they had been removed by their author as soon as the applicant had so requested, were taken into account to examine the sufficiency of protection of the applicant's right to reputation (§§ 38-39).

177. In *Sousa Goucha v. Portugal*, the Court referred to the criterion of "the reasonable reader" when approaching issues relating to satirical material (§ 50; see also *Nikowitz and Verlagsgruppe News GmbH v. Austria*, §§ 24-26). Also, a particularly wide margin of appreciation should be given to parody in the context of freedom of expression (*Sousa Goucha v. Portugal*, § 50). In this case, a wellknown celebrity alleged that he had been defamed during a television show shortly after making a public announcement concerning his sexual orientation. The Court considered that, because the joke had not been made in the context of a debate on a matter of public interest (see, a contrario, *Alves da Silva v. Portugal* and *Welsh and Silva Canha v. Portugal*), an obligation could arise under Article 8 for the State to protect a person's reputation where the statement went beyond the limits of what was acceptable under Article 10 (*Sousa Goucha v. Portugal*, § 51). In a case concerning the non-consensual use of a celebrity's first name for the purposes of a cigarette advertising campaign,

the Court found that the humoristic and commercial nature and his past behaviour outweighed the applicant's Article 8 arguments (*Bohlen v. Germany*, §§ 58-60; see also *Ernst August von Hannover v. Germany*, § 57).

178. The Court has, to date, expressly left open the question of whether the private life aspect of Article 8 protects the reputation of a company (*Firma EDV für Sie, EfS Elektronische Datenverarbeitung Dienstleistungs GmbH v. Germany* (dec.), § 23). However, under Article 10, it is worth mentioning that for the Court, the "dignity" of an institution could not be equated to that of human beings (*Kharlamov v. Russia*, § 29). In the Court's view, the protection of the university's authority was a mere institutional interest, which did not necessarily have the same strength as "the protection of the reputation or rights of others" (see also *Uj v. Hungary*, § 22, where the Court held that there was a difference between damaging an individual's reputation regarding his or her social status, with the repercussions that this could have on his or her dignity, and damaging a company's commercial reputation, which had no moral dimension). Similarly, in *Margulev v. Russia* (§ 45), the Court emphasised that there is a difference between the reputation of a legal entity and the reputation of an individual as a member of society. Whereas the latter may have repercussions on one's dignity, the former is devoid of that moral dimension. This difference is even more salient when it is a public authority that invokes its right to reputation.

179. Although Article 8 rights are non-transferable[26], the reputation of a deceased member of a person's family may, in certain circumstances, affect that person's private life and identity, and thus come within the scope of Article 8 (*Jakovljević v. Serbia* (dec.), §§ 30-31).

3. Data protection[27]

180. The protection of personal data is of fundamental importance to a person's enjoyment of his or her right to respect for private and family life as guaranteed by Article 8 and the fact that information is already in the public domain will not necessarily remove the protection of Article 8 (*Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], §§ 133-134). This Article provides for the right to a form of informational self-determination, allowing individuals to rely on their right to privacy as regards data which, albeit neutral, is collected, processed and disseminated collectively and in such a form or manner that their Article 8 rights may be engaged. Where there has been compilation of data on a particular individual, processing or use of personal data or publication of the material concerned in a manner or degree beyond that normally foreseeable, private life considerations arise. The domestic law must afford appropriate safeguards to prevent any such use of personal data as may be inconsistent with the guarantees of Article 8 (*ibid.,* §§ 136-138).

This subjet-matter is fully examined in the relevant Case-Law Guide: Data protection Guide (available on the Court's website: *www.echr.coe.int – Case-law – Case-law analysis*).

4. Right to access personal information[28]

181. Matters of relevance to personal development include details of a person's identity as a human being and the vital interest protected by the Convention in obtaining information necessary to discover the truth concerning important aspects of one's personal identity, such as the identity of one's

[26] See the *Guide on admissibility criteria*.
[27] See the *Guide on Data protection*.
[28] See also the *Guide on Data protection*.

parents, one's origins, and aspects of one's childhood and early development (*Mikulić v. Croatia*, §§ 54 and 64; *Odièvre v. France* [GC], §§ 42 and 44). Birth, and in particular the circumstances in which a child is born, forms part of a child's, and subsequently the adult's, private life guaranteed by Article 8 of the Convention (*ibid.*, § 29).

182. The Court considers that the interests of the individual seeking access to records relating to her or his private and family life must be secured when a contributor to the records either is not available or improperly refuses consent. Such a system is only in conformity with the principle of proportionality if it provides that an independent authority finally decides whether access has to be granted in cases where a contributor fails to answer or withholds consent (*Gaskin v. the United Kingdom*, § 49; *M.G. v. the United Kingdom*, § 27).

183. The issue of access to information about one's origins and the identity of one's natural parents is not of the same nature as that of access to a case record concerning a child in care or to evidence of alleged paternity (*Odièvre v. France* [GC], § 43).

184. With regard to accessing personal information held by security services, the Court has held that obstacles to access may constitute violations of Article 8 (*Haralambie v. Romania*, § 96; *Joanna Szulc v. Poland*, § 87). However, in cases concerning suspected terrorists, the Court has also held that the interests of national security and the fight against terrorism prevail over the applicants' interest in having access to information about them in the Security Police files (*Segerstedt-Wiberg and Others v. Sweden*, § 91). While the Court has recognised that, particularly in proceedings related to the operations of state security agencies, there may be legitimate grounds to limit access to certain documents and other materials, it has found this consideration loses much of its validity with respect to lustration proceedings (*Turek v. Slovakia*, § 115).

185. The law must provide an effective and accessible procedure enabling applicants to have access to any important information concerning them (*Yonchev v. Bulgaria*, §§ 49-53). In this particular case, the applicant, a police officer, had applied for a position in an international mission, but following two psychological assessments, had been declared unfit for the position in question. He complained that he had been refused access to his personnel file at the Ministry of the Interior, and in particular the assessments, on the grounds that certain documents were classified.

5. Information about one's health[29]

186. Respecting the confidentiality of health data is a vital principle in the legal systems of all the Contracting Parties to the Convention. It is crucial not only to respect the privacy of a patient, but also to preserve his or her confidence in the medical profession and in the health services in general. Without such protection, those in need of medical assistance may be deterred from revealing such information of a personal and intimate nature as may be necessary in order to receive appropriate treatment and, even, from seeking such assistance. They may thereby endanger their own health and, in the case of communicable diseases, that of the community. The domestic law must therefore afford appropriate safeguards to prevent any such communication or disclosure of personal health data as may be inconsistent with the guarantees in Article 8 of the Convention (*Z v. Finland*, § 95; *Mockutė v. Lithuania*, §§ 93-94; *Kotilainen and Others v. Finland*, § 83).

187. The right to privacy and other considerations also apply particularly when it comes to protecting the confidentiality of information relating to HIV, as the disclosure of such information can have

[29] See also the *Guide on Data protection*.

devastating consequences for the private and family life of the individual and his or her social and professional situation, including exposure to stigma and possible exclusion (*Z v. Finland*, § 96; *C.C. v. Spain*, § 33; *Y v. Turkey* (dec.), § 68). The interest in protecting the confidentiality of such information will therefore weigh heavily in the balance in determining whether the interference was proportionate to the legitimate aim pursued. Such interference cannot be compatible with Article 8 unless it is justified by an overriding requirement in the public interest (*Z v. Finland*, § 96; *Y v. Turkey* (dec.), § 78), in the interest of the applicant himself or in the interest of the safety of hospital staff (*ibid.*, § 77-78). The unnecessary disclosure of sensitive medical data in a certificate, which has to be produced in various situations such as obtaining a driving licence and applying for a job, is disproportionate to any possible legitimate aim (*P.T. v. the Republic of Moldova,* §§ 31-32). Similarly, the disclosure by State hospitals of Jehovah's Witnesses' medical files to the prosecutor's office following their refusal of a blood transfusion constituted a disproportionate interference with the applicants' right to respect for their private life in breach of Article 8 (*Avilkina and Others v. Russia*, § 54). However, the publication of an article on the mental health status of a psychological expert did not violate Article 8 because of its contribution to a debate of general interest (*Fürst-Pfeifer v. Austria*, § 45).

188. The Court has found that the collection and storage of a person's health-related data for a very long period, together with the disclosure and use of such data for purposes unrelated to the original reasons for their collection, constituted a disproportionate interference with the right to respect for private life (*Surikov v. Ukraine*, §§ 70 and 89, concerning the disclosure to an employer of the medical grounds for an employee's dispensation from military service).

189. The disclosure – without a patient's consent – of medical records, including information relating to an abortion, by a clinic to the Social Insurance Office, and therefore to a wider circle of public servants, constituted an interference with the patient's right to respect for private life (*M.S. v. Sweden*, § 35). A criminal court's dismissal of a defendant's application to hear evidence which contained senstitive medical information *in camera* was also found to have breached Article 8 as the court had not carried out any individualised assessment of proportionalty (*Frâncu v. Romania*, §§ 63-75). The disclosure of medical data by medical institutions to journalists and to a prosecutor's office, and the collection of a patient's medical data by an institution responsible for monitoring the quality of medical care were also held to have constituted an interference with the right to respect for private life (*Mockutė v. Lithuania*, § 95). In this case there had also been an interference with Article 8 concerning the information disclosed to the applicant's mother, given the tense relations between the latter and her daughter (§ 100).

190. The right to effective access to information concerning health and reproductive rights falls within the scope of private and family life within the meaning of Article 8 (*K.H. and Others v. Slovakia*, § 44). There may be positive obligations inherent in effective respect for private or family life which require the State to provide essential information about risks to one's health in a timely manner (*Guerra and Others v. Italy*, §§ 58 and 60). In particular, where a State engages in hazardous activities, which might have hidden adverse consequences on the health of those involved in such activities, respect for private and family life under Article 8 requires that an effective and accessible procedure be established which enables such persons to seek all relevant and appropriate information (*McGinley and Egan v. the United Kingdom*, §§ 97 and 101; *Roche v. the United Kingdom* [GC], § 167).

6. File or data gathering by security services or other organs of the State[30]

191. The Court has held that where a State institutes secret surveillance, the existence of which remains unknown to the persons being controlled with the effect that the surveillance remains unchallengeable, individuals could be deprived of their Article 8 rights without being aware and without being able to obtain a remedy either at the national level or before the Convention institutions (*Klass and Others v. Germany*, § 36). This is especially so in a climate where technological developments have advanced the means of espionage and surveillance, and where the State may have legitimate interests in preventing disorder, crime, or terrorism (*ibid.*, § 48). An applicant can claim to be the victim of a violation occasioned by the mere existence of secret surveillance measures or of legislation permitting such measures, if certain conditions are satisfied (*Roman Zakharov v. Russia* [GC], §§ 171-172). In that case, the Court found the *Kennedy* approach was best tailored to the need to ensure that the secrecy of surveillance measures did not result in the measures being effectively unchallengeable and outside the supervision of the national judicial authorities and of the Court (*Kennedy v. the United Kingdom*, § 124).

192. The mere existence of legislation which allows a system for the secret monitoring of communications entails a threat of surveillance for all those to whom the legislation may be applied (*Weber and Saravia v. Germany* (dec.), § 78). While domestic legislatures and national authorities enjoy a certain margin of appreciation in which to assess what system of surveillance is required, the Contracting States do not enjoy unlimited discretion to subject persons within their jurisdiction to secret surveillance. The Court has affirmed that the Contracting States may not, in the name of the struggle against espionage and terrorism, adopt whatever measures they deem appropriate; rather, whatever system of surveillance is adopted, there must be adequate and effective guarantees against abuse (*ibid.*, § 106). Powers of secret surveillance of citizens are tolerable only in so far as strictly necessary for safeguarding the democratic institutions (*Klass and Others v. Germany*, § 42; *Szabó and Vissy v Hungary*, §§ 72-73). Such interference must be supported by relevant and sufficient reasons and must be proportionate to the legitimate aim or aims pursued (*Segerstedt-Wiberg and Others v. Sweden*, § 88).

193. The Court found the recording of a conversation by a remote radio-transmitting device during a police covert operation without procedural safeguards to be a violation (*Bykov v. Russia* [GC], §§ 81 and 83; *Oleynik v. Russia*, §§ 75-79). Similarly, the systematic collection and storing of data by security services on particular individuals constituted an interference with these persons' private lives, even if such data were collected in a public place (*Peck v. the United Kingdom*, § 59; *P.G. and J.H. v. the United Kingdom*, §§ 57-59) or concerned exclusively the person's professional or public activities (*Amann v. Switzerland* [GC], §§ 65-67; *Rotaru v. Romania* [GC], §§ 43-44). Collection, through a GPS device attached to a person's car, and storage of data concerning that person's whereabouts and movements in the public sphere was also found to constitute an interference with private life (*Uzun v. Germany*, §§ 51-53). Where domestic law does not indicate with sufficient clarity the scope and manner of exercise of the discretion conferred on the domestic authorities to collect and store in a surveillance database information on persons' private lives – in particular, where it does not set out in a form accessible to the public any indication of the minimum safeguards against abuse – this amounts to an interference with private life as protected by Article 8 § 1 of the Convention (*Shimovolos v. Russia*, § 66, where the applicant's name was registered in the Surveillance Data-

[30] See also Surveillance of telecommunications in a criminal context and Special secret surveillance of citizens/organisations, and the *Guide on Data protection*.

base which collected information about his movements, by train or air, within Russia). Domestic legislation should provide sufficiently precise, effective and comprehensive safeguards on the ordering, execution and potential redressing of surveillance measures (*Szabó and Vissy v Hungary*). According to that case, the need for the interference to be "necessary in a democratic society" had to be interpreted as requiring that any measures taken should be strictly necessary both, as a general consideration, to safeguard democratic institutions and, as a particular consideration, to obtain essential intelligence in an individual operation. Any measure of secret surveillance which did not fulfil the strict necessity criterion would be prone to abuse by the authorities (§§ 72-73).

194. The Court also found that consultation of a lawyer's bank statements amounted to an interference with her right to respect for professional confidentiality, which fell within the scope of private life (*Brito Ferrinho Bexiga Villa-Nova v. Portugal*, § 59).

7. Police surveillance[31]

195. The Court has held that the GPS surveillance of a suspected terrorist and the processing and use of the data thus obtained did not violate Article 8 (*Uzun v. Germany*, § 81).

196. However, the Court found a violation of Article 8 where police registered an individual's name in a secret surveillance security database and tracked his movements on account of his membership of a human rights organisation (*Shimovolos v. Russia*, § 66, the database in which the applicant's name had been registered had been created on the basis of a ministerial order, which had not been published and was not accessible to the public. Therefore, the public could not know why individuals were registered in it, what type of information was included and for how long, how it was stored and used or who had control over it).

197. The Court has established that the surveillance of communications and telephone conversations (including calls made from business premises, as well as from the home) is covered by the notion of private life and correspondence under Article 8 (*Halford v. the United Kingdom*, § 44; *Malone v. the United Kingdom*, § 64; *Weber and Saravia v. Germany* (dec.), §§ 76-79). This does not necessarily extend to the use of undercover agents (*Lüdi v. Switzerland*, § 40).

198. Tapping and other forms of interception of telephone conversations represent a serious interference with private life and correspondence and must accordingly be based on a law that is precise. It is essential to have clear, detailed rules on the subject, especially as the technology available for use is continually becoming more sophisticated (*Kruslin v. France*, § 33). When balancing the respondent State's interest in protecting its national security through secret surveillance measures against the seriousness of the interference with an applicant's right to respect for his or her private life, the national authorities enjoy a certain margin of appreciation in choosing the means for achieving the legitimate aim of protecting national security. However, there must be adequate and effective safeguards against abuse. The Court thus takes into account the circumstances of the case, such as the nature, scope and duration of the possible measures, the grounds required for ordering them, the authorities competent to authorise, carry out and supervise them, and the kind of remedy provided by the national law (*Roman Zakharov v. Russia* [GC], § 232; *İrfan Güzel v. Turkey*, § 85).

199. In *Hambardzumyan v. Armenia* (§§ 63-68), the warrant authorising surveillance did not state the applicant's name as the person in respect of whom the police were permitted to carry out audio

[31] This chapter should be read in conjunction with Surveillance of telecommunications in a criminal context and Special secret surveillance of citizens/organisations, and the *Guide on Data protection*.

and video recording. In addition, the police had carried out surveillance and interception of telephone communications even though the warrant did not specify those measures. The Court held that the judicial authorisation serving as the basis of secret surveillance could not be drafted in such vague terms as to leave room for speculation and assumptions with regard to its content and, most importantly, as to the identity of the person to whom the measure was to be applied. Since the secret surveillance in this case had not been the subject of proper judicial supervision, the Court ruled it was not "in accordance with the law" within the meaning of Article 8 § 2 of the Convention.

200. The Court has found violations of Article 8 where applicants' telephone conversations in connection with prosecution for criminal offences were intercepted, "metered", or listened to in violation of the law (*Malone v. the United Kingdom*; *Khan v. the United Kingdom*). The phrase "in accordance with the law" not only requires compliance with domestic law but also relates to the quality of that law, requiring it to be compatible with the rule of law (*Halford v. the United Kingdom*, § 49). In the context of covert surveillance by public authorities domestic law must provide protection against arbitrary interference with an individual's right under Article 8 (*Khan v. the United Kingdom*, §§ 26-28). Moreover, the law must be sufficiently clear in its terms to give individuals an adequate indication as to the circumstances in which and the conditions on which public authorities are entitled to resort to such covert measures (*ibid.*). Where there exists no statutory system to regulate the use of covert listening devices, and guidelines concerning them are neither legally binding nor directly publicly accessible, the interference is not "in accordance with the law" as required by Article 8 § 2 of the Convention, and is therefore a violation of Article 8 (*ibid.*, §§ 27-28).

201. The recording of private (telephone) conversations by a conversation partner and the private use of such recordings does not per se offend against Article 8 if this is done by private means. However, this must be distinguished from the covert monitoring and recording of communications by a private person in the context of and for the benefit of an official inquiry – criminal or otherwise – and with the connivance and technical assistance of public investigation authorities (*Van Vondel v. the Netherlands*, § 49). The disclosure of the content of certain conversations to the media obtained through telephone tapping could constitute a violation of Article 8 depending on the circumstances of the case (*Drakšas v. Lithuania*, § 62).

202. The Court considers the surveillance of legal consultations taking place in a police station to be analogous to the interception of a telephone call between a lawyer and client, given the need to ensure an enhanced degree of protection for that relationship and in particular for the confidentiality of the exchanges which characterise it (*R.E. v. the United Kingdom*, § 131).

8. Stop and search police powers[32]

203. The Court has held that there is a zone of interaction between a person with others, even in a public context, which may fall within the scope of "private life" (*Gillan and Quinton v. the United Kingdom*, § 61). In that case, the Court found that the stopping and searching of a person in a public place without reasonable suspicion of wrongdoing was a violation of Article 8 as the powers were not sufficiently circumscribed and contained inadequate legal safeguards to be in accordance with the law (*ibid.*, § 87).

204. In *Beghal v. the United Kingdom* the Court considered a power given to police, immigration officers and designated customs officers under anti-terrorism legislation to stop, examine and search

[32] See also the *Guide on Terrorism*.

passengers at ports, airports and international rail terminals. No prior authorisation was required for the use of the power, and it could be exercised without suspicion of involvement in terrorism. In assessing whether domestic law sufficiently curtailed the power so as to offer adequate protection against arbitrary interference with the applicant's right to respect for her private life, the Court had regard to the following factors: the geographic and temporal scope of the powers; the discretion afforded to the authorities in deciding if and when to exercise the powers; any curtailment on the interference occasioned by the exercise of the powers; the possibility of judicially reviewing the exercise of the powers; and any independent oversight of the use of the powers. Although the Court acknowledged the importance of controlling the international movement of terrorists, and accepted that the national authorities enjoyed a wide margin of appreciation in matters relating to national security, it nevertheless held that the power was neither sufficiently circumscribed nor subject to adequate legal safeguards against abuse.

205. The Court has also found that police officers' entry into a home in which applicant was not present and there was little or no risk of disorder or crime was disproportionate to the legitimate aim pursued and was therefore a violation of Article 8 (*McLeod v. the United Kingdom*, § 58; *Funke v. France*, § 48).

206. With respect to persons suspected of terrorism-related offences, governments must strike a fair balance between the exercise by the individual of the right guaranteed to him or her under paragraph 1 of Article 8 and the necessity under paragraph 2 for the State to take effective measures for the prevention of terrorist crimes (*Murray v. the United Kingdom*, §§ 90-91).

9. Home visits, searches and seizures[33]

207. In some cases, the Court examines evictions from the perspective of "private" and/or "family" life" and not of the "right to home" (*Hirtu and Others v. France*, §§ 65-66; *Khadija Ismayilova v. Azerbaijan*, § 107).

208. The Court can examine searches not only from the perspective of the "right to home" or the "right to family life", but also from the perspective of the "right to private life" (*Vinks and Ribicka v. Latvia*, § 92; *Yunusova and Yunusov v. Azerbaijan (no. 2)* with regard to the inspection of the applicants' luggage and handbags, § 148). The interference must be justified under paragraph 2 of Article 8 – in other words it must be "in accordance with the law", pursue one or more of the legitimate aims set out in that paragraph and be "necessary in a democratic society" to achieve that aim (*Vinks and Ribicka v. Latvia*, §§ 93-104 with further references therein). The *Vinks and Ribicka* case concerned an early-morning raid at the applicants' home involving a special anti-terrorist unit against the background of charges of economic crimes. The Member States, when taking measures to prevent crime and protect the rights of others, may well consider it necessary, for the purposes of special and general prevention, to resort to measures such as searches and seizures in order to obtain evidence of certain offences where it is otherwise impossible to identify a person guilty of an offence. Although the involvement of special police units may be considered necessary, in certain circumstances, having regard to the severity of the interference with the right to respect for private life of the individuals affected by such measures as well as the risk of abuse of authority and violation of human dignity, adequate and effective safeguards against abuse must be put in place (§§ 113-114, 118).

[33] See also Home below, and the *Guide on Data protection*.

10. Lawyer-client relationship

209. The Court has emphasised that professional secrecy is the basis of the relationship of trust existing between a lawyer and his client and that the safeguarding of professional secrecy is in particular the corollary of the right of a lawyer's client not to incriminate himself, which presupposes that the authorities seek to prove their case without resorting to evidence obtained through methods of coercion or oppression in defiance of the will of the "person charged" (*André and Another v. France*, § 41). Moreover, the Court has stressed that it is clearly in the general interest that any person who wishes to consult a lawyer should be free to do so under conditions which favour full and uninhibited discussion and that it is for that reason that the lawyer-client relationship is, in principle, privileged. It has not limited that consideration to matters relating to pending litigation only and has emphasised that, whether in the context of assistance for civil or criminal litigation or in the context of seeking general legal advice, individuals who consult a lawyer can reasonably expect their communication to be private and confidential (*Altay v. Turkey (no. 2)*, §§ 49-51, and the further references therein).

210. In the case of *Altay v. Turkey (no. 2)*, the Court ruled for the first time that a person's communication with a lawyer in the context of legal assistance falls within the scope of "private life" since the purpose of such interaction is to allow an individual to make informed decisions about his or her life. The Court considered that more often than not the information communicated to the lawyer involves intimate and personal matters or sensitive issues. It therefore follows that whether it be in the context of assistance for civil or criminal litigation or in the context of seeking general legal advice, individuals who consult a lawyer can reasonably expect that their communication is private and confidential (§ 49).

211. It is clearly in the general interest that any person who wishes to consult a lawyer should be free to do so under conditions which favour full and uninhibited discussion (§ 50 with reference to *Campbell v. the United Kingdom*, § 46). In principle, oral communication as well as correspondence between a lawyer and his or her client is privileged under Article 8 (§ 51).

212. In spite of its importance, the right to confidential communication with a lawyer is not absolute but may be subject to restrictions. In order to ensure that the restrictions that are imposed do not curtail the right in question to such an extent as to impair its very essence and deprive it of its effectiveness, the Court must satisfy itself that they are foreseeable for those concerned and pursue a legitimate aim or aims under paragraph 2 of Article 8, and are "necessary in a democratic society", in the sense that they are proportionate to the aims sought to be achieved.

213. The margin of appreciation of the State in the assessment of the permissible limits of interference with the privacy of consultation and communication with a lawyer is narrow in that only exceptional circumstances, such as to prevent the commission of serious crime or major breaches of prison safety and security, might justify the necessity of limitation of these rights (§ 52).

11. Privacy during detention and imprisonment[34]

214. Since any detention which is lawful and justified inevitably entails some limitations on Article 8 rights, the assessment of compliance with that Article in the case of detainees is somewhat particular. Thus, for example, with respect to a detainees contacts with the outside world, regard must be had to the ordinary and reasonable requirements of imprisonment since some restrictions on those

[34] See also Prisoners' correspondence.

contacts, such as limitations on the number and duration of visits, are not of themselves incompatible with Article 8 (*Khoroshenko v. Russia* [GC], §§ 106, 109, 116-149; see also *Lebois v. Bulgaria*, §§ 61-64, as regards restrictions on visits and telephone calls, *Bădulescu v. Portugal*, §§ 35 and 36).

215. In the context of persons deprived of their liberty, the Court emphasized for the first time the confidentiality of lawyer-client communication in the case of *Altay v. Turkey (no. 2)*. It ruled that an individual's oral communications with his or her lawyer in the context of legal assistance falls within the scope of "private life" since the purpose of such interaction is to allow that individual to make informed decisions about his or her life (§§ 49-50). In principle, oral, face-to-face communication and correspondence between a lawyer and his or her client are privileged under Article 8 (§ 51). The Court also noted that a prisoner's right to communicate with counsel out of earshot of the prison authorities would be relevant in the context of Article 6 § 3 (c) of the Convention vis-à-vis a person's rights of defence. Prisoners may feel inhibited in discussing with their lawyers in the presence of an official not only matters relating to pending litigation but also in reporting abuses they may be suffering through fear of retaliation. In addition, the privilege of lawyer-client relationship and the national authorities' obligation to ensure the privacy of communications between a prisoner and his or her chosen representative are among recognised international norms (§ 50).

216. This case concerns the mandatory presence of an official during consultations between a prisoner and his lawyer. The right to confidential communication between a detainee and his/her lawyer is not absolute but might be subject to restrictions. The margin of appreciation of the State in the assessment of the permissible limits of interference with the privacy of consultation and communication with a lawyer is narrow in that only exceptional circumstances, such as to prevent the commission of serious crime or major breaches of prison safety and security, might justify the necessity of limitation of these rights (§ 52).

217. In the case at hand, the domestic courts had ordered the presence of an official during the applicant's consultations with his lawyer in prison because they had found that the lawyer's behaviour had been incompatible with the profession of a lawyer in so far as she had sent books and periodicals to the applicant which had not been defence-related. The Court found that the measure in question constituted an interference with the applicant's right to respect for his private life. The Court reiterated in this context that the Convention does not prohibit the imposition on lawyers of certain obligations likely to concern their relationships with their clients. That is the case in particular where credible evidence had been found of the participation of a lawyer in an offence, or in connection with efforts to combat certain practices. On that account, however, it is vital to provide a strict framework for such measures, since lawyers occupy a vital position in the administration of justice and can, by virtue of their role as intermediary between litigants and the courts, be described as officers of the law (§ 56).

218. In *Gorlov and Others v. Russia* the Court held that the permanent video surveillance of prisoners when confined to their cells was not "in accordance with the law" as required by Article 8 § 2 of the Convention since it did not define the scope of those powers and the manner of their exercise with sufficient clarity to afford an individual adequate protection against arbitrariness. In this regard, the Court found that the authorities had an unrestricted power to place every individual in pre-trial or post-conviction detention under permanent video surveillance, unconditionally, in any area of the institution, for an indefinite period of time, with no periodic reviews, and the national law offered virtually no safeguards against abuse by State officials.

219. In the case of *Szafrański v. Poland*, the Court found that the domestic authorities failed to discharge their positive obligation of ensuring a minimum level of privacy for the applicant and therefore had violated Article 8 where the applicant had to use a toilet in the presence of other inmates and was thus deprived of a basic level of privacy in his everyday life (§§ 39-41).

D. Identity and autonomy

220. Article 8 secures to individuals a sphere within which they can freely pursue the development and fulfilment of their personality (*A.-M.V. v. Finland*, § 76; *Brüggemann and Scheuten v. Germany*, Commission decision; *National Federation of Sportspersons' Associations and Unions (FNASS) and Others v. France*, § 153.

1. Right to personal development and autonomy

221. Article 8 protects a right to personal development, and the right to establish and develop relationships with other human beings and the outside world (*Niemietz v. Germany*, § 29; *Pretty v. the United Kingdom*, §§ 61 and 67; *Oleksandr Volkov v. Ukraine*, §§ 165-167; *El Masri v. the former Yugoslav Republic of Macedonia* [GC], §§ 248-250, concerning the applicant's secret and extrajudicial abduction and arbitrary detention).

222. The right to apply for adoption, and to have their application considered fairly, falls within the scope of "private life" taking into account the couple's decision to become parents (*A.H. and Others v. Russia*, § 383). In *Paradiso and Campanelli v. Italy* [GC] the Court examined a couple's immediate and irreversible separation from a child born abroad under a surrogacy agreement, and its impact on their right to respect for their private life. The Court balanced the general interest at stake against the applicants' interest in ensuring their personal development by continuing their relationship with the child and held that the Italian courts, in separating the applicants from the child, had struck a fair balance between the competing interests at stake (§ 215). In the case of *Lazoriva v. Ukraine*, the Court held that the applicant's wish to maintain and develop her relationship with her five-year-old nephew by becoming his legal tutor, a wish which had an adequate legal and factual basis, was also a matter of private life (§ 66). Consequently, the child's adoption by third persons, which had had the effect of severing the legal ties between the boy and the applicant and to impede her request to take him into her care, amounted to an interference with her right to respect for her private life (§ 68).

223. The right to personal development and personal autonomy does not cover every public activity a person might seek to engage in with other human beings (for example, the hunting of wild animals with hounds in *Friend and Others v. the United Kingdom* (dec.), §§ 40-43). Indeed, not every kind of relationship falls within the sphere of private life. Thus, the right to keep a dog does not fall within the scope of Article 8 protection (*X. v. Iceland*, Commission decision).

2. Right to discover one's origins[35]

224. The Court has recognised the right to obtain information in order to discover one's origins and the identity of one's parents as an integral part of identity protected under the right to private and family life (*Odièvre v. France* [GC], § 29; *Gaskin v. the United Kingdom*, § 39; *Çapın v. Turkey*,§§ 33-34; *Boljević v. Serbia*, § 28).

225. The private life of a deceased person from whom a DNA sample would have to be taken could not be adversely affected by a request to that effect made following his death (*Jäggi v. Switzerland*, § 42; *Boljević v. Serbia*, § 54).

[35] See also the *Guide on Data protection*.

226. The Court has ruled that it is not compulsory for States to DNA test alleged fathers, but that the legal system must provide alternative means enabling an independent authority to speedily determine a paternity claim. For example in *Mikulić v. Croatia*, §§ 52-55, the applicant was born out of an extramarital relationship and complained that the Croatian judicial system had been inefficient in determining the issue of paternity, leaving her uncertain as to her personal identity. In that case the Court held that the inefficiency of the domestic courts had left the applicant in a state of prolonged uncertainty as to her personal identity. The Croatian authorities had therefore failed to secure to the applicant the "respect" for her private life to which she was entitled under the Convention (*ibid.*, § 68). The Court has also held that procedures must exist that allow particularly vulnerable children, such as those with disabilities, to access information about their paternity (*A.M.M. v. Romania*, §§ 58-65). In *Jäggi v. Switzerland*, the Court found the refusal by the authorities to authorise a DNA test on a deceased person, requested by the putative son wishing to establish his parentage with certainty, to violate Article 8. In that case, the applicant's interest in ascertaining the identity of his biological father prevailed over that of the remaining family of the deceased which opposed the taking of DNA samples (§§ 40-44). In *Boljević v. Serbia*, the Court found that, in the very specific circumstances of the case, a time-bar, which precluded the DNA test of a deceased man and the review of the final judgment approving his disavowal of paternity, constituted a violation of Article 8. In this case, the judgment had been rendered before DNA tests became available and without the applicant's knowledge. He only became aware of it decades after the applicable deadline for the reopening of the paternity proceedings had already expired. The Court held that the preservation of legal certainty could not suffice in itself as a ground for depriving the applicant of the right to ascertain his parentage (§ 55).

227. The Court also found a violation of Article 8 where domestic courts rejected the application to reopen proceedings to establish the paternity of a child, when all the parties concerned were in favour of establishing the biological truth concerning the filiation, on the basis of scientific evidence which had not been available at the date of the paternity proceedings (*Bocu v. Romania*, §§ 33-36). Similarly, it has found a violation of Article 8 where an applicant claiming to be the biological father was unable to seek to establish paternity because another man had already reciognised the child, and where there had been no detailed assessment by the domestic courts (*Koychev v. Bulgaria*, §§ 59-68).

228. The Court has held that the introduction of a time-limit for instituting paternity proceedings is justified by the desire to ensure legal certainty and thus not per se incompatible with the Convention. However, in *Çapın v. Turkey* the Court ruled that a fair balance needs to be struck between the child who has the right to know his or her identity and the putative father's interest in being protected from allegations concerning circumstances that date back many years (§ 87). In that case, the Court found that the national courts had not properly balanced the competing interests at stake because they had not assessed the exceptional circumstances of the case namely, the applicant's claim that he had been told as a child that his father was dead and that, once he was eighteen years of age, he had left his home country and lived abroad for twenty-five years, estranged from his mother and his relatives (§§ 75-76). The Court also reiterated that everyone has a vital interest to know the truth about his or her identity and to eliminate any uncertainty about it.

229. In *Odièvre v. France* [GC], the applicant, who was adopted, requested access to information to identify her natural mother and natural family, but her request was rejected under a special procedure which allowed mothers to remain anonymous. The Court held that there was no violation of Article 8 as the State had struck a fair balance between the competing interests (§§ 44-49).

230. However, where national law did not attempt to strike any balance between the competing rights and interests at stake, the inability of a child abandoned at birth to gain access to non-identifying information concerning his or her origins or the disclosure of the mother's identity was a violation of Article 8 (*Godelli v. Italy*, §§ 57-58).

3. Legal parent-child relationship

231. Respect for private life requires that everyone should be able to establish details of their identity as individual human beings, which includes the legal parent-child relationship (Mennesson v. France, § 96). Therefore, Article 8 protects children born to a surrogate mother outside the member State in question, whose legal parents according to the foreign State could not register as such under domestic law. The Court does not require that States legalise surrogacy and, furthermore, States may demand proof of parentage for children born to surrogates before issuing the child's identity papers. However, the child's right to respect for his or her private life requires that domestic law provide a possibility of recognition of the legal relationship between a child born through a surrogacy arrangement abroad and the intended father, where he is the biological father (*Mennesson v. France*; *Labassee v. France*; *Foulon and Bouvet v. France*).

In its first Advisory Opinion, the Court clarified that where a child is born through a gestational surrogacy arrangement abroad, in a situation where he or she was conceived using the eggs of a third-party donor, and the intended mother is designated in a birth certificate legally established abroad as the "legal mother", the child's right to respect for his or her private life also requires that domestic law provide a possibility of recognition of a legal parent-child relationship with the intended mother. The choice of means by which to achieve recognition of the legal relationship between the child and the intended mother falls within the State's margin of appreciation. However, once the relationship between the child and the intended mother has become a "practical reality" the procedure laid down to establish recognition of the relationship in domestic law must be capable of being "implemented promptly and efficiently" (*Advisory opinion concerning the recognition in domestic law of a legal parent-child relationship between a child born through a gestational surrogacy arrangement abroad and the intended mother* [GC]). Applying the principles of *Mennesson v. France* and the before-mentioned *Advisory opinion*, the Court found that the obligation for children born under a surrogacy arrangement to be adopted in order to ensure the legal recognition between the genetic mother and her child did not violate the mother's right to private life (*D v. France*).

4. Religious and philosophical convictions

232. Although Article 9 governs most freedom of thought, conscience, and religious matters, the Court has established that disclosure of information about personal religious and philosophical convictions may implicate Article 8 as well, as such convictions concern some of the most intimate aspects of private life (*Folgerø and Others v. Norway* [GC], § 98, where imposing an obligation on parents to disclose detailed information to the school authorities about their religious and philosophical convictions could be seen to constitute a violation of Article 8 of the Convention).

5. Desired appearance

233. The Court has established that personal choices as to an individual's desired appearance, whether in public or in private, relate to the expression of his or her personality and thus fall within the notion of private life. This has included a haircut (*Popa v. Romania* (dec.), §§ 32-33), denial of access to a university for wearing a beard (*Tığ v. Turkey* (dec.)), a ban on wearing clothing designed to conceal the face in public places for women wishing to wear a fullface veil for reasons related to their beliefs (*S.A.S. v. France* [GC], §§ 106-107), and appearing naked in public places (*Gough v. the United Kingdom*, §§ 182-184). However, it is important to note that in each of these cases, the Court found the restriction on personal appearance to be proportionate. The absolute prohibition on growing a beard in prison was considered a violation of Article 8 of the Convention, because that the Government had failed to demonstrate the existence of a pressing social need to justify an absolute prohibition (*Biržietis v. Lithuania*, §§ 54 and 57-58).

6. Right to a name/identity documents[36]

234. The Court has established that issues concerning an individual's first name and surname fall under the right to private life (*Mentzen v. Latvia* (dec.); *Henry Kismoun v. France*). The Court held that as a means of personal identification and of linking to a family, a person's name concerns his or her private and family life, and found a violation of Article 8 where authorities refused to register the applicant's surname after his family surname had been recorded as his wife's surname (*Burghartz v. Switzerland*, § 24). It has also found a violation of Article 8 where the domestic authorities' refused to allow two Turkish men to change their surnames to names which were not "of Turkish language", since the courts had conducted a purely formalistic examination of the legislative and statutory texts instead of taking into account the arguments and the specific and personal situations of the applicants, or balancing the competing interests at stake (*Aktaş and Aslaniskender v. Turkey*).

235. The Court has held that forenames also fall within the ambit of "private life" (*Guillot v. France*, §§ 21-22; *Güzel Erdagöz v. Turkey*, § 43; *Garnaga v. Ukraine*, § 36). However, the Court has found that some laws relating to the registration of names strike a proper balance, while others do not (compare *Guillot v. France*, with *Johansson v. Finland*). In relation to a change of name in the process of gender reassignment, see *S.V. v. Italy*, §§ 70-75 (under Gender identity below).

236. The Court has ruled that the tradition of demonstrating family unity by obliging married women to adopt the surname of their husbands is no longer compatible with the Convention (*Ünal Tekeli v. Turkey*, §§ 67-68). The Court has found a violation of Article 14 (prohibition of discrimination) read in conjunction with Article 8 as a result of discriminatory treatment on the part of the authorities' refusal to let a binational couple keep their own surnames after marriage (*Losonci Rose and Rose v. Switzerland*, § 26). The mere fact that an existing name could take on a negative connotation does not mean that the refusal to permit a change of name will automatically constitute a breach of Article 8 (*Stjerna v. Finland*, § 42; *Siskina and Siskins v. Latvia* (dec.); *Macalin Moxamed Sed Dahir v. Switzerland* (dec.), § 31).

237. As concerns the seizure of documents needed to prove one's identity, the Court has found an interference with private life as a result of a domestic court's withholding of identity papers following the applicant's release from custody, as papers were needed often in everyday life in order to prove one's identity (*Smirnova v. Russia*, §§ 95-97). The Court has also held, however, that a government may refuse to issue a new passport to a citizen living abroad, if the decision is one made because of public safety, even if the failure to issue a new passport will have negative implications for the applicants' private and family life (*M. v. Switzerland*, § 67).

7. Gender identity

238. Article 8 is applicable to the question of the legal recognition of the gender identity of transgender people who have undergone gender reassignment surgery (*Hämäläinen v. Finland*, [GC], § 68), the conditions for access to such surgery (*L. v. Lithuania*, § 56-57; *Schlumpf v. Switzerland*, § 107; *Y.Y. v. Turkey*, §§ 65-66), and the legal recognition of the gender identity of transgender people who have not undergone, or do not wish to undergo, gender reassignment treatment (*A.P., Garçon and Nicot v. France*, §§ 95-96).

239. The Court has dealt with a series of cases concerning the official recognition of transgender people post gender reassignment surgery in the United Kingdom (*Rees v. the United Kingdom*; *Cos-*

[36] See also the *Guide on Data protection*.

sey v. the United Kingdom; *X, Y and Z v. the United Kingdom*; *Sheffield and Horsham v. the United Kingdom*; *Christine Goodwin v. the United Kingdom* [GC]; *I. v. the United Kingdom* [GC]). In the cases of *Christine Goodwin* and *I v. the United Kingdom*, the Court found a violation of Article 8 notably on the basis that a European and International consensus existed favoring the legal recognition of a transgender person's acquired gender. The Goodwin case raised the issue of whether or not the respondent State had failed to comply with a positive obligation to ensure the right of the applicant, a post-operative male to female transgender, to respect for her private life, in particular through the lack of legal recognition given to her gender reassignment. The Court held that there has been a failure to respect the applicant's right to private life since there were no significant factors of public interest to weigh against the interest of the applicant in obtaining legal recognition of her gender reassignment (§ 93).

240. The Court has recognised that, in the twenty-first century, the right of transgender people to personal development and to physical and moral security in the full sense enjoyed by others in society could not be regarded as a matter of controversy requiring the lapse of time to cast clearer light on the issues involved. In short, the unsatisfactory situation in which post-operative transgender people lived in intermediate zone as not quite one gender or the other was no longer sustainable (*Christine Goodwin v. the United Kingdom*, § 90; *Grant v. the United Kingdom*, § 40; *L. v. Lithuania*, § 59).

241. However, Member States possess a margin of appreciation when it comes to rule on the changing of a transgender's identity on official documents. In *Hämäläinen v. Finland* [GC], the applicant complained that the full recognition of her new gender was made conditional on the transformation of her marriage into a registered partnership. The Court noted that in this case, Article 8 was found to apply under both its private life and family life aspects (§§ 60-61). The Court held that the refusal of the State to recognise the applicant's female identity following sex change unless her marriage was transformed into a civil partnership was not disproportionate. Indeed, the Court reiterated that the Convention did not impose general obligation on the States to allow same-sex marriage. Therefore in the absence of a European consensus and given the sensitive moral and ethical issues at stake, Finland had to be afforded a wide margin of appreciation both on enacting or not legislation concerning legal recognition of the new gender of post-operative transgender people and on establishing the rules striking a balance between competing private and public interests or Convention rights (§ 67).

242. Concerning the legal recognition of transgender person's gender identity, the Court held in *A.P., Garçon and Nicot v. France* that making such recognition conditional on sterilisation surgery or treatment (the "sterility requirement"), which they did not wish to undergo, amounted to making the full exercise of their right to respect for their private life conditional on their relinquishing the full exercise of their right to respect for their physical integrity as protected not only by Article 8 but also by Article 3 of the Convention (§ 131), this being in breach of their right to respect for their private life (§ 135). In fact, the State enjoyed only a narrow margin of appreciation on the sterility requirement for two reasons: firstly, the condition that the change in one's appearance be irreversible touches an essential aspects of an individual's intimate identity, and even of his or her existence; secondly, a trend had emerged in Europe in recent years with regard to abandoning this criterion of sterility. However, the Court found that, within its wide margin of appreciation, the State could require a prior diagnosis of "gender dysphoria syndrome" (§§ 139-143) and the performance of a medical examination confirming gender reassignment (§§ 150-154).

243. In the case of *S.V. v. Italy*, the authorities refused to authorise a change of the applicant's forename prior to the completion of gender reassignment surgery. The Court held that the refusal was based on purely formal grounds and did not take into consideration that the applicant had been undergoing a gender transition process for a number of years resulting in a change in physical appearance and social identity (§§ 70-75). According to the Court, the rigid nature of the judicial procedure for recognising the gender identity of transgender people had left the applicant for an unrea-

sonable period of time – two and a half years – in an anomalous position apt to engender feelings of vulnerability, humiliation and anxiety (§ 72).

244. In the specific case of *L. v. Lithuania*, a transgender applicant underwent partial reassignment surgery since the full surgery could not be completed in the absence of adequate legal regulation. Then, until he underwent the full surgery, his personal code on his new birth certificate, passport and university diploma would not be amended because there was no law regulating full gender-reassignment surgery. The Court considered that the State had failed to strike a fair balance between the public interest and the applicant's rights. Indeed, the legislative gap left the applicant in a situation of distressing uncertainty with regard to his private life and budgetary restraints in the public-health service did not justify a delay of over four years (*Ibid.*, § 59).

245. More recently, in a case where a transgender applicant complained about the lack of a regulatory framework for legal recognition and the alleged requirement that such recognition be conditional on complete sex reassignment surgery, the Court ruled that the lack of "quick, transparent and accessible procedures" for changing the registered sex of transgender people on the birth certificates had resulted in violation of Article 8 (*X v. the former Yugoslav Republic of Macedonia*, § 70). The State has failed to comply with its positive obligation to put in place an effective and accessible procedure, with clearly defined conditions securing the applicant's right to respect for his private life, as concerns his application for the sex/gender marker to be altered in the civil status register.

246. In *Y.T. v. Bulgaria*, the Court held that the refusal to allow a transsexual to have his change of sex recorded in the civil-status register, although his physical appearance and social and family identity had been altered for a long time, constituted a violation of his right to private life. In particular, the domestic courts failed to provide relevant and sufficient reasons for the refusal and to explain why in other cases such a gender reassignment could be recognised (§ 74).

247. Another important issue concerns the access to gender reassignment surgery and other treatments for transgender people. Although the Court has not found a general right to access such treatment (*Y.Y. v. Turkey*, § 65), it has found that procedures which deny insurance coverage for such treatment may violate Article 8 (*Van Kuck v. Germany*, §§ 82-86; *Schlumpf v. Switzerland*, § 115-116). In the case of Schlumpf, the Court stated that the State has a limited margin of appreciation in relation to a question concerning one of the most intimate aspects of private life, being the sexual identity of an individual (§§ 104 and 115). In the latter case, in view of the applicant's very particular situation – she had been over 67 years old when she requested the State to pay for the operation – the State should not have applied mechanically the two-year waiting period as required by the law. The Court concluded that a fair balance had not been struck between the insurance company's and the applicant's interests (§ 115).

248. Regarding the question of gender reassignment surgery, in *Y.Y. v. Turkey*, the applicant sought authorisation to undergo such surgery. This was refused by Turkey because the applicant did not satisfy the prior requirement of permanent inability to procreate (§ 44). The Court found that in denying the applicant the possibility of undergoing gender reassignment surgery for many years the State had breached his right to respect for his private life (§§ 121-122).

8. Right to ethnic identity[37]

249. The Court has considered ethnic identity, in particular the right of members of a national minority to maintain their identity and to lead a private and family life in accordance with their tradition, to constitute part of the Article 8 right to private and family life, with a consequent obligation placed upon States to facilitate, and not obstruct disproportionately, the traditional lifestyles of minorities. Referring to its recent considerations about the positive and negative aspects of the right to free self-identification of members of national minorities in international law — not only in the Council of Europe *Framework Convention for the Protection of National Minorities* —, the Court reiterated that any member of a national minority had a full right to choose not to be treated as such (*Tasev v. North Macedonia*, §§ 32-33). The right to free self-identification is the "cornerstone" of international law on the protection of minorities in general. This applies especially to the negative aspect of the right: no bilateral or multilateral treaty or other instrument requires anyone to submit against his or her wishes to a special regime in terms of protection of minorities (§ 33).

250. The Court has found that the authorities' refusal to register an individual's ethnicity as declared by the individual constituted a failure to comply with the State's positive obligation to secure to the applicant the effective respect for his private life (*Ciubotaru v. Moldova*, § 53). The conducting of a meaningful inquiry into the discrimination behind an event that formed part of a general hostile attitude against the Roma community and the implementation of effective criminal law mechanisms are also considered to be part of the positive obligation of a State to protect respect for ethnic identity (*R.B. v. Hungary*, §§ 88-91).

251. In the specific context of demonstrations motivated by hostility towards an ethnic group, mostly involving intimidation rather than physical violence, the Court drew inspiration from the principles established in cases concerning Article 10 of the Convention. Thus, the key factors to determine are whether the offending statements were made against a tense political and social background, whether they amounted to a direct or indirect call for violence, hatred or intolerance, and their capacity to lead to harmful consequences (*Király and Dömötör v. Hungary*, §§ 72 et seq). A legal framework should be in place for criminalising antiminority demonstrations and should afford effective protection against harassment, threats and verbal abuse; otherwise, there may be a perception that the authorities tolerate such verbal intimidation and disturbances (§ 80).

252. The Court found that there had been a violation of Article 8 taken in conjunction with Article 14 in a case where the authorities had failed to protect the applicants from an attack on their homes, had a certain role in the attack, where there was no effective domestic investigation, and taking into account the general background of prejudice against Roma in the country (*Burlya and Others v. Ukraine*, §§ 169-170).

253. The occupation by a Gypsy woman of her caravan was found to comprise an integral part of her ethnic identity, one which the State should take into account when instituting measures of forced eviction from the land (*Chapman v. the United Kingdom* [GC], § 73; *McCann v. the United Kingdom*, § 55). In *Hirtu and Others v. France*, as regards the eviction of Roma from an unauthorised camp, the Court also stated that national authorities, when carrying out the proportionality assessment, must take into account that Roma belong to a socially disadvantaged group and that they have particular needs in that respect (§ 75). The Court also found an Article 8 violation on procedural grounds as a result of a family's summary eviction from the local authority caravan site where the

[37] See also Home.

applicant and his family had lived for more than 13 years; the Court stated that such a serious interference necessitated "particularly weighty reasons of public interest" and a narrow margin of appreciation (*Connors v. the United Kingdom*, § 86). However, the Court has in the past found that national planning policies may displace caravan sites if a fair balance is struck between the individual rights of the families living in the site and the environmental (and other) rights of the community (*Jane Smith v. the United Kingdom* [GC], §§ 119-120; *Lee v. the United Kingdom* [GC]; *Beard v. the United Kingdom* [GC]; *Coster v. the United Kingdom* [GC]).

254. The Court has found that the authorities' continued retention of applicants' fingerprints, cellular samples, and DNA profiles after criminal proceedings against them had ended and the usage of those data to infer ethnic origin implicated and violated the applicants' right to ethnic identity under Article 8 (*S. and Marper v. the United Kingdom* [GC], § 66).

255. The Court has also found that any negative stereotyping of a group, when it reaches a certain level, is capable of impacting the group's sense of identity and the feelings of selfworth and selfconfidence of members of the group. In this sense it can be seen as affecting the private life of members of the group (*Aksu v. Turkey* [GC], §§ 58-61 where the applicant, who is of Roma origin, felt offended by certain passages of the book "The Gypsies of Turkey", which focused on the Roma community; *Király and Dömötör v. Hungary*, § 43, for anti Roma demonstrations not involving violence but rather verbal intimidation and threats). The Court also held the principle of negative stereotyping applicable when it comes to the defamation of former Mauthausen prisoners, who, as survivors of the Holocaust, can be seen as constituting a (heterogeneous) social group (*Lewit v. Austria*, § 46).

256. In the context of the positive duty to take measures to facilitate family reunification, the Court has pointed out that it is imperative to consider the long-term effects which a permanent separation of a child from her natural mother might have, especially since it could lead to an alienation of the child from her Roma identity (*Jansen v. Norway*, § 103).

9. Statelessness, citizenship and residence[38]

257. The right to citizenship has been recognised by the Court, under certain circumstances, as falling under private life (*Genovese v. Malta*). Although the right to acquire a particular nationality is not guaranteed as such by the Convention, the Court has found that an arbitrary refusal of citizenship may, in certain circumstances, raise an issue under Article 8 by impacting on private life (*Karassev v. Finland* (dec.); *Slivenko and Others v. Latvia* (dec.) [GC]; *Genovese v. Malta*). The loss of citizenship that has already been acquired may entail similar – if not greater – interference with the person's right to respect for his or her private and family life (*Ramadan v. Malta*, § 85; in the context of terrorism-related activities, see *K2 v. the United Kingdom* (dec.), § 49; *Ghoumid and Others v. France*, § 43 (with regard to private life); *Usmanov v. Russia*, §§ 59-62).[39] To determine whether such interference breaches Article 8, two separate issues must be addressed: whether the decision to revoke citizenship was arbitrary (a stricter standard than that of proportionality); and what its consequences were for the applicant (*Ramadan v. Malta*, §§ 86-89; *K2 v. the United Kingdom* (dec.), § 50; *Ghoumid and Others v. France*, § 44 with regard to the deprivation of nationality on the basis of a conviction for a terrorism offence committed over ten years earlier; *Usmanov v. Russia*, §§ 63-70). The same principles apply to the refusal of the domestic authorities to issue an applicant with an identity card (*Ahmadov v. Azerbaijan*, § 45). In this case, the domestic authorities found that the

[38] See the *Guide on Immigration*.
[39] See the *Guide on Terrorism*.

applicant had never acquired Azerbaijani citizenship and was not a citizen of the Republic of Azerbaijan in spite of the fact that he had been considered a citizen of the Republic of Azerbaijan by various State authorities from 1991 to 2008 and that there was a stamp confirming his Azerbaijani citizenship in his Soviet passport. The denial of citizenship to the applicant was not accompanied by the necessary procedural safeguards and was both arbitrary and in breach of Article 8 of the Convention.

258. Article 8 cannot be construed as guaranteeing, as such, the right to a particular type of residence permit; the choice of permit is in principle a matter for the domestic authorities alone (*Kaftailova v. Latvia* (striking out) [GC], § 51). However, the solution proposed must enable the individual in question to exercise unhindered his right to private and/or family life (*B.A.C. v. Greece*, § 35; *Hoti v. Croatia*, § 121). Measures restricting the right to reside in a country may, in certain cases, entail a violation of Article 8 if they create disproportionate repercussions on the private or family life, or both, of the individuals concerned (*Hoti v. Croatia*, § 122).

259. Moreover, in this context, Article 8 may involve a positive obligation to ensure effective enjoyment of the applicant's private and/or family life (*Hoti v. Croatia*, § 122). In the same case, the national authorities infringed a stateless immigrant's right to private life by failing, for years, to regularise his resident's status and leaving him in a situation of insecurity (§ 126). The State had not complied with its positive obligation to provide an effective and accessible procedure or combination of procedures enabling the applicant to have the issues of his further stay and status in Croatia determined with due regard to his private-life interests under Article 8 (§ 141). In *Sudita Keita v. Hungary*, the State also failed to comply with its positive obligation to provide an effective and accessible procedure, or a combination of procedures, enabling the *de facto* stateless applicant to have the issue of his status in Hungary determined with due regard to his private-life interests under Article 8 (§ 41). In particular, the applicant had had protracted difficulties in regularising his legal situation for fifteen years, with adverse repercussions on his access to healthcare and employment and his right to get married.

260. The Court has held the failure to regulate the residence of persons who had been "erased" from the permanent residents register following Slovenian independence to be a violation of Article 8 (*Kurić and Others v. Slovenia* [GC], § 339).

261. Where there is an arguable claim that expulsion threatens to interfere with a non-citizen's right to respect for his private and family life, Article 13 in conjunction with Article 8 of the Convention requires that States must make available to the individual concerned the effective possibility of challenging the deportation or refusal of residence order and of having the relevant issues examined with sufficient procedural safeguards and thoroughness by an appropriate domestic forum offering adequate guarantees of independence and impartiality (*De Souza Ribeiro v. France* [GC], § 83; *M. and Others v. Bulgaria*, §§ 122-132; *Al-Nashif v. Bulgaria*, § 133).

10. Deportation and expulsion decisions[40]

262. As Article 8 protects the right to establish and develop relationships with other human beings and the outside world and can sometimes embrace aspects of an individual's social identity, the Court has held that that the totality of social ties between settled migrants and the community in which they are living constitutes part of the concept of "private life" within the meaning of Article 8. Therefore, regardless of the existence of a "family life", the expulsion of a settled migrant consti-

[40] See also the *Guide on Immigration*.

tutes an interference with his or her right to respect for private life (*Maslov and Others v. Austria* [GC], § 63).[41] In order to determine whether the interference is necessary in a democratic society, it is important to bear in mind that States are entitled to control the entry of aliens into their territory and their residence there. The Convention does not guarantee the right of an alien to enter or to reside in a particular country and, in pursuance of their task of maintaining public order, Contracting States have the power to expel an alien convicted of criminal offences (*ibid*., § 68; *Üner v. the Netherlands* [GC], § 68). When assessing the proportionality of the interference under the right to private life, the Court has generally applied the criteria established in *Üner v. the Netherlands* [GC] (see, for example, *Zakharchuk v. Russia*, §§ 46 – 49) as regards settled migrants. For instance, in *Levakovic v. Denmark*, §§ 42-45, applying the Üner criteria, the Court did not find a violation of the "private life" of an adult migrant convicted of serious offences, who had no children, no elements of dependence with his parents or siblings, and had consistently demonstrated a lack of will to comply with the law.

263. Very serious reasons are required to justify the expulsion of a settled migrant who has lawfully spent all or the major part of his or her childhood and youth in a host country (*Maslov v. Austria* [GC], § 75). In the very specific case of a foreigner, who had arrived in the host country as a child with a tourist visa, which expired shortly after his arrival, and who had not known about his unlawful stay until he was 17 years old, the Court did not consider the applicant a "settled migrant" because his residence in the host country had not been lawful. In such a case, it could neither be said that the refusal of a residence permit would require very serious reasons to be justified under Article 8 nor that it would violate that provision only in very exceptional circumstances. Instead, the assessment has to be carried out from a neutral starting point, taking into account the specific circumstances of the applicant's case (*Pormes v. the Netherlands**, § 61).

11. Marital and parental status

264. The Court has considered cases concerning the marital or parental status of individuals to fall within the ambit of private and family life. In particular, it found that the registration of a marriage, being a recognition of an individual's legal civil status, undoubtedly concerns both private and family life and comes within the scope of Article 8 § 1 (*Dadouch v. Malta*, § 48). An Austrian court's decision to nullify the applicant's marriage had implications for her legal status and in general on her private life. However, since the marriage had been fictitious, the interference with her private life was found to be proportionate (*Benes v. Austria*, Commission decision).

265. Similarly, proceedings relating to one's identity as a parent fall under private and family life. The Court has found cases involving the determination of the legal provisions governing a father's relations with his putative child to come within the scope of private life (*Rasmussen v. Denmark*, § 33; *Yildirim v. Austria* (dec.); *Krušković v. Croatia*, § 20; *Ahrens v. Germany*, § 60; *Tsvetelin Petkov v. Bulgaria*, §§ 49-59; *Marinis v. Greece*, § 58), as does a putative father's attempt to disavow paternity (*R.L. and Others v. Denmark*, § 38; *Shofman v. Russia*, §§ 30-32. In addition, the right to apply for adoption with a view to becoming parents falls within the scope of private life (*A.H. and Others v. Russia*, § 383).

[41] See also Deportation and expulsion decisions.

III. Family life

A. Definition of family life and the meaning of family

266. The essential ingredient of family life is the right to live together so that family relationships may develop normally (*Marckx v. Belgium*, § 31) and members of the family may enjoy each other's company (*Olsson v. Sweden (no. 1)*, § 59). The notion of family life is an autonomous concept (*Marckx v. Belgium*, § 31). Consequently, whether or not "family life" exists is essentially a question of fact depending upon the real existence in practice of close personal ties (*Paradiso and Campanelli v. Italy* [GC], § 140). The Court will therefore look at de facto family ties, such as applicants living together, in the absence of any legal recognition of family life (*Johnston and Others v. Ireland*, § 56). Other factors will include the length of the relationship and, in the case of couples, whether they have demonstrated their commitment to each other by having children together (*X, Y and Z v. the United Kingdom*, § 36). In *Ahrens v. Germany*, § 59, the Court found no *de facto* family life where the relationship between the mother and the applicant had ended approximately one year before the child was conceived and the ensuing relations were of a sexual nature only. In *Evers v. Germany*, the Court held that, in the very specific circumstances of the case, the mere fact that the applicant had been living in a common household with his partner and her mentally disabled daughter and that he was the daughter's biological father did not constitute a family link which was protected by Article 8 (§ 52). In this case, the applicant had likely sexually abused the mentally disabled daughter, which is why the domestic courts deemed the contact to the daughter detrimental and issued a contact ban. The Court held that Article 8 cannot be relied on in order to complain about the foreseeable negative consequences on "private life" as a result of criminal offences or other misconduct entailing a measure of legal responsibility (*ibid*, § 55). The Court stated also in *Paradiso and Campanelli v. Italy* [GC] that the conformity of the applicants' conduct with the law is a factor to be considered.

267. A child born of a marital relationship is ipso jure part of that "family" unit from the moment and by the very fact of his or her birth (*Berrehab v. the Netherlands*, § 21). Thus, there exists between the child and its parents a bond amounting to family life. The existence or non-existence of "family life" within the meaning of Article 8 is a question of fact depending upon the real existence in practice of close personal ties, for instance the demonstrable interest and commitment by the father to the child both before and after birth (*L. v. the Netherlands*, § 36).

268. Where the existence of a family tie with a child has been established, the State must act in a manner calculated to enable that tie to be developed and legal safeguards must be established that render possible as from the moment of birth, or as soon as practicable thereafter, the child's integration in his family (*Kroon and Others v. the Netherlands*, § 32).

269. In spite of the absence of a biological tie and of a parental relationship legally recognised by the respondent State, the Court found that there existed family life between the foster parents who had cared for a child on a temporary basis and the child in question, on account of the close personal ties between them, the role played by the adults vis-à-vis the child, and the time spent together (*Moretti and Benedetti v. Italy*, § 48; *Kopf and Liberda v. Austria*, § 37). In addition, in the case of *Wagner and J.M.W.L. v. Luxembourg* – which concerned the inability to obtain legal recognition in Luxembourg of a Peruvian judicial decision pronouncing the second applicant's full adoption by the first applicant – the Court recognised the existence of family life in the absence of legal recognition of the adoption. It took into consideration that de facto family ties had existed for more than ten years between the applicants and that the first applicant had acted as the minor child's mother in every respect. In these cases, the child's placement with the applicants was respectively recognised or tolerated by the authorities. On the contrary, in *Paradiso and Campanelli v. Italy* [GC], having regard to the absence of any biological tie between the child and the intended parents, the short duration of the relationship with the child (about eight months) and the uncertainty of the ties from a legal perspective, and in spite of the existence of a parental project and the quality of the emotional bonds, the Court considered that the conditions enabling it to conclude that there had existed a de

facto family life had not been met (§§ 156-157) (compare and contrast *D. and Others v. Belgium* (dec.)).

270. Article 8 does not guarantee either the right to found a family or the right to adopt. The right to respect for "family life" does not safeguard the mere desire to found a family; it presupposes the existence of a family, or at the very least the potential relationship between, for example, a child born out of wedlock and his or her natural father, or the relationship that arises from a genuine marriage, even if family life has not yet been fully established, or the relationship between a father and his legitimate child even if it proves, years later, to have had no biological basis (*Paradiso and Campanelli v. Italy* [GC], § 141). An applicant's intention to develop a previously non-existent "family life" with her nephew by becoming his legal tutor lies outside the scope of "family life" as protected by Article 8 (*Lazoriva v. Ukraine*, § 65).

271. However, where family life is not found, Article 8 may still be applicable under its private life head (*Paradiso and Campanelli v. Italy* [GC], § 165; *Lazoriva v. Ukraine*, §§ 61 and 66; *Azerkane v. the Netherlands*, § 65).

B. Procedural obligation

272. Whilst Article 8 contains no explicit procedural requirements (as noted above), the decision-making process involved in measures of interference must be fair and sufficient to afford due respect to the interests safeguarded by Article 8 (*Petrov and X v. Russia*, § 101), in particular in relation to children being taken into care (*W. v. the United Kingdom*, §§ 62 and 64; *McMichael v. the United Kingdom*, § 92; *T.P. and K.M. v. the United Kingdom* [GC], §§ 72-73) and the withdrawal of parental responsibility and consent to adoption (*Strand Lobben and Others v. Norway* [GC], §§ 212-213, 220). Also, the Court has stated that in cases in which the length of proceedings has a clear impact on the applicant's family life, a more rigorous approach is called for, and the remedy available in domestic law should be both preventive and compensatory (*Macready v. the Czech Republic*, § 48; *Kuppinger v. Germany*, § 137).

C. Margin of appreciation in relation to family life[42]

273. A number of factors must be taken into account when determining the width of the margin of appreciation to be enjoyed by the State when deciding any case under Article 8. The Court recognises that the authorities enjoy a wide margin of appreciation, in particular when deciding on custody, when assessing the necessity of taking a child into care by way of an emergency order (*R.K. and A.K. v. the United Kingdom*) or when framing their divorce laws and implementing them in specific cases (*Babiarz v. Poland*, § 47) or in respect of the determination of a child's legal status (*Fröhlich v. Germany*, § 41).

274. However, stricter scrutiny is called for as regards any further limitations, such as restrictions placed by those authorities on parental rights of access, and as regards any legal safeguards designed to secure an effective protection of the right of parents and children to respect for their family life. Such further limitations entail the danger that the family relations between a young child and

[42] See also Parental allowances, custody/access, and contact-rights

one or both parents would be effectively curtailed (*Sahin v. Germany* [GC], § 65; *Sommerfeld v. Germany* [GC], § 63).

275. The margin of appreciation is more limited regarding questions of contact and information rights (*Fröhlich v. Germany*), and much narrower when it comes to prolonged separation of a parent and child. In such cases, States have an obligation to take measures to reunite parents and children (*Elsholz v. Germany* [GC]; *K.A. v. Finland*).

D. Sphere of application of family life

1. Couples

a. Marriages not according to custom, *de facto* cohabitation

276. The notion of "family" under Article 8 of the Convention is not confined solely to marriage-based relationships and may encompass other de facto "family ties" where the parties are living together outside marriage (i.e. out of wedlock) (*Johnston and Others v. Ireland*, § 56; *Van der Heijden v. the Netherlands* [GC], § 50, which dealt with the attempt to compel the applicant to give evidence in criminal proceedings against her long term cohabiting partner). Even in the absence of cohabitation there may still be sufficient ties for family life (*Kroon and Others v. the Netherlands*, § 30; contrast with *Azerkane v. the Netherlands*, § 65, where the couple did not live together and there was no information available on the nature of their relationship) as the existence of a stable union may be independent of cohabitation (*Vallianatos and Others v. Greece* [GC], §§ 49 and 73). However, that does not mean that de facto families and relationships have to be granted specific legal recognition (*Babiarz v. Poland*, § 54): thus, the State's positive obligations do not include an obligation to accept a petition for divorce filed by an applicant wishing to remarry after having a child with his new partner (§§ 56-57). Moreover, while nowadays cohabitation might not be a defining criterion for establishing the stability of a long-lasting relationship, it certainly is a factor which could help rebut other indications which raise doubts about the sincerity of a marriage (*Concetta Schembri v. Malta* (dec.), § 52 concerning a marriage that was considered not genuine).

277. The Court has further considered that intended family life may exceptionally fall within the ambit of Article 8, notably in cases where the fact that family life has not yet fully been established is not attributable to the applicant (*Pini and Others v. Romania*, §§ 143 and 146). In particular, where the circumstances warrant it, family life must extend to the potential relationship which may develop between a child born out of wedlock and the biological father. Relevant factors which may determine the real existence in practice of close personal ties in these cases include the nature of the relationship between the natural parents and a demonstrable interest in and commitment by the father to the child both before and after the birth (*Nylund v. Finland* (dec.); *L. v. the Netherlands*, § 36; *Anayo v. Germany*, § 57).

278. In general, however, cohabitation is not a sine qua non of family life between parents and children (*Berrehab v. the Netherlands*, § 21). Marriages which are not in accordance with national law are not a bar to family life (*Abdulaziz, Cabales and Balkandali v. the United Kingdom*, § 63). A couple who enters into a purely religious marriage not recognised by domestic law may come within the scope of family life within the meaning of Article 8. However, Article 8 cannot be interpreted as imposing an obligation on the State to recognise religious marriage, for example in relation to inheritance rights and survivors' pensions (*Şerife Yiğit v. Turkey* [GC], §§ 97-98 and 102) or where the marriage was contracted by a 14yearold child (*Z.H. and R.H. v. Switzerland*, § 44).

279. Finally, engagement does not in itself create family life (*Wakefield v. the United Kingdom*, Commission decision).

b. Same-sex couples

280. A same-sex couple living in a stable relationship falls within the notion of family life, as well as private life, in the same way as a heterosexual couple (*Vallianatos and Others v. Greece* [GC], § 73-74; *X and Others v. Austria* [GC], § 95; *P.B. and J.S. v. Austria*, § 30; *Schalk and Kopf v. Austria*, §§ 92-94). This principle was first set out in the case of *Schalk and Kopf v. Austria* where the Court considered it artificial to maintain the view that, in contrast to a different-sex couple, a same-sex couple could not enjoy "family life" for the purposes of Article 8. Consequently, the relationship of the applicants, a cohabiting same-sex couple living in a stable de facto partnership, fell within the notion of "family life", just as the relationship of a different-sex couple in the same situation would. The Court has also established that the relationship between two women who were living together and had entered into a civil partnership, and the child conceived by one of them by means of assisted reproduction but being brought up by both of them, constituted family life within the meaning of Article 8 (*Gas and Dubois v. France* (dec.); *X and Others v. Austria* [GC], § 96).

281. In 2010, the Court has noted that there is an emerging European consensus towards legal recognition of same-sex couples, which has developed rapidly over the past decade (*Schalk and Kopf v. Austria*, § 105; see also *Orlandi and Others v. Italy*, §§ 204-206). In the cases of *Schalk and Kopf v. Austria*, § 108, and *Chapin and Charpentier v. France*, § 48, the Court found that States were free, under Article 14 taken in conjunction with Article 8, to restrict access to marriage to different-sex couples.

282. However, the Court has found a violation of Article 14 taken together with Article 8 where a law barred same-sex couples from entering into civil unions, noting that of the 19 State parties to the Convention which authorised some form of registered partnership other than marriage, only two states reserved it exclusively to different-sex couples (*Vallianatos and Others v. Greece* [GC], §§ 91-92). Noting the continuing international movement towards legal recognition and taking into account the specific circumstances in Italy, the Court found that the Italian authorities had failed to comply with the positive obligation under Article 8 to ensure that the applicants have available a specific legal framework providing for the recognition and protection of their same-sex unions (*Oliari and Others v. Italy*, §§ 178 and 180-185). The Court noted that within the Council of Europe, twenty-four of the forty-seven Member States had already enacted legislation recognising same-sex couples and affording them legal protection (§ 178). It observed that in Italy there was a conflict between the social reality of the applicants, who lived openly as a couple, and their inability to secure any official recognition of their relationship. Noting that guaranteeing the recognition and protection of same-sex unions would not amount to any particular burden on the Italian State, it held that in the absence of marriage, same-sex couples like the applicants had a particular interest in obtaining the option of entering into a form of civil union or registered partnership, since this would be the most appropriate way in which they could have their relationship legally recognised and be guaranteed the relevant protection – in the form of core rights relevant to a couple in a stable and committed relationship – without unnecessary hindrance (§§ 173-174).

283. As to the refusal to register same-sex marriages contracted abroad, in *Orlandi and Others v. Italy* the national authorities failed to provide any form of protection to the applicants' same-sex union, as a result of the legal vacuum which existed in Italian law (in so far as it did not provide for any union capable of safeguarding the applicants' relationship). The failure to ensure that the applicants had available a specific legal framework providing for the recognition and protection of their same-sex unions breached Article 8 (§ 201).

284. In two cases, the Court considered same-sex couples to be in a different situation than heterosexual couples. In *Aldeguer Tomás v. Spain*, the Court found no violation of Article 14 read in conjunction with Article 8 of the Convention and Article 1 of Protocol No. 1 where the surviving partner of a same-sex couple, contrary to the surviving partner of a heterosexual couple, could not obtain a survivor's pension where the other partner had died before the recognition of same-sex marriage in

2005 (§§ 88-90). In *Taddeuci and McCall v. Italy*, the Court found a violation of Article 14 of the Convention read in conjunction with Article 8 where a same-sex couple was prevented from living together in Italy as a result of the refusal to grant one applicant, a non-EU national, a residence permit for family purposes (§§ 98-99). The Court considered that a same-sex couple where one of the partners was a non-EU national was in a different situation than an unmarried heterosexual couple where one of the partners was a non-EU national and, therefore, needed to be treated differently (§ 85).

285. In another case concerning the regulation of residence permits for family reunification, however, the Court considered same-sex and different-sex couples as being in a similar position (*Pajić v. Croatia*, § 73). The Court stated that by tacitly excluding same-sex couples from its scope, the domestic legislation introduced a difference in treatment based on sexual orientation and thus violated Article 8 of the Convention (§§ 79-84).

286. In a case where the applicant sought to have her identity number changed from a male to a female one after having undergone gender reassignment surgery, family life was implicated by the fact that full recognition of her new gender required the transformation of her marriage into a registered partnership (*Hämäläinen v. Finland* [GC], §§ 60-61). However, the Court found that the conversion of the applicant's marriage into a registered partnership would not constitute a violation of family life under Article 8 (*ibid.*, § 86).

2. Parents

Medically assisted procreation/right to become genetic parents

287. Like the notion of private life (see "Reproductive rights" above), the notion of family life incorporates the right to respect for decisions to become a parent in the genetic sense (*Dickson v. the United Kingdom* [GC], § 66; *Evans v. the United Kingdom* [GC], § 72). Accordingly, the right of a couple to make use of medically assisted procreation comes within the ambit of Article 8, as an expression of private and family life (*S.H. and Others v. Austria* [GC], § 82). However, the provisions of Article 8 taken alone do not guarantee either the right to found a family or the right to adopt (*E.B. v. France* [GC], § 41; *Petithory Lanzmann v. France* (dec.), § 18). In addition, however worthy an applicant's personal aspiration to continue the family line, Article 8 does not encompass the right to become a grandparent (*Petithory Lanzmann v. France* (dec.), § 20).

288. The Court considers that concerns based on moral considerations or on social acceptability must be taken seriously in a sensitive domain like artificial procreation (*S. H. and Others v. Austria* [GC], § 100). However, they are not in themselves sufficient reasons for a complete ban on a specific artificial procreation techniques such as ovum donation; notwithstanding the wide margin of appreciation afforded to the Contracting States, the legal framework devised for this purpose must be shaped in a coherent manner which allows the different legitimate interests involved to be adequately taken into account (*ibid.*).

289. The Court found no violation of Article 8 where domestic law permitted the applicant's former partner to withdraw his consent to the storage and use by her of embryos created jointly by them, preventing her from ever having a child to whom she would be genetically related (*Evans v. the United Kingdom* [GC], § 82).

290. Article 8 does not require States to legalise surrogacy. Therefore, the refusal to recognise a legal relationship between a child born through a surrogacy arrangement abroad and the intended parents does not violate the parents' and children's right to family life if this inability to obtain recognition of the legal parent-child relationship does not prevent them from enjoying their family life together. In particular, there is no violation of their right to family life if the family is able to settle in the respective member State shortly after the birth of their children born abroad and if there is nothing to suggest that the family is at risk of being separated by the authorities on account of their

situation (*Mennesson v. France*, §§ 92-94; *Labassee v. France*, §§ 71-73; *Foulon and Bouvet v. France*, § 58). In addition, the Court found that the Convention could not oblige States to authorise entry to their territory of children born to a surrogate mother without the national authorities having a prior opportunity to conduct certain relevant legal checks (*D. and Others v. Belgium*, § 59). Therefore, an application concerning the refusal to provide the applicants with a travel document to enable their child, born abroad as a result of a surrogacy arrangement, to travel back with them to their country of origin, was considered to be manifestly ill-founded although the refusal had resulted in an effective separation of the parents and their child (*D. and Others v. Belgium*, § 64).[43]

291. *Paradiso and Campanelli v. Italy* [GC] concerned the separation and placement for adoption of a child conceived abroad through surrogacy and brought back to Italy in violation of Italian adoption laws (§ 215). The Court found that no family life had existed in this particular case and considered it under the notion of "private life".[44]

3. Children

a. Mutual enjoyment

292. The mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life within the meaning of Article 8 of the Convention (even if the relationship between the parents has broken down), and domestic measures hindering such enjoyment amount to an interference with the right protected by Article 8 of the Convention (*Monory v. Romania and Hungary*, § 70; *Zorica Jovanović v. Serbia*, § 68; *Kutzner v. Germany*, § 58; *Elsholz v. Germany* [GC], § 43; *K. and T. v. Finland* [GC], § 151).

293. The Court has found that an applicant's secret and extrajudicial abduction and arbitrary detention resulted in the deprivation of mutual enjoyment between family members and was therefore a violation of Article 8 (*El-Masri v. the former Yugoslav Republic of Macedonia* [GC], §§ 248-250). The Court has also found a violation of Article 8 where the applicant was kept in isolation for more than a year, separated from his family, who did not have any information on his situation (*Nasr and Ghali v. Italy*, § 305).

294. The Court has also found that a State's continuing failure to provide an applicant with credible information as to the fate of her son constituted a continuing violation of the right to mutual enjoyment and respect for her family life (*Zorica Jovanović v. Serbia*, §§ 74-75).

295. A refusal to allow a child to accompany her mother to another country for the purposes of the latter's postgraduate education based on the absence of the consent of both parents needs to be examined in the light of the child's best interest, avoiding a formalistic and mechanical approach (*Penchevi v. Bulgaria*, § 75).

b. Ties between natural mother and children

296. A natural mother's standing suffices to afford her the necessary power to apply to the Court on her child's behalf too, in order to protect his or her interests (*M.D. and Others v. Malta*, § 27; *Strand Lobben and Others v. Norway* [GC], §§ 156-159).

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[43] See also Legal parent-child relationship

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[44] See also Right to personal development and autonomy

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297. The Court regards a single woman and her child as one form of family no less than others. In acting in a manner calculated to allow the family life of an unmarried mother and her child to develop normally, the State must avoid any discrimination on grounds of birth (*Marckx v. Belgium*, §§ 31 and 34). The development of the family life of an unmarried mother and her child whom she has recognised may be hindered if the child does not become a member of the mother's family and if the establishment of affiliation has effects only as between the two of them (*ibid.*, § 45; *Kearns v. France*, § 72).

298. A natural parent who knowingly gives consent to adoption may later be legally prevented from being granted a right to contact with and information about the child (*I.S. v. Germany*). Where there is insufficient legislation to protect parental rights, then an adoption decision violates the mother's right to family life (*Zhou v. Italy*). Similarly, where a child was unjustifiably taken into care and separated from her mother and the local authority failed to submit the issue to the court for determination, the natural mother was deprived of an adequate involvement in the decision-makingprocess concerning the care of her daughter and thereby of the requisite protection of their interests, resulting in a failure to respect family life (*T.P. and K.M. v. the United Kingdom* [GC], § 83). In addition, in the decision-making process concerning the withdrawal of parental responsibility and consent to adoption, the domestic authorities have to perform a genuine balancing exercise between the interests of the child and his biological family and seriously contemplate any possibility of the child's reunification with the biological family. The Court reiterated that authorities have to take measures to facilitate family reunification as soon as reasonably feasible (*Strand Lobben and Others v. Norway* [GC], § 205). In this context, it is important that domestic authorities take steps to maintain contact between a child and its biological parents even after its initial removal from their care; and that they rely on fresh expert evidence (*Strand Lobben and Others v. Norway* [GC], §§ 220-225). In *Y.I. v. Russia* the applicant, who had been taking drugs and had been unemployed, was deprived of parental authority over her three children with her two youngest being placed in public care. The Court found a violation of Article 8 (§ 96): in its view, the domestic authorities had not sufficiently justified the measures because the children were not neglected or in danger despite the mother's situation (§§ 88-91). In addition, the childcare authorities did not provide the applicant with appropriate assistance to facilitate eventual family reunification. In this context, the Court reaffirmed that the authorities' role in the social welfare field is to help persons in difficulty, to provide them with guidance in their contact with the welfare authorities and to advise them, *inter alia*, on how to overcome their difficulties (§ 87). The Court also took into account that the children were not only separated from their mother but also separated from each other (§ 94).

c. Ties between natural father and children

299. The Court observes that the notion of family life in Article 8 is not confined solely to marriage-based relationships and may encompass other de facto "family" ties where the parties are living together outside marriage (*Keegan v. Ireland*, § 44; *Kroon and Others v. the Netherlands*, § 30). The application of this principle has been found to extend equally to the relationship between natural fathers and their children born out of wedlock. Further, the Court considers that Article 8 cannot be interpreted as only protecting family life which has already been established but, where the circumstances warrant it, must extend to the potential relationship which may develop between a natural father and a child born out of wedlock (*Nylund v. Finland* (dec.); *Shavdarov v. Bulgaria*, § 40). In the latter case, the Court accepted that the presumption of paternity meant that the applicant was not able to establish paternal affiliation by law, but that he could have taken other steps to establish a parental link, hence finding no violation of Article 8.

300. Where the existence or non-existence of family life concerns a potential relationship which could develop between a child born out of wedlock and its natural father, relevant factors include the nature of the relationship between the natural parents and the demonstrable interest in and commitment by the father to the child both before and after its birth (*Nylund v. Finland* (dec.)). Mere biological kinship, without any further legal or factual elements indicating the existence of a

close personal relationship, is not sufficient to attract the protection of Article 8 (*L. v. the Netherlands*, §§ 37-40). On the other hand, the complete and automatic exclusion of the applicant from his child's life after the termination of his paternity, without properly considering the child's best interests, amounted to a failure to respect the applicant's family life (*Nazarenko v. Russia*, §§ 65-66; compare *Mandet v. France*, § 58). The Court has also found a violation of Article 8 where the applicants were unable to establish their paternity due to a strict statute of limitations (*Călin and Others v. Romania*, §§ 96-99).

301. In *Shofman v. Russia*, concerning a father's decision to bring an action contesting paternity once he had discovered that he was not the biological father of a child born two years previously, the Court found that the introduction of a time-limit for the institution of paternity proceedings could be justified by the desire to ensure legal certainty in family relations and to protect the interests of the child (§ 39). However, it held that it was not necessarily proportionate to set a time-limit of one year from the child's birth with no exceptions permitted, especially where the person concerned had not been aware of the biological reality (§ 43) (see also *Paulík v. Slovakia*, §§ 45-47).

302. In the case of children born outside marriage who wish to bring an action for recognition of paternity before the domestic courts, the existence of a limitation period per se is not incompatible with the Convention (*Phinikaridou v. Cyprus*, §§ 51-52). Nevertheless, States must strike a fair balance between the competing rights and interests at stake (§§ 53-54). The application of a rigid time-limit for instituting paternity proceedings, regardless of the circumstances of an individual case and, in particular, the knowledge of the facts concerning paternity, impairs the very essence of the right to respect for private life under Article 8 (§ 65).

303. A situation in which a legal presumption is allowed to prevail over biological and social reality, without regard to both established facts and the wishes of those concerned and without actually benefiting anyone, is not compatible, even having regard to the margin of appreciation left to the State, with the obligation to secure effective "respect" for private and family life (*Kroon and Others v. the Netherlands*, § 40).

304. There exists between the child and his or her parents a bond amounting to family life even if at the time of his or her birth the parents are no longer cohabiting or if their relationship has then ended (*Berrehab v. the Netherlands*, § 21). Where the relationship between the applicant and the child's mother had lasted for two years, during one of which they cohabited and planned to get married, and the conception of their child was the result of a deliberate decision, it followed that from the moment of the child's birth there existed between the applicant and his daughter a bond amounting to family life, regardless of the status of the relationship between the applicant and the child's mother (*Keegan v. Ireland*, §§ 42-45). Thus, permitting the applicant's child to have been placed for adoption shortly after the child's birth without the father's knowledge or consent constituted an Article 8 violation (*ibid.*, § 55).

305. The Court found that the domestic courts did not exceed their wide margin of appreciation when they took into account the applicant's refusal to abide by a court-ordered genetic testing and declared him the father of the child, giving priority to the latter's right to respect for private life over that of the applicant (*Canonne v. France* (dec.), § 34 and § 30 for DNA tests). The Court found no violation of Article 8 in a case involving the refusal, in the best interests of the children concerned, to recognise their biological father (*R.L. and Others v. Denmark*). The Court observed that the domestic courts had taken account of the various interests at stake and prioritised what they believed to be the best interests of the children, in particular their interest in maintaining the family unit. (§§ 47-48). In *Fröhlich v. Germany*, the Court accepted the importance that the question of paternity might have for the child in the future, when she would start to ask about her origin, but held that at that time it was not in the best interest of the six-year-old child to be confronted with the paternity issue. As a result, a court's refusal to grant contact rights or order legal parents to provide information

about a child's personal circumstances to potential biological father did not breach Article 8 (§§ 62-64).

306. In the specific context of a 'passive parent' and, in particular, the lack of contact between a natural father and his very young child during a long period of time with no attempts to resume contact, the Court found that the removal of parental authority did not constitute a violation of Article 8 (*Ilya Lyapin v. Russia*). The Court especially took into account that it was the father's own inaction that led to the severance of ties between him and his son and that, given the absence of any personal relations for a period of seven years prior, the removal of his parental authority did no more than cancel the legal link between the natural father and his son (§ 54).

d. Parental allowances, custody/access, and contact-rights

307. The Court has stated that while Article 8 does not include a right to parental leave or impose any positive obligation on States to provide parental leave allowances, at the same time, by enabling one of the parents to stay at home to look after the children, parental leave and related allowances promote family life and necessarily affect the way in which it is organised; thus, parental leave and parental allowances come within the scope of Article 8 (*Konstantin Markin v. Russia* [GC], § 130; *Petrovic v. Austria*, §§ 26-29; *Di Trizio v. Switzerland*, §§ 60-62).

308. There is a broad consensus – including in international law – in support of the idea that in all decisions concerning children, their best interests must be paramount (*Strand Lobben and Others v. Norway* [GC], § 207; *Neulinger and Shuruk v. Switzerland* [GC], § 135; *X v. Latvia* [GC], § 96). The child's best interests may, depending on their nature and seriousness, override those of the parents (*Sahin v. Germany* [GC], § 66). The parents' interests, especially in having regular contact with their child, nevertheless remain a factor when balancing the various interests at stake (*Neulinger and Shuruk v. Switzerland*, § 134). The child's interests dictate that the child's ties with the family must be maintained, except in cases where the family has proved particularly unfit. It follows that family ties may only be severed in very exceptional circumstances and that everything must be done to preserve personal relations and, if and when appropriate, to "rebuild" the family (*Gnahoré v. France*, § 59 and for a review of the case-law, *Jansen v. Norway*, §§ 88-93).

309. While Article 8 of the Convention contains no explicit procedural requirements, the decision-making process must be fair and such as to ensure due respect for the interests safeguarded by Article 8. The parents ought to be sufficiently involved in this process seen as a whole, to be provided with the requisite protection of their interests and fully able to present their case. The domestic courts must conduct an in-depth examination of the entire family situation and of a whole series of factors, particularly those of a factual, emotional, psychological, material and medical nature, and make a balanced and reasonable assessment of the respective interests of each person, with a constant concern for determining what would be the best solution for the child, as this consideration is in every case of crucial importance. The margin of appreciation to be accorded to the competent national authorities will vary in accordance with the nature of the issues and the importance of the interests at stake (*Petrov and X v. Russia*, §§ 98-102)[45]. In *Strand Lobben and Others v. Norway* [GC], the Court pointed out that domestic authorities have to perform a genuine balancing exercise between the interests of the child and the biological family in the process leading to the withdrawal of parental responsibilities and consent to adoption.

[45] See also Margin of appreciation in relation to family life.

310. The Court has found that the failure to disclose relevant documents to parents during the procedures instituted by the authorities in placing and maintaining a child in care meant that the decision-makingprocess determining the custody and access arrangements did not afford the requisite protection of the parents' interests as safeguarded by Article 8 (*T.P. and K.M. v. the United Kingdom* [GC], § 73). The refusal to order an independent psychological report and the absence of a hearing before a regional court insufficiently involved the applicant in the decision-making process regarding his parental access and thereby violated the applicant's rights under Article 8 (*Elsholz v. Germany* [GC], § 53). In *Petrov and X v. Russia*, there was an insufficient examination of a father's application for a residence order and no relevant and sufficient reasons were adduced for a decision to make the residence order in favour of the child's mother, in violation of Article 8 (see §§ 105-114 and the review of the case-law therein).

311. As regards contact-rights, the Court held that the decision-making process of the domestic courts had to be fair, it must allow the concerned parties to present their case fully and the best interests of the child must be defended. In *Cînța v. Romania*, the applicant's contact-rights in respect of his four-year old daughter were restricted and the domestic courts based their decision on his mental illness. However, there had been no evidence before the courts that the applicant would pose a threat to his daughter's well-being (§§ 47-48) and the courts had not established or assessed the child's best interests (§§ 52-55).

312. The Court has found that the right to private and family life of a divorced couple's daughter had been violated as regards the length of the custody proceedings and, taking into account her age and maturity, the failure of the domestic courts to allow her to express her views on which parent should take care of her (*M. and M. v. Croatia*, §§ 171-172). In *C. v. Croatia*, it found that the authorities had breached the right to family life of a child at the centre of custody proceedings because he did not have an opportunity to be heard by the competent judicial authorities and a guardian *ad litem* had not been represented to represent his views (§§ 77-82).

313. A parent cannot be entitled under Article 8 to have measures taken as would harm the child's health and development (*Elsholz v. Germany* [GC], § 50; *T.P. and K.M. v. the United Kingdom* [GC], § 71; *Ignaccolo-Zenide v. Romania*, § 94; *Nuutinen v. Finland*, § 128). Thus, where a 13 year-old girl had expressed her clear wish not to see her father, and had done so for several years, and where forcing her to see him would seriously disturb her emotional and psychological balance, the decision to refuse contact with the father can be taken to have been made in the interests of the child (*Sommerfeld v. Germany* [GC], §§ 64-65; *Buscemi v. Italy*, § 55). In a case of a putative father who asked to be provided with information about his alleged child and be allowed contact with her, despite her legal parents' refusal, the Court accepted that this would likely result in a break up of the marriage of the child's legal parents, thereby endangering the wellbeing of the child who would lose her family unit and her relationships (*Fröhlich v. Germany*, §§ 42 and 62-63). Similarly, in *Suur v. Estonia* the Court found no breach of Article 8 where the domestic courts had fully considered the best interests of the child and had put forward relevant and sufficient reasons why – at that point in time – the child should not be forced to have contact with his biological father (§ 98). The Court did, however, consider it relevant that the father could, in future, reapply to the domestic courts for revision of the contact arrangements.

314. In cases concerning a parent's relationship with his or her child, there is a duty to exercise exceptional diligence in view of the risk that the passage of time may result in a de facto determination of the matter. This duty, which is decisive in assessing whether a case has been heard within a reasonable time as required by Article 6 § 1 of the Convention, also forms part of the procedural requirements implicit in Article 8 (*Ribić v. Croatia*, § 92). In assessing what is considered to be in the best interests of the child, the potential negative long-term consequences of losing contact with the child's parents and the positive duty to take measures to facilitate family reunification as soon as reasonably feasible have to be sufficiently weighed in the balance. It is imperative to consider the long-term effects which a permanent separation of a child from its natural mother might have

(*Jansen v. Norway*, § 104). As the Court pointed out in this case, the risk of abduction of the applicant's child by her father (and hence the issue of the child's protection) should not prevail over addressing sufficiently the mother's contact-rights with her child (§ 103).

315. States must also provide measures to ensure that custody determinations and parental rights are enforced (*Raw and Others v. France*; *Vorozhba v. Russia*, § 97; *Malec v. Poland*, § 78). This may, if necessary, include investigation into the whereabouts of the child whose location has been hidden by the other parent (*Hromadka and Hromadkova v. Russia*, § 168). The Court also found that in placing reliance on a series of automatic and stereotyped measures in order to secure the exercise of the father's contact rights in respect of his child, the domestic courts had not taken the appropriate measures to establish a meaningful relationship between the applicant and his child and to make the full exercise of his contact rights possible (*Giorgioni v. Italy*, §§ 75-77; *Macready v. the Czech Republic*, § 66; *Bondavalli v. Italy*, §§ 81-84). Likewise, a violation was found where no new independent psychiatric evidence concerning the applicant had been taken for around 10 years (*Cincimo v. Italy*, §§ 73-75). Another violation was found in the case where, over seven years, the applicant was unable to exercise his contact rights under the conditions set by the courts, owing to the opposition of the child's mother and the lack of appropriate measures taken by the domestic courts (*Strumia v. Italy*, §§ 122-125). The role of the domestic courts is thus to ascertain what steps can be taken to overcome existing barriers and to facilitate contact between the child and the noncustodial parent; for example, the fact that the domestic courts had failed to consider any means that would have assisted an applicant in overcoming the barriers arising from his disability (deafness with communication by sign language, while his son was also deaf but could communicate orally) led the Court to find a violation (*Kacper Nowakowski v. Poland*, § 95).

316. With regard to measures which prevented the applicants from leaving confined areas and made it more difficult for them to exercise their right to maintain contact with family members living outside the enclave, the Court has found violations of Article 8 (*Nada v. Switzerland* [GC], §§ 165 and 198; *Agraw v. Switzerland*, § 51; *Mengesha Kimfe v. Switzerland*, §§ 69-72).

e. International child abduction

317. In matters of international child abduction, the obligations that Article 8 imposes on the Contracting States must be interpreted taking into account, in particular, the Hague Convention on the Civil Aspects of International Child Abduction of 25 October 1980 (*Iglesias Gil and A.U.I. v. Spain*, § 51; *Ignaccolo-Zenide v. Romania*, § 95) and the Convention on the Rights of the Child of 20 November 1989 (*Maire v. Portugal*, § 72).

318. In this area the decisive issue is whether a fair balance between the competing interests at stake – those of the child, of the two parents, and of the public order – has been struck, within the margin of appreciation afforded to States in such matters (*Maumousseau and Washington v. France*, § 62; *Rouiller v. Switzerland*), bearing in mind, however, that the child's best interests must be the primary consideration (*Gnahoré v. France*, § 59; *X v. Latvia* [GC], § 95). In the latter case the Court found that there exists a broad consensus – including in international law – in support of the idea that in all decisions concerning children, their best interests must be paramount (§ 96). The parents' interests, especially in having regular contact with their child, nevertheless remain a factor when balancing the various interests at stake (*ibid.*, § 95; *Kutzner v. Germany*, § 58). For example, parents must have an adequate opportunity to participate in the decision-making process (*López Guió v. Slovakia*).

319. In order to achieve a harmonious interpretation of the European Convention and the Hague Convention, the factors capable of constituting an exception to the child's immediate return in application of Articles 12, 13 and 20 of the Hague Convention have, first of all, genuinely to be taken into account by the requested court, which has to issue a decision that is sufficiently reasoned on this point, and then to be evaluated in the light of Article 8 of the European Convention. It follows that Article 8 of the Convention imposes on the domestic authorities a procedural obligation, requir-

ing that, when assessing an application for a child's return, the courts have to consider arguable allegations of a "grave risk" for the child in the event of return and make a ruling giving specific reasons. As to the exact nature of the "grave risk", the exception provided for in Article 13 (b) of the Hague Convention concerns only the situations which go beyond what a child could reasonably bear (*X v. Latvia* [GC], §§ 106-107 and *Vladimir Ushakov v. Russia*, § 103).

320. The Court considers that exceeding the non-obligatory six-week time-limit in Article 11 of the Hague Convention by a significant time, in the absence of any circumstances capable of exempting the domestic courts from the duty to strictly observe it, is not in compliance with the positive obligation to act expeditiously in proceedings for the return of children (*G.S. v. Georgia*, § 63; *G.N. v. Poland*, § 68; *K.J. v. Poland*, § 72; *Carlson v. Switzerland*, § 76; *Karrer v. Romania*, § 54; *R.S. v. Poland*, § 70; *Blaga v. Romania*, § 83; *Monory v. Romania and Hungary*, § 82). However, in *Rinau v. Lithuania*, the Court found that rendering a decision five months after the first applicant's request for his daughter's return, thereby exceeding the afore-mentioned six-week time limit, did not violate Article 8. The domestic courts had to reconcile their two obligations under this Article. On the one hand, they had a positive obligation towards the first applicant father to act expeditiously and, on the other, they had a procedural obligation towards the child's mother to effectively examine plausible allegations that returning the daughter to Germany would expose her to psychological harm. The Court stated that those questions required detailed and to an extent time-consuming examination by the domestic courts, which was necessary in order to reach a decision on the requisite balance between the competing interests at stake, the best interests of the child being the primary consideration (§ 194). Nevertheless, the Court found that the domestic authorities had not fulfilled their procedural obligations under Article 8: in particular, political interventions and procedural vagaries intended to impede the court-ordered return of the child constituted a violation of Article 8, as they had impacted on the fairness of the decision-making process and resulted in lengthy delays.

321. Execution of judgments regarding child abduction must also be adequate and effective in light of their urgent nature (*V.P. v. Russia*, § 154).

f. Adoption

322. The Court has established that although the right to adopt is not, as such, included among the rights guaranteed by the Convention, the relations between an adoptive parent and an adopted child are as a rule of the same nature as the family relations protected by Article 8 (*Kurochkin v. Ukraine*; *Ageyevy v. Russia*). A lawful and genuine adoption may constitute family life, even in the absence of cohabitation or any real ties between an adopted child and the adoptive parents (*Pini and Others v. Romania*, §§ 143-148; *Topčić-Rosenberg v. Croatia*, § 38).

323. However, the provisions of Article 8 taken alone do not guarantee either the right to found a family or the right to adopt (*Paradiso and Campanelli v. Italy* [GC], § 141; *E.B. v. France* [GC]). Nor must a member State grant recognition to all forms of guardianship as adoption, such as "kafala" (*Harroudj v. France*, § 51; *Chbihi Loudoudi and Others v. Belgium*). The authorities enjoy a wide margin of appreciation in the area of adoption (*Wagner and J.M.W.L. v. Luxembourg*, § 128).

324. The Court has stated that the obligations imposed by Article 8 in the field of adoption and the effects of adoption on the relationship between adopters and those being adopted must be interpreted in light of the Hague Convention of 29 May 1993 on Protection of Children and Cooperation in respect of Intercountry Adoption, the United Nations Convention of 20 November 1989 on the Rights of the Child and the European Convention on the Adoption of Children (*Pini and Others v. Romania*, §§ 139-140).

325. There is no obligation under Article 8 to extend the right to second-parent adoption to unmarried couples (*X and Others v. Austria* [GC], § 136; *Gas and Dubois v. France*, §§ 66-69; *Emonet and Others v. Switzerland*, §§ 79-88). States do not have an obligation to treat married different-sex couples and unmarried same-sex couples on an equal footing as regards the conditions of access to

adoption (*Gas and Dubois v. France*, § 68). However, once States have made adoption available to unmarried couples, it must become accessible to both different-sex and same-sex couples, provided that they are in a relevantly similar situation (*X and Others v. Austria* [GC], §§ 112 and 130).

326. With respect to child adoption by an unmarried homosexual man, the Court has noted, in 2002, divided opinion both within and between individual countries, and concluded that national authorities could legitimately and reasonably have considered the right to adopt asserted by the applicant to be circumscribed by the interests of adoptable children (*Fretté v. France*, § 42).

327. The principles relating to adoption are applicable even when the parties seek to enforce a foreign adoption decision, which is prohibited under the law of their native country (*Negrepontis-Giannisis v. Greece*).

328. A vacuum in Turkish civil law in relation to single parent adoption constituted a violation of Article 8; at the time the applicant had made her request, there had been no regulatory framework for recognition of the adoptive single parent's forename in place of that of the natural parent (*Gözüm v. Turkey*, § 53).

329. The revocation of the applicants' adoption of children, which completely deprived the applicants of their family life with the children and was irreversible and inconsistent with the aim of reuniting them, was a measure which could only be applied in exceptional circumstances and justified by an overriding requirement pertaining to the children's best interests (*Ageyevy v. Russia*, § 144; *Johansen v. Norway*; *Scozzari and Giunta v. Italy* [GC], § 148; *Zaieţ v. Romania*, § 50).

330. *Paradiso and Campanelli v. Italy* [GC] concerned the separation and placement for adoption of a child conceived abroad through surrogacy and brought back to Italy in violation of Italian adoption laws (§ 215). The facts of the case touched on ethically sensitive issues – adoption, the taking of a child into care, medically assisted reproduction and surrogate motherhood – in which Member States enjoyed a wide margin of appreciation (§ 194). The Court found that no family life had existed in this particular case and considered it under the notion of "private life".

g. Foster families

331. The Court may recognise the existence of de facto family life between foster parents and a child placed with them, having regard to the time spent together, the quality of the relationship and the role played by the adult vis-à-vis the child (see *Moretti and Benedetti v. Italy*, §§ 48-52). In this case, the Court found a violation of the State's positive obligation as the applicants' request for a special adoption order in respect of the fosterchild, who had been placed with their family immediately after her birth for a period of five months, had not been examined carefully before the baby had been declared free for adoption and another couple had been selected (see also *Jolie and Others v. Belgium*, Commission decision, for examination of the relationship between foster parents and children for whom they have been caring; and *V.D. and Others v. Russia,* in which a foster family complained about the decisions of the national authorities to return a child in their care to his biological parents, terminate guardianship and to refuse them contact with him).

332. The Court has also held (in the context of determining whether there existed a right to see files relating to fostering arrangements) that persons in the situation of the applicant (a former foster child) had a vital interest, protected by the Convention, in receiving the information necessary to know and to understand their childhood and early development (*Gaskin v. the United Kingdom*, § 49).

h. Parental authority and State care

333. Family life does not end when a child is taken into public care (*Johansen v. Norway*, § 52; *Eriksson v. Sweden*, § 58), or the upon the parents' divorce (*Mustafa and Armağan Akın v. Turkey*, § 19). It is well established that removing children from the care of their parents to place them in the care of the state constitutes an interference with respect for family life that requires justification under

paragraph 2 of Article 8 (*Strand Lobben and Others v. Norway* [GC], § 202; *Kutzner v. Germany*, §§ 58-60). *Strand Lobben and Others v. Norway* [GC] has recapitulated the relevant case-law principles (§§ 202-13). Notably, the Court has emphasized the following guiding principles: the paramount importance of the child's best interests, the necessity to facilitate family reunification as soon as reasonably feasible, the care order being regarded as a temporary measure, to be discontinued as soon as circumstances permit, the necessity of an adequate decision-making process.

334. The Court has established that the authorities enjoy a wide margin of appreciation when assessing the necessity of taking a child into care (*B.B. and F.B. v. Germany*, § 47; *Johansen v. Norway*, § 64, *Wunderlich v. Germany*, § 47). Moreover, it must be borne in mind that the national authorities have the benefit of direct contact with all the persons concerned (*Olsson v. Sweden (no. 2)*, § 90), often at the very stage when care measures are being envisaged or immediately after their implementation. A stricter scrutiny is called for, however, in respect of any further limitations, such as restrictions placed by those authorities on parental rights of access (*Elsholz v. Germany* [GC], § 64; *A.D. and O.D. v. the United Kingdom*, § 83).

335. In two cases concerning systematic recourse to corporal punishment in child-rearing, the Court's main aim was to determine whether the decision-making process, seen as a whole, had provided the parents with the requisite protection of their interests and whether the measures chosen had been proportionate (*Wetjen and Others v. Germany*, § 79; *Tlapak and Others v. Germany*, § 92) Thus, the withdrawal of parental authority, which should only be applied as a measure of last resort, must be confined to the aspects strictly necessary to prevent any real and imminent risk of degrading treatment and only used in respect of children running such a risk (*Wetjen and Others v. Germany*, § 84; *Tlapak and Others v. Germany*, § 97). Moreover, the domestic courts must give detailed reasons why there was no other option available to protect the children which entailed less of an infringement of the family's rights (*Wetjen and Others v. Germany*, § 85; *Tlapak and Others v. Germany*, § 98). The procedural obligations implicit in Article 8 also include ensuring that the parents are in a position to put forward all their arguments (*Wetjen and Others v. Germany*, § 80; *Tlapak and Others v. Germany*, § 93). Those obligations also require the findings of the domestic courts to be based on a sufficient factual foundation and not to appear arbitrary or unreasonable (*Wetjen and Others v. Germany*, § 81). For instance, in *Wetjen and Others v. Germany*, the domestic authorities relied on statements by the parents and the children themselves in finding that the latter had been, or were liable to be, caned.

336. Mistaken judgments or assessments by professionals do not per se render childcare measures incompatible with the requirements of Article 8 (*B.B. and F.B. v. Germany*, § 48). The authorities, both medical and social, have a duty to protect children and cannot be held liable every time genuine and reasonably held concerns about the safety of children vis-à-vis members of their family are proved, retrospectively, to have been misguided (*R.K. and A.K. v. the United Kingdom*, § 36; *A.D.* and *O.D. v. the United Kingdom*, § 84). It follows that the domestic decisions can only be examined in the light of the situation such as it presented itself to the domestic authorities at the time these decisions were taken (*B.B. and F.B. v. Germany*, § 48).

337. Thus, where domestic authorities were confronted with at least prima facie credible allegations of severe physical abuse, the temporary withdrawal of parental authority was sufficiently justified (*B.B. and F.B. v. Germany*, § 49). However, a decision to withdraw parental authority permanently did not provide sufficient reasons in the main proceedings and was thus an Article 8 violation (*ibid.*, §§ 51-52). In *Wetjen and Others v. Germany*, the Court found that the risk of systematic and regular caning constituted a relevant reason to withdraw parts of the parents' authority and to take the children into care (§ 78) (see also *Tlapak and Others v. Germany*, § 91). The Court assessed whether the domestic courts had struck a fair balance between the parents' interests and the best interests of the children (*Wetjen and Others v. Germany*, §§ 79-85).

338. Where withdrawal of parental authority had been based on a distinction essentially deriving from religious considerations, the Court held that there had been a violation of Article 8 in conjunction with Article 14 (*Hoffmann v. Austria*, § 36, concerning the withdrawal of parental rights from the applicant after she divorced the father of their two children because she was a Jehovah's Witness). Furthermore, the Court considered disproportionate the decision to take a healthy infant into care because the mother chose to leave hospital earlier than recommended by doctors (*Hanzelkovi v. the Czech Republic*, § 79). However, it has held that the withdrawal of certain aspects of parental authority and the forcible removal children from their parents' care for three weeks on account of the parents' persistent refusal to send the children to school "struck a proportionate balance between the best interests of the children and those of the applicants, which did not fall outside the margin of appreciation granted to the domestic authorities" (*Wunderlich v. Germany*, § 57).

339. The fact that a child could be placed in a more beneficial environment for his or her upbringing will not on its own justify a compulsory measure of removal from the care of the biological parents; there must exist other circumstances pointing to the "necessity" of such an interference with the parents' right under Article 8 to enjoy a family life with their child (*Strand Lobben and Others v. Norway* [GC], § 208; *K. and T. v. Finland* [GC], § 173). Furthermore, the application of the relevant provisions of national law must be devoid of any arbitrariness (*Zelikha Magomadova v. Russia*, § 112).

340. The judgment in *Strand Lobben and Others v. Norway* [GC] summarised the case-law principles (§§ 202-213) applicable to cases where the authorities have decided to replace the foster home arrangement with a more far-reaching type of measure, namely deprivation of parental responsibilities and authorisation of adoption. The Court has had regard to the principle that "such measures should only be applied in exceptional circumstances and could only be justified if they were motivated by an overriding requirement pertaining to the child's best interests" (*S.S. v. Slovenia*, §§ 85-87, 96 and 103; *Aune v. Norway*, § 66). A mother's financial situation cannot, without regard for changed circumstances, justify the removal of a child from her mother's care (*R.M.S. v. Spain*, § 92). Likewise, a breach was found where domestic authorities had merely based their decision on the applicant's financial and social difficulties, without providing him with appropriate social assistance (*Akinnibosun v. Italy*, §§ 83-84). In *Soares De Melo v. Portugal*, the Court found a violation of Article 8 where the children of a woman living in precarious conditions were placed in care with a view to adoption, resulting in the severance of the family ties (§§ 118-123). Further, the absence of skills and experience in rearing children could hardly in itself be regarded as a legitimate ground for restricting parental authority or keeping a child in public care (*Kocherov and Sergeyeva v. Russia*, § 106, concerning a father with a mild intellectual disability).

341. In *Strand Lobben and Others v. Norway* [GC], the Court found a violation because the decision-making process leading to the withdrawal of parental responsibility and consent to adoption did not take all views and interests of the applicants into account. In particular, the authorities had failed to facilitate contact after the child was initially taken into care, and they had also failed to order a fresh expert examination of the mother's capacity to provide proper care (§§ 220-225). Similarly, in *Omorefe v. Spain*, the Court found that the decisions to place a baby under guardianship at the mother's request and to authorise an adoption six years later, despite the mother's opposition, were not conducted in such a way as to ensure that the mother's views and interests were duly taken into account and were not surrounded by safeguards proportionate to the gravity of the interference and the interests at stake (§ 60). In particular, the authorities did not consider the possibility of reuniting the child with his mother, they did not envisage less radical measures such as temporary reception or simple, non-pre-adoptive foster care and the applicant's contact rights were withdrawn from her without any psychological expertise. Moreover, pre-adoptive foster care for the child was implemented 20 days after the applicant was informed that she would have a period of six months in which to achieve certain objectives in order to reunite with her son. No violation, however, was found in a case where parental rights were withdrawn from a mentally-ill mother (with subsequent

adoption) as there was no realistic possibility of the applicant resuming care of the child despite the positive steps taken to assist the mother (*S.S. v. Slovenia*, §§ 97 and 103-104).

342. A care order should be regarded as a temporary measure, to be discontinued as soon as circumstances permit, and any measures implementing temporary care should be consistent with the ultimate aim of reuniting the natural parents and the child (*Strand Lobben and Others v. Norway* [GC], § 208; *Olsson v. Sweden (no. 1)*, § 81). The positive duty to take measures to facilitate family reunification as soon as reasonably feasible will begin to weigh on the competent authorities with increasing force as from the commencement of the period of care, subject always to its being balanced against the duty to consider the best interests of the child (*K. and T. v. Finland* [GC], § 178 and *Haddad v. Spain*, § 54). The Court found a violation of Article 8 where the domestic authorities, by declaring the children of the applicant adoptable, did not make all the necessary efforts to preserve the parent-child relationship (*S.H. v. Italy*, § 58). A violation was found where a mother was denied contact rights in respect of her child in foster care because of abduction risk by the father. As the Court pointed out, the risk of abduction of the applicant's child by her father (and hence the issue of his protection) should not prevail over sufficiently addressing the mother's contact rights with her child (*Jansen v. Norway*, §§ 103-104). The Court also found a violation of Article 8 where the authorities did not re-establish contact between a child and her father following his acquittal of charges of domestic violence and the return of two older children to his care. The Court did not find convincing the reasons relied on by the authorities and domestic courts to justify the child's placement in pre-adoption care (*Haddad v. Spain*, §§ 57-74).

343. Article 8 demands that decisions of courts aimed in principle at facilitating visits between parents and their children, so that they can reestablish relations with a view to reunification of the family, must be implemented in an effective and coherent manner. No logical purpose would be served in deciding that visits may take place if the manner in which the decision is implemented means that de facto the child is irreversibly separated from its natural parent. Accordingly, authorities failed to strike a fair balance between the interests of an applicant and her children under Article 8 as a result of the absence of any time-limit on a care order and the negative conduct and attitudes of those at the care centre which drove the first applicant's children towards an irreversible separation from their mother (*Scozzari and Giunta v. Italy* [GC], §§ 181 and 215).

344. An emergency care order placing an applicant's child in public care and the authorities' failure to take sufficient steps towards a possible reunification of the applicants' family regardless of any evidence of a positive improvement in the applicants' situation was also a violation of the right to family life, but subsequent normal care orders and access restrictions were not (*K. and T. v. Finland* [GC], §§ 170, 174, 179 and 194).

345. In *Blyudik v. Russia*, the Court held that the placement of the applicant's daughter in a closed educational facility 2,500km from his home was unlawful in the absence of any grounds under domestic law for such placement.

4. Other family relationships

a. As between siblings, grandparents

346. Family life can also exist between siblings (*Moustaquim v. Belgium*, § 36; *Mustafa and Armağan Akın v. Turkey*, § 19) and aunts/uncles and nieces/nephews (*Boyle v. the United Kingdom*, §§ 41-47). However, the traditional approach is that close relationships short of family life generally fall within the scope of private life (*Znamenskaya v. Russia*, § 27 and the references cited therein).

347. The Court has recognised the relationship between adults and their parents and siblings as constituting family life protected under Article 8 even where the adult did not live with his parents or siblings (*Boughanemi v. France*, § 35) and the adult had formed a separate household and family (*Moustaquim v. Belgium*, §§ 35 and 45-46; *El Boujaïdi v. France*, § 33).

348. The Court has stated that family life includes at least the ties between near relatives, for instance those between grandparents and grandchildren, since such relatives may play a considerable part in family life (*Marckx v. Belgium*, § 45; *Bronda v. Italy*, § 51; *T.S. and J.J. v. Norway* (dec.), § 23). The right to respect for family life of grandparents in relation to their grandchildren primarily entails the right to maintain a normal grandparent-grandchild relationship through contact between them (*Kruškić v. Croatia* (dec.), § 111; *Mitovi v. the Former Yugoslav Republic of Macedonia*, § 58). However, the Court considers that contact between grandparents and grandchildren normally take place with the agreement of the person who has parental responsibility, which means that access of a grandparent to his or her grandchild is normally at the discretion of the child's parents (*Kruškić v. Croatia* (dec.), § 112).

349. In *Petithory Lanzmann v. France* (dec.) the Court held that Article 8 does not grant a right to become a grandparent (§ 20).

350. The principle of mutual enjoyment by parent and child of each other's company also applies in cases involving relations between a child and its grandparents (*L. v. Finland*, § 101; *Manuello and Nevi v. Italy*, §§ 54, 58-59, as concerns a suspension of grandparents' contact rights with granddaughter). Particularly where the natural parents are absent, family ties have been held to exist between uncles and aunts and nieces and nephews (*Butt v. Norway*, §§ 4 and 76; *Jucius and Juciuvienė v. Lithuania*, § 27). However, in normal circumstances the relationship between grandparents and grandchildren is different in nature and degree from the relationship between parent and child and thus by its very nature generally calls for a lesser degree of protection (*Kruškić v. Croatia* (dec.), § 110; *Mitovi v. the Former Yugoslav Republic of Macedonia*, § 58).

351. In more recent jurisprudence, the Court has stated that family ties between adults and their parents or siblings attract lesser protection unless there is evidence of further elements of dependency, involving more than the normal emotional ties (*Benhebba v. France*, § 36; *Mokrani v. France*, § 33; *Onur v. the United Kingdom*, § 45; *Slivenko v. Latvia* [GC], § 97; *A.H. Khan v. the United Kingdom*, § 32).

b. Prisoners' and other detainees' right to contact[46]

352. It is an essential part of a prisoner's right to respect for family life that the prison authorities assist him or her in maintaining contact with his or her close family (*Chaldayev v. Russia*, § 59; *Messina v. Italy (no. 2)*, § 61; *Kurkowski v. Poland*, § 95; *Vintman v. Ukraine*, § 78). There is also a particular obligation under that Article to enable a detainee to contact his or her family rapidly after being taken into custody (*Lebois v. Bulgaria*, § 53). The Court attached considerable importance to the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), which noted that longterm prison regimes "should seek to compensate for the desocialising effects of imprisonment in a positive and proactive way" (*Khoroshenko v. Russia* [GC], § 144).

353. Restrictions such as limitations put on the number of family visits, supervision of those visits and, subjection of a detainee to a special prison regime or special visit arrangements constitute an "interference" with his rights under Article 8 (*Mozer v. the Republic of Moldova and Russia* [GC], §§ 193-195). However, where applicants complain about limitations on the number of family visits, in order to establish "victim" status under Article 34 of the Convention, they need to demonstrate that they had relatives or other persons with whom they wished to maintain contact while in deten-

[46] See the *Guide on Prisoners' Rights* and the *Guide on Terrorism*.

tion (*Chernenko and Others v. Russia* (dec.), §§ 46-47). The "interference" has to be justified under the second paragraph of Article 8 (see, for instance, the recapitulation of the case-law on visiting rights in *Khoroshenko v. Russia* [GC], §§ 123-126, where a ban on long-term family visits to life prisoners was found a violation, § 148, and *Mozer v. the Republic of Moldova and Russia* [GC] where the restriction of prison visits from the applicant's parents did not comply with Article 8 § 2, §§ 193-196; *Khodorkovskiy and Lebedev v. Russia (no. 2)*, § 598 and *Resin v. Russia*, §§ 39-41 as regards the unavailability of long-stay visits in a remand prison). *Öcalan v. Turkey (no. 2)* concerned stricter security regimes for dangerous prisoners. The Court considered that the restrictions on the applicant's right to respect for his family life had not exceed those which are necessary in a democratic society for the protection of public safety and the prevention of disorder and crime, within the meaning of Article 8 § 2 (§§ 161-164). The Court has also deemed a decision to restrict visitation rights for dangerous prisoners able to maintain their positions within their criminal organisations to be necessary and proportionate given the necessity of the specific prison regime that was in force at the time (*Enea v. Italy* [GC], §§ 125-131). In addition, it has held that the restriction of visits by the unmarried partner of the prisoner could be justified if the partner was registered in the police records as a perpetrator of a criminal offence (*Ulemek v. Croatia*, § 151).

354. In *Ciupercescu v. Romania (no. 3)*, concerning a prisoner's online communication with his wife, the Court considered that Article 8 could not be interpreted as guaranteeing prisoners the right to communicate with the outside world by way of online devices, particularly where facilities for contact by alternative means were available and adequate (§ 105, and concerning the right to telephone calls, see *Lebois v. Bulgaria*, § 61). In *Ciupercescu*, while domestic law allowed inmates to maintain contact with the outside world, particularly family members, through online communication and domestic courts had also acknowledged this right, the applicant could not exercise that right due to the lack of implementing regulations. Nevertheless, the Court concluded that the restriction of the right concerned a relatively short period of time and the applicant, who could receive visits from his wife and make telephone calls, could maintain contact with her *via* alternative means of communication (§§ 106-110).

355. In *Mirgadirov v. Azerbaijan and Turkey*, there were restrictions on the applicant's meetings with persons other than his lawyer. The Court found that there had been a *de facto* outright ban on the applicant having any contact (meetings, telephone calls or correspondence) with the outside world, except for contact with his lawyers. In the absence of any explanation as to why such extreme measures had been necessary, and without any apparent indications that there was a risk of secret information being transferred through his family members, a breach of Article 8 was found (§ 123).

356. The Court held that the refusal to transfer the applicant to a prison closer to his parents 'home had constituted a violation of Article 8 (*Rodzevillo v. Ukraine*, §§ 85-87; *Khodorkovskiy and Lebedev v. Russia*, §§ 831-851). As concerns an applicant serving a 25-year prison sentence for collaboration with a terrorist organisation, the Court declared a similar complaint inadmissible as manifestly ill-founded, noting, in particular, the legitimate aim of the authorities in severing the applicant links with the terrorist organisation, and the fact that the journeys his close relatives had to make did not appear to have raised any insurmountable or particularly difficult problems (*Fraile Iturralde v. Spain* (dec.), §§ 26-33). In *Polyakova and Others v. Russia*, the Court found a breach of Article 8 on account of the failure of the applicable domestic law to provide sufficient safeguards against abuse in the field of geographical distribution of prisoners (§ 116).

357. In the context of intra-State transfers, while the domestic authorities have a wide discretion in matters relating to execution of sentences, such discretion is not absolute, particularly as regards the distribution of the prison population (*Rodzevillo v. Ukraine*, § 83). The Court has also ruled on inter-State prison transfer requests. In *Serce v. Romania*, § 56, the applicant, a Turkish national serving an 18-year prison sentence in Romania, complained about the refusal of the Romanian authorities to transfer him to another Council of Europe member State, Turkey, to serve the remainder of his sentence there, close to his wife and children. Despite having found that the unhygienic condi-

tions in which he had been detained in Romania, the lack of activities or work and the prison overcrowding to which he was subject breached his Article 3 rights, the Court confirmed that Article 8 of the Convention was not applicable to his request for an interState prison transfer. In *Palfreeman v. Bulgaria* (dec.), concerning the authorities' refusal to transfer a prisoner to a non-member State of the Council of Europe, the Court pointed out that the Convention did not grant prisoners the right to choose their place of detention (§ 36) and examined the question of the applicability of Article 8 in the light of the provisions of the relevant treaty on the transfer of sentenced prisoners (§§ 33-36).

358. The refusal of leave to attend a relative's funeral will constitute an interference with the right to respect for family life (see *Schemkamper v. France*, § 31; *Lind v. Russia*, § 92; and *Feldman v. Ukraine (no. 2)*, § 32). Although Article 8 does not guarantee an unconditional right to leave prison to attend a relative's funeral (or to leave prison to visit a sick relative - see *Ulemek v. Croatia*, §152) every such limitation must be justifiable as being "necessary in a democratic society" (see *Lind v. Russia*, § 94, and *Feldman v. Ukraine (no. 2)*, § 34). The authorities can therefore refuse an individual the right to attend the funeral of his parents only if there are compelling reasons for such refusal and if no alternative solution can be found (see *Płoski v. Poland*, § 37; and *Guimon v. France*, §§ 44-51). For example, a refusal to allow a prisoner to attend the funerals of close relatives was held to amount to an interference with the respect for private and family life in Płoski v. Poland (§ 39) and in *Vetsev v. Bulgaria* (§ 59). On the other hand, in an anti-terrorism context, the Court found no violation of Article 8 as the judicial authorities had carried out a balancing exercise between the interests at stake, namely the applicant's right to respect for her family life on the one hand and public safety and the prevention of disorder and crime on the other (*Guimon v. France*, § 50).

359. *Solcan v. Romania* (§§ 24-35) concerned a request by a detainee in a psychiatric facility for temporary release to attend a relative's funeral. The Court stressed that perpetrators of criminal acts who suffer from mental disorders and are placed in psychiatric facilities are in a fundamentally different situation than other detainees, in terms of the nature and purpose of their detention. Consequently, there are different risks to be assessed by the authorities. On the facts of the case, the Court found, in particular, that an unconditional denial by the domestic courts of compassionate leave or another solution to enable the applicant to attend her mother's funeral was not compatible with the State's duty to assess each individual request on its merits and to demonstrate that the restriction on the individual's right to attend a relative's funeral was "necessary in a democratic society" within the meaning of Article 8 § 2.

5. Immigration and expulsion[47]

360. The Court has affirmed that a State is entitled, as a matter of international law and subject to its treaty obligations, to control the entry of aliens into its territory and their residence there (*Abdulaziz, Cabales and Balkandali v. the United Kingdom*, § 67; *Boujlifa v. France*, § 42). Moreover, the Convention does not guarantee the right of a foreign national to enter or to reside in a particular country. Thus, there is no obligation for the domestic authorities to allow an alien to settle in their country (*Jeunesse v. the Netherlands* [GC], § 103). The corollary of a State's right to control immigration is the duty of aliens such as the applicant to submit to immigration controls and procedures and leave the territory of the Contracting State when so ordered if they are lawfully denied entry or residence (*ibid.*, § 100). However, the Court has found a violation of Article 8 where the authorities had

[47] See the *Guide on Immigration*.

failed to secure the applicant's right to respect for his private life by not putting in place an effective and accessible procedure, which would have allowed the applicant's asylum request to be examined within a reasonable time, thus reducing as much as possible the precariousness of his situation (*B.A.C. v. Greece*, § 46).

a. Children in detention centres

361. Whilst mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life (*Olsson v. Sweden (no. 1)*, § 59), it cannot be inferred from this that the sole fact that the family unit is maintained necessarily guarantees respect for the right to a family life, particularly where the family is detained (*Popov v. France*, § 134; *Bistieva and Others v. Poland*, § 73; and, by way of comparison, *B.G. and Others v. France*, where the family was neither separated nor detained). A measure of confinement must be proportionate to the aim pursued by the authorities; where families are concerned, the authorities must, in assessing proportionality, take account of the child's best interests (*Popov v. France*, § 140). Where a State systematically detained accompanied immigrant minors in the absence of any indication that the family was going to abscond, the measure of detention for fifteen days in a secure centre was disproportionate to the aim pursued and a violation of Article 8 (*ibid.*, §§ 147-148). The Court also found a violation of Article 8 where families were held in administrative detention for eighteen and nine days respectively while the authorities did not take all necessary measures to execute the decision of expulsion and there was no particular flight risk (*A.B. and Others v. France*, §§ 155-156; *R.K. and Others v. France*, §§ 114 and 117). In two other cases, however, the detention of families for a period of eight and ten days was not considered disproportionate (*A.M. and Others v. France*, § 97; *R.C. and V.C. v. France*, § 83).

362. In the case of *Bistieva and Others v. Poland*, the application was lodged by a family who had been held in a secure centre for five months, twenty days following their transfer from Germany. They had fled there shortly after their first asylum application had been rejected by the Polish authorities (§ 79). The Court held that even in light of the risk that the family might abscond, the authorities had failed to provide sufficient reasons to justify their detention for such a long period (§ 88). Indeed, the detention of minors calls for greater speed and diligence on the part of the authorities (§ 87).

363. The States' interest in foiling attempts to circumvent immigration rules must not deprive foreign minors, especially if unaccompanied, of the protection their status warrants (*Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, § 81). Where the risk of the second applicant's seeking to evade the supervision of the Belgian authorities was minimal, her detention in a closed centre for adults was unnecessary (*ibid.*, § 83).

364. In *Moustahi v. France*, the domestic authorities placed two young children alone in administrative detention, refusing to entrust them to their father or even to come into contact with him. The Court held that the fact of placing certain members of the same family in a detention centre while other members of that family were free could be construed as interference with the exercise of their right to family life, regardless of the duration of the measure in question. If there had been a legal basis for the applicants' forced separation, it was conceivable that a State might refuse to entrust the children to a person claiming to be a member of their family, or to arrange a meeting between them, on grounds related to the children's best interests (such as the precaution of ascertaining beforehand, beyond all reasonable doubt, the reality of the alleged links). However, the refusal to reunite the applicants had not sought to ensure respect for the best interests of the children, but

only to implement their removal as quickly as possible and in a manner contrary to domestic law, which could not be accepted as a legitimate aim (§ 114).

b. Family reunification[48]

365. Where immigration is concerned, Article 8, taken alone, cannot be considered to impose on a State a general obligation to respect a married couple's choice of country for their matrimonial residence or to authorise family reunification on its territory (*Jeunesse v. the Netherlands* [GC], § 107; *Biao v. Denmark* [GC], § 117). Nevertheless, in a case which concerns family life as well as immigration, the extent of a State's obligations to admit to its territory relatives of persons residing there will vary according to the particular circumstances of the persons involved and the general interest (*Abdulaziz, Cabales and Balkandali v. the United Kingdom*, §§ 6768; *Gül v. Switzerland*, § 38; *Ahmut v. the Netherlands*, § 63; *Sen v. the Netherlands*; *Osman v. Denmark*, § 54; *Berisha v. Switzerland*, § 60).

366. Factors to be taken into account in this context are the extent to which family life is effectively ruptured, the extent of the ties in the Contracting State, whether there are insurmountable obstacles in the way of the family living in the country of origin of one or more of them and whether there are factors of immigration control (for example, a history of breaches of immigration law) or considerations of public order weighing in favour of exclusion (*Rodrigues da Silva and Hoogkamer v. the Netherlands*, § 38; *Ajayi and Others v. the United Kingdom* (dec.); *Solomon v. the Netherlands* (dec.)).

367. Another important consideration is whether family life was created at a time when the persons involved were aware that the immigration status of one of them was such that the persistence of that family life within the host State would from the outset be precarious (*Sarumi v. the United Kingdom* (dec.); *Shebashov v. Latvia* (dec.)). Where this is the case the removal of the non-national family member would be incompatible with Article 8 only in exceptional circumstances (*Abdulaziz, Cabales and Balkandali v. the United Kingdom*, § 68; *Mitchell v. the United Kingdom* (dec.); *Ajayi and Others v. the United Kingdom* (dec.); *Rodrigues da Silva and Hoogkamer v. the Netherlands*; *Biao v. Denmark* [GC], § 138). For instance, in *Jeunesse v. the Netherlands* [GC], viewing several factors cumulatively, the Court found that the circumstances of the applicant's case were indeed exceptional. The family reunification process must also be adequately transparent and processed without undue delays (*Tanda-Muzinga v. France*, § 82).

c. Deportation and expulsion decisions[49]

368. A State's entitlement to control the entry of aliens into its territory and their residence there applies regardless of whether an alien entered the host country as an adult or at a very young age, or was perhaps even born there (*Üner v. the Netherlands* [GC], §§ 54-60). While a number of Contracting States have enacted legislation or adopted policy rules to the effect that longterm immigrants who were born in those States or who arrived there during early childhood cannot be expelled on the basis of their criminal record, such an absolute right not to be expelled cannot be derived from Article 8 (*ibid.*, § 55). However, very serious reasons are required to justify expulsion of a settled migrant who has lawfully spent all or the major part of his or her childhood and youth in a host country (*Maslov v. Austria* [GC], § 75). Taking into account the applicant's family life and the fact that he only committed one serious crime in 1999, the Court stated that the expulsion of the applicant to Albania and a lifetime ban on returning to Greece violated Article 8 (*Kolonja v. Greece*,

[48] See the *Guide on Immigration*.
[49] See the *Guide on Immigration*.

§§ 57-58). By contrast, in *Levakovic v. Denmark*, §§ 42-45, the Court did not find a violation of the "private life" of an adult migrant convicted, after entering adulthood, of serious offences, who had no children, no elements of dependence with his parents or siblings, and had consistently demonstrated a lack of will to comply with the law. The Court made clear that unlike in Maslov, the authorities did not base their decision to expel the applicant on crimes perpetrated when the applicant was a juvenile (see notably §§ 44-45).

369. In assessing such cases, the Court has generally understood the margin of appreciation to mean that, where the independent and impartial domestic courts have carefully examined the facts, applying the relevant human rights standards consistently with the Convention and its case-law, and adequately balanced the applicant's personal interests against the more general public interest in the case, it is not for the Court to substitute its own assessment of the merits (including, in particular, its own assessment of the factual details of proportionality) for that of the competent national authorities. The only exception to this is where there are shown to be "strong reasons" for doing so (*Ndidi v. the United Kingdom*, § 76). For instance, in two cases concerning the expulsion of settled migrants, the Court declined to substitute its conclusions for those of the domestic courts, which had thoroughly assessed the applicants' personal circumstances, carefully balanced the competing interests and took into account the criteria set out in its case law, and reached conclusions which were "neither arbitrary nor manifestly unreasonable" (*Hamesevic v. Denmark* (dec.), § 43, ; *Alam v. Denmark* (dec.), § 35; see, by way of comparison, *I.M. v. Switzerland*, in which the proportionality of the expulsion order had only been examined superficially). More recently, the Court considered a case in which the authorities had integrated the proportionality test into domestic legsiation, which the applicant argued precluded those courts from conducting an individualised assessment of proportionality (*Unuane v. the United Kingdom*). The Court did not consider that the national courts were necessarily precluded from carrying out a Convention-compliant Article 8 assessment, but found that, on the facts of the case, the Court had failed to conduct the requisite balancing exercise (§§ 78-84; by way of comparison, see *M.M. v. Switzerland*). The Court therefore carried out the balancing exercise itself and concluded that the applicant's expulsion had breached Article 8 (§§ 85-90).

370. The Court also examines the best interests and wellbeing of the children, in particular the seriousness of the difficulties which any children of the applicant are likely to encounter in the country to which the applicant is to be expelled; and the solidity of social, cultural and family ties with the host country and with the country of destination (*Üner v. the Netherlands* [GC], § 58; *Udeh v. Switzerland*, § 52). The Court has affirmed that the best interests of minor children should be taken into account in the balancing exercise with regard to expulsion of a parent, including the hardship of returning to the country of origin of the parent (*Jeunesse v. the Netherlands* [GC], §§ 117-118).

371. In immigration cases, there will be no "family life" between parents and adult children unless they can demonstrate additional elements of dependence other than normal emotional ties (*Kwakye-Nti and Dufie v. the Netherlands* (dec.); *Slivenko v. Latvia* [GC], § 97; *A.S. v. Switzerland*, § 49; *Levakovic v. Denmark*, §§ 35 and 44). However, such ties may be taken into account under the head of "private life" (*Slivenko v. Latvia* [GC]). Furthermore, the Court has accepted in a number of cases concerning young adults who have not yet founded a family of their own that their relationship with their parents and other close family members also constituted family life (*Maslov v. Austria* [GC], § 62; *Azerkane v. the Netherlands*, §§ 63-64; *Bousarra v. France*). In other cases, the Court found that the applicants could not invoke family relationships to their adult children due to the non-existence of elements of dependency. Nevertheless, the Court has considered that family relations with adult children are not completely irrelevant to the assessment of the applicants' family situation.

372. Where expulsions are challenged on the basis of alleged interference with private and family life, it is not imperative, in order for a remedy to be effective, that it should have automatic suspensive effect (*De Souza Ribeiro v. France* [GC], § 83). Nevertheless, in immigration matters, where there is an arguable claim that expulsion threatens to interfere with the alien's right to respect for his or

her private and family life, Article 13 in conjunction with Article 8 of the Convention requires that States must make available to the individual concerned the effective possibility of challenging the deportation or refusal of residence order and of having the relevant issues examined with sufficient procedural safeguards and thoroughness by an appropriate domestic forum offering adequate guarantees of independence and impartiality (*M. and Others v. Bulgaria*, §§ 122-132; *Al-Nashif v. Bulgaria*, § 133). Moreover, a person subject to a measure based on national security considerations must not be deprived of all guarantees against arbitrariness. On the contrary, he or she must be able to have the measure in question scrutinised by an independent and impartial body competent to review all the relevant questions of fact and law, in order to determine the lawfulness of the measure and censure a possible abuse by the authorities. Before that review body the person concerned must have the benefit of adversarial proceedings in order to present his or her point of view and refute the arguments of the authorities (*Ozdil and Others v. the Republic of Moldova*, § 68).

373. The Court has found a violation of an applicant's right to respect for his private and family life where the obligation not to abscond and the seizure of the applicant's international travel passports prevented the applicant from travelling to Germany, where he had lived for several years and where his family continued to live (*Kotiy v. Ukraine*, § 76).

374. The proposed deportation of a person suffering from serious illness to his country of origin in face of doubts as to the availability of appropriate medical treatment there, would have constituted a violation of Article 8 (*Paposhvili v. Belgium* [GC], §§ 221-226).

d. Residence permits[50]

375. Neither Article 8 nor any other provision of the Convention can be construed as guaranteeing, as such, the right to the granting of a particular type of residence permit, provided that a solution offered by the authorities allows the individual concerned to exercise without obstacles his or her right to respect for private and/or family life (*B.A.C. v. Greece*, § 35). In particular, if a residence permit allows the holder to reside within the territory of the host country and to exercise freely there the right to respect for his or her private and family life, the granting of such a permit represents in principle a sufficient measure to meet the requirements of Article 8. In such cases, the Court is not empowered to rule on whether the individual concerned should be granted one particular legal status rather than another, that choice being a matter for the domestic authorities alone (*Hoti v. Croatia*, § 121).

6. Material interests

376. "Family life" does not include only social, moral or cultural relations; it also comprises interests of a material kind, as is shown by, among other things, maintenance obligations and the position occupied in the domestic legal systems of the majority of the Contracting States by the institution of the reserved portion of an estate (in French, "réserve héréditaire"). The Court has thus accepted that the right of succession between children and parents, and between grandchildren and grandparents, is so closely related to family life that it comes within the ambit of Article 8 (*Marckx v. Belgium*, § 52; *Pla and Puncernau v. Andorra*, § 26). Article 8 does not, however, require that a child should be entitled to be recognised as the heir of a deceased person for inheritance purposes (*Haas v. the Netherlands*, § 43).

[50] See the *Guide on Immigration*.

377. The Court has held that the granting of family allowance enables States to "demonstrate their respect for family life" within the meaning of Article 8; the allowance therefore comes within the scope of that provision (*Fawsie v. Greece*, § 28).

378. However, the Court has found that the concept of family life is not applicable to a claim for damages against a third party following the death of the applicant's fiancée (*Hofmann v. Germany* (dec.)).

379. "Family life" is also closely interrelated with the protection of "home" or "private life" when it comes, for instance, to attack on houses and destruction of belongings (*Burlya and Others v. Ukraine*) or to eviction (*Hirtu and Others v. France*, § 66).

7. Testimonial privilege

380. An attempt to compel an individual to give evidence in criminal proceedings against someone with whom that individual had a relationship amounting to family life constituted an interference with his or her right to respect for his or her "family life" (*Van der Heijden v. the Netherlands* [GC], § 52; *Kryževičius v. Lithuania*, § 51). Such witnesses are relieved of the moral dilemma of having to choose between giving truthful evidence and thereby, possibly, jeopardising their relationship with the suspect or giving unreliable evidence, or even perjuring themselves, in order to protect that relationship (*Van der Heijden v. the Netherlands* [GC], § 65). For this reason, it can only apply to oral evidence (testimony), as opposed to real evidence, which exists independently of a person's will (*Caruana v. Malta* (dec.), § 35).

381. The right not to give evidence constitutes an exemption from a normal civic duty acknowledged to be in the public interest. Therefore, where recognised, it may be made subject to conditions and formalities, with the categories of its beneficiaries clearly set out. It requires balancing two competing public interests, i.e. the public interest in the prosecution of serious crime and the public interest in the protection of family life from State interference (*Van der Heijden v. the Netherlands* [GC], §§ 62 and 67).

382. The Court, for example, accepted that restricting the exercise of the testimonial privilege to individuals whose ties with the suspect could be objectively verified by drawing the line at marriage or registered partnerships (but not extending it to long-term relationships) was acceptable (*Van der Heijden v. the Netherlands* [GC], §§ 67-68). *Kryževičius v. Lithuania* concerned a spouse compelled to testify in criminal proceedings in which his wife was a "special witness". The exemption from testifying under the domestic law only related to family members of a "suspect" or "accused" but not of a "special witness". Nonetheless, as this status was sufficiently similar to the status of a suspect, the criminal proceedings could be said to have been "against" the applicant's wife. Hence, punishing the applicant for refusing to testify in the criminal proceedings involving his wife as a suspect, constituted an interference with his right to respect for his "family life" (§ 51). Refusing testimonial privilege to the spouse was found to be in violation of Article 8 in this case (§§ 65 and 69).

IV. Home[51]

A. General points

1. Scope of the notion of "home"

383. The notion of "home" is an autonomous concept which does not depend on the classification under domestic law (*Chiragov and Others v. Armenia* [GC], § 206). Accordingly, the answer to the question whether a habitation constitutes a "home" under the protection of Article 8 § 1 depends on the factual circumstances, namely the existence of sufficient and continuous links with a specific place (*Winterstein and Others v. France*, § 141 with further references therein; *Prokopovich v. Russia*, § 36; *McKay-Kopecka v. Poland* (dec.); for the case of a forced displacement, see *Chiragov and Others v. Armenia* [GC], §§ 206-207, and *Sargsyan v. Azerbaijan* [GC], § 260; for people living illegally in caravans in an unauthorised camp for only six months, lacking sufficient and continuous links with the place, see *Hirtu and Others v. France*, § 65). Furthermore, the word "home" appearing in the English version of Article 8 is a term that is not to be strictly construed as the equivalent French term, "domicile", has a broader connotation (*Niemietz v. Germany*, § 30).

384. "Home" is not limited to property of which the applicant is the owner or tenant. It may extend to long-term occupancy, on an annual basis, for long periods, of a house belonging to a relative (*Menteş and Others v. Turkey*, § 73). "Home" is not limited to those which are lawfully established (*Buckley v. the United Kingdom*, § 54) and may be claimed by a person living in a flat whose lease is not in his or her name (*Prokopovich v. Russia*, § 36) or registered as living elsewhere (*Yevgeniy Zakharov v. Russia*, § 32). It may apply to a council house occupied by the applicant as tenant, even if, under domestic law, the right of occupation had ended (*McCann v. the United Kingdom*, § 46), or to occupancy for several years (*Brežec v. Croatia*, § 36).

385. "Home" is not limited to traditional residences. It therefore includes, among other things, caravans and other unfixed abodes (*Chapman v. the United Kingdom* [GC], §§ 71-74; compare and contrast with *Hirtu and Others v. France*, § 65). It includes cabins or bungalows stationed on land, regardless of the question of the lawfulness of the occupation under domestic law (*Winterstein and Others v. France*, § 141; *Yordanova and Others v. Bulgaria*, § 103). Even though the link between a person and a place which she inhabits only occasionally might be weaker, Article 8 may also apply to second homes or holiday homes (*Demades v. Turkey*, §§ 32-34; *Fägerskiöld v. Sweden* (dec.); *Sagan v. Ukraine*, §§ 51-54) or to partially furnished residential premises (*Halabi v. France*, §§ 41-43). As to a cold storage room in the courtyard of the applicant's house, see *Bostan v. the Republic of Moldova*,* § 19.

386. This concept extends to an individual's business premises (*DELTA PEKÁRNY a.s. v. the Czech Republic*, § 77), such as the office of a member of a profession (*Buck v. Germany*, § 31; *Niemietz v. Germany*, §§ 29-31), a newspaper's premises (*Saint-Paul Luxembourg S.A. v. Luxembourg*, § 37), a notary's practice (*Popovi v. Bulgaria*, § 103), or a university professor's office (*Steeg v. Germany* (dec.)). It also applies to a registered office, and to the branches or other business premises of a company (*Société Colas Est and Others v. France*, § 41; *Kent Pharmaceuticals Limited and Others v. the United Kingdom* (dec.)).

387. Furthermore, the Court does not rule out the possiblity that training centres and venues for sports events and competitions, and their annexes, such as a hotel room in the case of away events,

[51] See also Environmental issues and the *Guide on Data protection*.

may be treated as equivalent to "home" within the meaning of Article 8 (*National Federation of Sportspersons' Associations and unions (FNASS) and Others v. France*, § 158).

388. Whilst the Court has acknowledged the existence of a "home" in favour of an association complaining of surveillance measures (*Association for European Integration and Human Rights and Ekimdzhiev v.Bulgaria*), an association cannot itself claim to be a victim of a violation of the right to respect for one's home on account of pollution (*Asselbourg and Others v. Luxembourg* (dec.)).

389. The Court has laid down certain limits on the extension of the protection of Article 8. It does not apply to property on which it is intended to build a house, or to the fact of having roots in a particular area (*Loizidou v. Turkey* (merits), § 66); neither does it extend to a laundry room, jointly owned by the coowners of a block of flats, designed for occasional use (*Chelu v. Romania*, § 45); an artist's dressingroom (*Hartung v. France* (dec.); land used by the owners for sports purposes or over which the owner permits a sport to be conducted (for example, hunting, *Friend and Others v. the United Kingdom* (dec.), § 45); industrial buildings and facilities, such as a mill, bakery or storage facility used exclusively for professional purposes (*Khamidov v. Russia*, § 131 and compare and contrast *Bostan v. the Republic of Moldova**, § 19 and *Surugiu v. Romania*) or for housing farm animals (*Leveau and Fillon v. France* (dec.)). Similarly, a building that is not inhabited, empty or under construction may not be qualified as a "home" (*Halabi v. France*, § 41).

390. Additionally, where "home" is claimed in respect of property in which there has never been any, or hardly any, occupation by the applicant or where there has been no occupation for some considerable time, it may be that the links to that property are so attenuated as to cease to raise any issue under Article 8 (*Andreou Papi v. Turkey*, § 54). The possibility of inheriting title to property is not a sufficiently concrete link for the Court to conclude that there is a "home" (*Demopoulos and Others v. Turkey* (dec.) [GC], §§ 136-137). Moreover, Article 8 does not extend to guaranteeing the right to buy a house (*Strunjak and Others v. Croatia* (dec.)) or imposing a general obligation on the authorities to comply with the choice of joint residence elected by a married couple (*Mengesha Kimfe v. Switzerland*, § 61). Article 8 does not in terms recognise a right to be provided with a home (*Chapman v. the United Kingdom* [GC], § 99; *Ward v. the United Kingdom* (dec.); *Codona v. the United Kingdom* (dec.)), let alone a specific home or category of home – for instance, one in a particular location (*Hudorovič and Others v. Slovenia*, § 114). An intrusion into a person's home can be examined in the light of the requirements of protection of "private life" (*Khadija Ismayilova v. Azerbaijan*, § 107).

391. The Court has accepted material such as documents from the local administration, plans, photographs and maintenance receipts, as well as proof of mail deliveries, statements of witnesses or any other relevant evidence (*Prokopovich v. Russia*, § 37), as examples of *prima facie* evidence of residence at a particular property (*Nasirov and Others v. Azerbaijan*, where the applicant did not submit any evidence in order to support the existence of sufficient and continuous links with an apartment, §§ 72-75).

2. Examples of "interference"

392. The following can be cited as examples of possible "interference" with the right to respect for one's home:

- deliberate destruction of the home by the authorities (*Selçuk and Asker v. Turkey*, § 86; *Akdivar and Others v. Turkey* [GC], § 88; *Menteş and Others v. Turkey*, § 73) or confiscation (*Aboufadda v. France* (dec.));
- refusal to allow displaced persons to return to their homes (*Cyprus v. Turkey* [GC], § 174) which may amount to a "continuing violation" of Article 8;
- the transfer of the inhabitants of a village by decision of the authorities (*Noack and Others v. Germany* (dec.));

- police entry into a person's home (*Gutsanovi v. Bulgaria*, § 217) and search (*Murray v. the United Kingdom*, § 86);
- searches and seizures (*Chappell v. the United Kingdom*, §§ 50-51; *Funke v. France*, § 48), even where the applicant has co-operated with the police (*Saint-Paul Luxembourg S.A. v. Luxembourg*, § 38) and where the offence giving rise to the search had been committed by a third party (*Buck v. Germany*), and, more generally, any measure, if it is no different in its manner of execution and its practical effects from a search, regardless of its characterisation under domestic law (*Kruglov and Others v. Russia*, § 123);
- home visits of public officials without permission, even when no search is carried out and the visit does not lead to a seizure of documents or other objects (*Halabi v. France*, §§ 54-56);
- occupation or damaging of property (*Khamidov v. Russia*, § 138) or expulsion from home (*Orlić v. Croatia*, § 56 with further references therein), including an eviction order which has not yet been enforced (*Gladysheva v. Russia*, § 91; *Ćosić v. Croatia*, § 22).

393. Other examples of "interference" are:

- changes to the terms of a tenancy (*Berger-Krall and Others v. Slovenia*, § 264);
- loss of one's home on account of a deportation order (*Slivenko v. Latvia* [GC], § 96);
- impossibility for a couple, under the immigration rules, to set up home together and live together in a family unit (*Hode and Abdi v. the United Kingdom*, § 43);
- decisions regarding planning permission (*Buckley v. the United Kingdom*, § 60);
- disturbance to the peaceful enjoyement of one's home by public authorities such as, for instance, noise and other nuisances emanating from the everyday activities of a police station and temporary detention facilities situated in the basement of the applicant's apartment building (*Yevgeniy Dmitriyev v. Russia*, §§ 33 and 53);
- compulsory purchase orders (*Howard v. the United Kingdom*, Commission decision) and an order to companies to provide tax auditors with access to premises and to enable them to take a copy of data on a server (*Bernh Larsen Holding AS and Others v. Norway*, § 106).
- an order to vacate from land caravans, cabins or bungalows that had been illegally stationed there for many years (*Winterstein and Others v. France*, § 143) or illegal makeshift homes (*Yordanova and Others v. Bulgaria*, § 104) and compare and contrast, *Hirtu and Others v. France*, § 65);
- displacement from home as a result an attack motivated by anti-Roma sentiment (*Burlya and Others v. Ukraine*, § 166);
- a person's inability to have their name removed from the register of permanent residences (*Babylonová v. Slovakia*, § 52);
- obligation to obtain a licence to live in one's own house and imposition of a fine for unlawful occupation of own property (*Gillow v. the United Kingdom*, § 47).

The Court has also found that the inability of displaced persons, in the context of a conflict, to return to their homes amounted to an "interference" with the exercise of their rights under Article 8 (*Chiragov and Others v. Armenia* [GC], § 207; *Sargsyan v. Azerbaijan* [GC], § 260).

394. Conversely, the mere fact that construction or reconstruction carried out by an applicant's neighbour may not have been lawful is not sufficient grounds for asserting that the applicant's rights under Article 8 have been interfered with. For Article 8 to apply, the Court must be convinced that the difficulties caused by the neighbour's construction were serious enough to affect adversely, to a sufficient extent, the applicant's enjoyment of the amenities of her home and the quality of her private and family life (*Cherkun v.* Ukraine (dec.), §§ 77-80).

3. Margin of appreciation

395. In so far as, in this area, the questions in issue may depend on a multitude of local factors and pertain to the choice of town and country planning policies, the Contracting States in principle enjoy a wide margin of appreciation (*Noack and Others v. Germany* (dec.); see also the wide margin of appreciation for housing matters and more specifically access to water and sanitation, *Hudorovič and Others v. Slovenia*, §§ 141, 144, 158 and the references cited therein). However, it remains open to the Court to conclude that there has been a manifest error of appreciation (*Chapman v. the United Kingdom* [GC], § 92). The implementation of these choices may infringe the right to respect for one's home, without however raising an issue under the Convention where certain conditions are satisfied and accompanying measures implemented (*Noack and Others v. Germany* (dec.)). However, where the right at stake is crucial to the individual's effective enjoyment of intimate or key rights, the margin of appreciation will tend to be narrower (*Connors v. the United Kingdom*, § 82).

B. Housing

396. Article 8 cannot be construed as recognising a right to be provided with a home (*Chapman v. the United Kingdom* [GC], § 99) or as conferring a right to live in a particular location (*Garib v. the Netherlands*, [GC], § 141). Moreover, the scope of any positive obligation to house the homeless is limited (*Hudorovič and Others v. Slovenia*, § 114).

397. The right to respect for one's home means not just the right to the actual physical area, but also to the quiet enjoyment of that area. This may involve measures that are required to be taken by the authorities, particularly regarding the enforcement of court decisions (*Cvijetić v. Croatia*, §§ 51-53). An interference may be either physical, such as unauthorised entry into a person's home (*Cyprus v. Turkey* [GC], § 294; *National Federation of Sportspersons' Associations and Unions (FNASS) and Others v. France*, § 154), or not physical, such as noise, smells, etc. (*Moreno Gómez v. Spain*, § 53).

398. Whilst Article 8 protects individuals against interference by public authorities, it may also entail the State's adoption of measures to secure the right to respect for one's "home" (*Novoseletskiy v. Ukraine*, § 68), even in the sphere of relations between individuals (*Surugiu v. Romania*, § 59). The Court has found a breach by the State of its positive obligations on account of failure by the authorities to take action following the repeated complaints by an applicant that people were coming into his courtyard and emptying cartloads of manure in front of his door and windows (*ibid.*, §§ 67-68; for a case in which the authorities were found not to have failed to comply with their positive obligation, see *Osman v. the United Kingdom*, §§ 129-130). Failure by the national authorities to enforce an eviction order from a flat, in favour of the owner, was deemed to amount to a failure by the State to comply with its positive obligations under Article 8 (*Pibernik v. Croatia*, § 70). Late restitution by the public authorities of a flat in a condition unfit for human habitation was held to infringe the right to respect for the applicant's home (*Novoseletskiy v. Ukraine*, §§ 84-88). Although the Convention does not protect access to safe drinking water as such, a persistent and long-standing lack of access to safe drinking water could have adverse consequences for health and human dignity effectively eroding the core of private life and the enjoyment of a home, meaning that a State's positive obligations might be triggered, depending on the specific circumstances of the case and their level of seriousness (*Hudorovič and Others v. Slovenia*, §§ 116, 158, and §§ 145-146).

399. The Court requires the Member States to weigh up the competing interests at stake (*Hatton and Others v. the United Kingdom* [GC], § 98), whether the case is examined from the point of view of an interference by a public authority that has to be justified under paragraph 2 of Article 8, or from that of positive obligations requiring the State to adopt a legal framework to protect the right to respect for one's home under paragraph 1.

400. With regard to the scope of the State's margin of appreciation in this area, particular significance has to be attached to the extent of the intrusion into the applicant's personal sphere (*Connors v. the United Kingdom*, § 82; *Gladysheva v. Russia*, §§ 91-96). Having regard to the crucial importance of the rights guaranteed under Article 8 to the individual's identity, selfdetermination, and physical and moral integrity, the margin of appreciation in housing matters is narrower when it comes to the rights guaranteed by Article 8 compared to those in Article 1 of Protocol No. 1 (*ibid.*, § 93).

401. The Court will have particular regard to the procedural guarantees in determining whether the State has exceeded its margin of appreciation when defining the applicable legal framework (*Connors v. the United Kingdom*, § 92). It has held, inter alia, that the loss of one's home is a most extreme form of interference with the right to respect for the home. Any person at risk of an interference of this magnitude should in principle be able to have the proportionality of the measure determined by an independent tribunal in the light of the relevant principles under Article 8 of the Convention, notwithstanding that, under domestic law, his right of occupation has come to an end (*McCann v. the United Kingdom*, § 50). This principle has been developed in the context of State-owned or socially-owned accommodation (*F.J.M. v. the United Kingdom* (dec.), § 37 with further references therein). However, a distinction has been drawn between public authority landlords and private landlords to the effect that the principle does not automatically apply in cases where possession is sought by a private individual or enterprise (§ 41). In particular, where possession is sought by a private individual or body, the balancing of the parties' competing interests can be embodied in domestic legislation which makes it unnecessary for a tribunal to weigh up those interests again when considering a claim for possession (§ 45).

1. Property owners

402. Where a State authority is dealing with a bona fide purchaser of property that had been fraudulently acquired by the previous owner, the national courts cannot automatically order eviction without examining more closely the proportionality of the measure or the particular circumstances of the case. The fact that the house is repossessed by the State, and not by another private party whose interests in that particular flat would have been at stake, is also of particular importance (*Gladysheva v. Russia*, §§ 90-97).

403. It will sometimes be necessary for a member State to attach and sell an individual's home in order to secure the payment of taxes due to the State. However, these measures must be enforced in a manner which ensures that the individual's right to his or her home is respected. In a case concerning the conditions of an enforced sale at auction of a house, to repay a tax debt, the Court found a violation because the owner's interests had not been adequately protected (*Rousk v. Sweden*, §§ 137-142). With regard, more generally, to reconciliation of the right to respect for one's home with the enforced sale of a house for the purposes of paying debts, see *Vrzić v. Croatia*, § 13.

404. The obligation to seek a licence to occupy a house owned on an island, in order to prevent overpopulation of the island, is not in itself contrary to Article 8. However, the proportionality requirement is not satisfied if the national authorities fail to give sufficient weight, inter alia, to the particular circumstances of the property owners (*Gillow v. the United Kingdom*, §§ 56-58).

405. The Court has examined the question of the imminent loss of a house following a decision to demolish it on the grounds that it had been built without a permit in breach of the applicable building regulations (*Ivanova and Cherkezov v. Bulgaria*). The Court mainly examined whether the demolition was "necessary in a democratic society". It relied on the judgments it had delivered in previous cases in which it had found that proceedings to evict from a house had to comply with the interests protected by Article 8, the loss of one's home being a most extreme form of interference with the right to respect for the home, whether or not the person concerned belonged to a vulnerable group. In concluding that there had been a violation of Article 8 in this case, the Court based itself on the

finding that the issue before the national courts was only that of illegality and they had confined themselves to examining that question, without examining the potentially disproportionate effect of enforcement of the demolition order on the applicants' personal situation (*ibid.*, §§ 49-62).

406. The Court has also held that where a State adopts a legal framework obliging a private individual to share his or her home with persons foreign to his or her household, it must put in place thorough regulations and necessary procedural safeguards to enable all the parties concerned to protect their Convention interests (*Irina Smirnova v. Ukraine*, § 94).

2. Tenants

407. The Court has ruled on a number of disputes relating to the eviction of tenants (see the references cited in *Ivanova and Cherkezov v. Bulgaria*, § 52). A notice to quit issued by the authorities must be necessary and comply with procedural guarantees as part of a fair decision-makingprocess before an independent tribunal complying with the requirements of Article 8 (*Connors v. the United Kingdom*, §§ 81-84; *Bjedov v. Croatia*, §§ 70-71). It is insufficient merely to indicate that the measure is prescribed by domestic law, without taking into account the individual circumstances in question (*Ćosić v. Croatia*, § 21). The measure must also pursue a legitimate objective and loss of the home must be shown to be proportionate to the legitimate aims pursued, in accordance with Article 8 § 2. Regard must therefore be had to the factual circumstances of the occupant whose legitimate interests are to be protected (*Orlić v. Croatia*, § 64; *Gladysheva v. Russia*, §§ 94-95; *Kryvitska and Kryvitskyy v. Ukraine*, § 50; *Andrey Medvedev v. Russia*, § 55).

408. The Court has thus decided that a summary procedure for eviction of a tenant that does not offer adequate procedural guarantees would entail a violation of the Convention, even if the measure was legitimately seeking to ensure due application of the statutory housing regulations (*McCann v. the United Kingdom*, § 55). Termination of a lease without any possibility of having the proportionality of the measure determined by an independent tribunal was held to infringe Article 8 in cases where the landlord was a public body (*Kay and Others v. the United Kingdom*, § 74). In cases where the landlord was a private individual or body, this principle did not apply automatically (*Vrzić v. Croatia*, § 67; *F.J.M. v. the United Kingdom* (dec.), § 41).

Furthermore, continuing occupation of a person's property in breach of an enforceable eviction order issued by a court after finding that the occupation in question was illegal infringes Article 8 (*Khamidov v. Russia*, § 145).

409. In its judgment *Larkos v. Cyprus* [GC], the Court held that offering differential protection to tenants against eviction – according to whether they are renting State-owned property or renting from private landlords – entailed a violation of Article 14 taken in conjunction with Article 8 (§§ 31-32). However, it is not discriminatory to make provisions only for tenants of publicly owned property to purchase their flat, with tenants of privately owned flats which they occupy being unable to do so (*Strunjak and Others v. Croatia* (dec.)). Moreover, it is legitimate to put in place criteria according to which social housing can be allocated, when there is insufficient supply available to satisfy demand, so long as such criteria are not arbitrary or discriminatory (*Bah v. the United Kingdom*, § 49; see, more generally, on tenants of social housing *Paulić v. Croatia*; *Kay and Others v. the United Kingdom*).

410. The Court did not find a violation of Article 8 regarding a reform of the housing sector, following the transition from a socialist regime to a market economy, resulting in a general weakening of legal protection for holders of "specially protected tenancies". Despite an increase in rent and a reduced guarantee of being able to stay in their flats, the tenants continued to enjoy special protection to a degree that was higher than that normally afforded to tenants (*Berger-Krall and Others v. Slovenia*, § 273 and the references cited therein; compare, however, *Galović v. Croatia* (dec.), § 65).

3. Tenants' partners/unauthorised occupancy

411. The protection provided by Article 8 of the Convention is not confined to lawful/authorised occupancy of a building pursuant to domestic law (*McCann v. the United Kingdom*, § 46; *Bjedov v. Croatia*, § 58; *Ivanova and Cherkezov v. Bulgaria*, § 49). As a matter of fact, the Court extended the protection of Article 8 to the occupant of a flat to which only her partner held the tenancy rights (*Prokopovich v. Russia*, § 37; see also *Korelc v. Slovenia*, § 82 and *Yevgeniy Zakharov v. Russia*, § 32), and to a person who had been living unlawfully in her flat for almost 40 years (*Brežec v. Croatia*, § 36). On the other hand, when considering whether a requirement that the individual leave his or her home is proportionate to the legitimate aim pursued, it is highly relevant whether or not the home was established unlawfully (*Chapman v. the United Kingdom* [GC], § 102).

412. The Court found a violation where the domestic court had given paramount importance to the fact that the applicant had been registered as living elsewhere throughout the ten years he had been living with his partner, without seeking to weigh this against his arguments concerning his need for the room in question (*Yevgeniy Zakharov v. Russia*, §§ 35-37).

413. The Court found a violation of Article 14 taken in conjunction with Article 8 where an occupant was prohibited from succeeding to a tenancy after the death of his same-sex partner (*Karner v. Austria*, §§ 41-43; *Kozak v. Poland*, § 99).

4. Minorities and vulnerable persons

414. The Court also takes into account an occupant's vulnerability, with case-law protecting minorities' lifestyles (see, for instance, *Hudorovič and Others v. Slovenia*, § 142). It has, in particular, emphasised the vulnerability of Roma and Travellers, and the need to pay particular attention to their specific needs and ways of life (*Connors v. the United Kingdom*, § 84). That may impose positive obligations on the national authorities (*Chapman v. the United Kingdom* [GC], § 96; *Yordanova and Others v. Bulgaria*, §§ 129-130 and 133), albeit within certain limits (*Codona v. the United Kingdom* (dec.); *Hudorovič and Others v. Slovenia*, § 158). Measures affecting the stationing of Gypsy caravans have an impact on their right to respect for their "home" (*Chapman v. the United Kingdom* [GC], § 73, compare and contrast *Hirtu and Others v. France*, § 65). Where problems arise, the Court places the emphasis on action by the national authorities to find a solution (*Stenegry and Adam v. France* (dec.)).

415. In that connection, the Court reiterated the criteria for assessing compliance with the requirements of Article 8 in its *Winterstein and Others v. France* judgment (§ 148 with further references therein). It found no violation where the applicants' difficult situation was duly taken into account, the reasons relied on by the responsible planning authorities were relevant and sufficient and the means employed were not disproportionate (*Buckley v. the United Kingdom*, § 84; *Chapman v. the United Kingdom* [GC], § 114). As regards measures to remove persons from their living environment, the Court found a violation in the cases of *Connors v. the United Kingdom*, § 95; *Yordanova and Others v. Bulgaria*, § 144; *Winterstein and Others v. France*, §§ 156 and 167; *Buckland v. the United Kingdom*, § 70; *Bagdonavicius and Others v. Russia*, § 107 (concerning forced evictions and the destruction of houses without any rehousing plans).

416. The Court has also ruled that the authorities' general attitude perpetuating the feelings of insecurity of Roma whose houses and property had been destroyed, and the repeated failure of the authorities to put a stop to interference with their home life, in particular, amounted to a serious violation of Article 8 (*Moldovan and Others v. Romania (no. 2)*, §§ 108-109; *Burlya and Others v. Ukraine*, §§ 169-170).

417. A measure which affects a minority does not amount *ipso facto* to a violation of Article 8 (*Noack and Others v. Germany* (dec.)). In this case, the Court has considered whether the arguments put forward to justify transferring the residents of a municipality, some of whom belonged to a na-

tional minority, to another municipality were relevant, and whether that interference had been proportionate to the aim pursued, bearing in mind that it had affected a minority. In *Hudorovič and Others v. Slovenia*, the Court addressed the scope of the State's positive obligation to provide access to utilities to a socially disadvantaged group, namely members of the Roma community (§§ 143-158). It found that the measures adopted by the State in order to ensure the applicants' access to safe drinking water and sanitation had taken account of their vulnerable position and satisfied the requirements of Article 8 (§ 158).

418. Individuals who lack legal capacity are also particularly vulnerable. Article 8 therefore imposes on the State the positive obligation to afford them special protection. Accordingly, the fact that a person who lacked legal capacity was dispossessed of her home without being able to participate effectively in the proceedings or to have the proportionality of the measure determined by the courts amounted to a violation of Article 8 (*Zehentner v. Austria*, §§ 63 and 65). Reference should be made to the safeguards existing in domestic law (*A.-M.V. v. Finland*, §§ 82-84 and 90). In the case cited, the Court found no violation of Article 8 on account of the refusal to comply with the wishes of an adult with intellectual disabilities regarding his education and place of residence.

419. The fact that children had been psychologically affected by repeatedly witnessing their father's violence against their mother in the family home amounted to an interference with their right to respect for their "home" (*Eremia v. the Republic of Moldova*, § 74). The Court found a violation of Article 8 in that case on the grounds of the failure of the judicial system to react decisively to the serious domestic violence committed (§§ 78-79).

420. Article 8 does not in terms give a right to be provided with a home and, accordingly, any positive obligation to house the homeless must be limited. However, an obligation to secure shelter to particularly vulnerable individuals may flow from Article 8 in exceptional cases (*Yordanova and Others v. Bulgaria*, § 130 with further references therein). A refusal by the welfare authorities to provide housing assistance to an individual suffering from a serious disease might in certain circumstances raise an issue under Article 8 because of the impact of such a refusal on the private life of the individual in question (*O'Rourke v. the United Kingdom* (dec.)).

421. In its case-law, the Court takes into account the relevant international-law material and determines the scope of the Member States' margin of appreciation (*A.-M.V. v. Finland*, §§ 73-74 and 90). In housing matters, States are accorded a wide margin of appreciation (*Hudorovič and Others v. Slovenia*, §§ 141 and 158).

5. Home visits, searches and seizures[52]

422. In order to secure physical evidence on certain offences, the domestic authorities may consider it necessary to implement measures which entail entering a private home (*Dragan Petrović v. Serbia*, § 74). The actions of the police when entering homes must be "lawful" (*Bostan v. the Republic of Moldova**, §§ 21-30) and proportionate to the aim pursued (*McLeod v. the United Kingdom*, §§ 53-57, in which a violation was found; for an example of a case in which no violation was found, see *Dragan Petrović v. Serbia*, §§ 75-77), as must any action taken inside the individual home (*Vasylchuk v. Ukraine*, § 83, concerning the ransacking of private premises).

423. The judgment in the case of *National Federation of Sportspersons' Associations and Unions (FNASS) and Others v. France* concerned the obligation imposed on high-level athletes falling within

[52] See also the *Guide on Data protection*.

a "target group" to give advance notification of their whereabouts so that unannounced anti-doping tests could be carried out. The Court emphasised that home visits for the purposes of such testing were very different from those carried out under court supervision, which were geared to investigating offences or seizing items of property. Such searches, by definition, struck at the heart of respect for the home and could not be treated as equivalent to the visits to the athletes' homes (§ 186). The Court considered that reducing or cancelling the obligations of which the applicant had complained could increase the dangers of doping to their health and to that of the whole sporting community, and would run counter to the European and international consensus on the need to carry out unannounced tests (§ 190).

424. Citizens must be protected from the risk of undue police intrusions into their homes. The Court found a violation of Article 8 where members of a special intervention unit wearing balaclavas and armed with machine guns had entered a private home at daybreak in order to serve charges on the applicant and escort him to the police station. The Court pointed out that that safeguards should be in place in order to avoid any possible abuse and protect human dignity in such circumstances (*Kučera v. Slovakia*, §§ 119 and 122; see also *Rachwalski and Ferenc v. Poland*, § 73). Those safeguards might even include requiring the State to conduct an effective investigation if that is the only legal means of shedding light on allegations of unlawful searches of property (*H.M. v. Turkey*, §§ 26-27 and 29: violation of the procedural limb of Article 8 owing to the inadequacy of the investigation; regarding the importance of such procedural protection, see *Vasylchuk v. Ukraine*, § 84).

425. Measures involving entering private homes must be "in accordance with the law", which entails compliance with legal procedure (*L.M. v. Italy*, §§ 29 and 31) and with the existing safeguards (*Panteleyenko v. Ukraine*, §§ 50-51; *Kilyen v. Romania*, § 34), must pursue one of the legitimate aims listed in Article 8 § 2 (*Smirnov v. Russia*, § 40), and must be "necessary in a democratic society" to achieve that aim (*Camenzind v. Switzerland*, § 47).

426. The following are examples of measures which pursue legitimate aims: action by the Competition Authority to protect economic competition (*DELTA PEKÁRNY a.s. v. the Czech Republic*, § 81); suppression of tax evasion (*Keslassy v. France* (dec.), and *K.S. and M.S. v. Germany*, § 48); seeking circumstantial and material evidence in criminal cases, for example involving forgery, breach of trust and the issuing of uncovered cheques (*Van Rossem v. Belgium*, § 40), murder (*Dragan Petrović v. Serbia*, § 74), drug trafficking (*Işıldak v. Turkey*, § 50) and illegal trade in medicines (*Wieser and Bicos Beteiligungen GmbH v. Austria*, § 55); environmental protection and prevention of nuisance (*Halabi v. France*, §§ 60-61); and protecting health and the "rights and freedoms of others" in the context of combating doping in sport (*National Federation of Sportspersons' Associations and Unions (FNASS) and Others v. France*, §§ 165-166).

427. The Court also assesses the relevance and adequacy of the arguments advanced to justify such measures, compliance with the proportionality principle in the specific circumstances of the case (*Buck v. Germany*, § 45), and whether the relevant legislation and practice provide appropriate and relevant safeguards to prevent the authorities from taking arbitrary action (*Gutsanovi v. Bulgaria*, § 220; regarding the applicable criteria, see *Iliya Stefanov v. Bulgaria*, §§ 38-39; *Smirnov v. Russia*, § 44). For example, judges cannot simply sign a record, add the official court seal and enter the date and time of the decision with the word "approved" on the document without a separate order setting out the grounds for such approval (*Gutsanovi v. Bulgaria*, § 223). Regarding a home search which was carried out under a warrant likely to have been obtained in breach of domestic and international law, see *K.S. and M.S. v. Germany*, §§ 49-53.

428. The Court is particularly vigilant where domestic law authorises house searches without a judicial warrant. It accepts such searches where the lack of a warrant is offset by effective subsequent judicial scrutiny of the lawfulness and necessity of the measure (*Işıldak v. Turkey*, § 51; *Gutsanovi v. Bulgaria*, § 222). This requires those concerned to be able to secure effective de facto and de jure judicial scrutiny of the lawfulness of the measure and appropriate redress should the measure be

found unlawful (*DELTA PEKÁRNY a.s. v. the Czech Republic*, § 87). A house search ordered by a prosecutor without scrutiny by a judicial authority is in breach of Article 8 (*Varga v. Romania*, §§ 70-74).

429. The Court considers that a search warrant has to be accompanied by certain limitations, so that the interference which it authorises is not potentially unlimited and therefore disproportionate. The wording of the warrant must specify its scope (in order to ensure that the search concentrates solely on the offences under investigation) and the criteria for its enforcement (to facilitate scrutiny of the extent of the operations). A broadly worded warrant lacking information on the investigation in question or the items to be seized fails to strike a fair balance between the rights of the parties involved because of the wide powers which it confers on the investigators (*Van Rossem v. Belgium*, §§ 44-50 with further references therein; *Bagiyeva v. Ukraine*, § 52).

430. A police search may be deemed disproportionate where it has not been preceded by reasonable and available precautions (*Keegan v. the United Kingdom*, §§ 33-36 in which there had been a lack of adequate prior verification of the identities of the residents of the premises searched), or where the action taken was excessive (*Vasylchuk v. Ukraine*, §§ 80 and 84). A police raid at 6 a.m., without adequate reason, of the home of an absent person who was not the prosecuted person but the victim, was found not to have been "necessary" in a democratic society (*Zubaľ v. Slovakia*, §§ 41-45, where the Court also noted the impact on the reputation of the person concerned). The Court has also found a violation of Article 8 in a case of searches and seizures in a private home in connection with a offence purportedly committed, by another person (*Buck v. Germany*, § 52).

431. The Court may take into account the presence of the applicant and other witnesses during a house search (*Bagiyeva v. Ukraine*, § 53) as a factor enabling the applicant effectively to control the extent of the searches carried out (*Maslák and Michálková v. the Czech Republic*, § 79). On the other hand, a search conducted in the presence of the person concerned, his lawyer, two other witnesses and an expert but in the absence of prior authorisation by a court and of effective subsequent scrutiny is insufficient to prevent the risk of abuse of authority by the investigating agencies (*Gutsanovi v. Bulgaria*, § 225).

432. Adequate and sufficient safeguards must also be in place when a search is carried out at such an early stage of the criminal proceedings as the preliminary police investigation preceding the pretrial investigation (*Modestou v. Greece*, § 44). The Court found that a search at this stage had been disproportionate on account of the imprecise wording of the warrant, the lack of prior judicial scrutiny, the fact that the applicant had not been physically present during the search, and the lack of immediate retrospective judicial review (§§ 52-54).

433. Conversely, the safeguards established by domestic law and the practicalities of the search may lead to a finding of no violation of Article 8 (*Camenzind v. Switzerland*, § 46, and *Paulić v. Croatia* regarding a search of limited scope geared to seizing an unauthorised telephone; *Cronin v. the United Kingdom* (dec.) and *Ratushna v. Ukraine*, § 82, regarding the existence of appropriate safeguards).

434. As regards visits to homes and seizures, the Court has deemed disproportionate the extensive powers conferred on the customs authorities combined with the lack of a judicial warrant (*Miailhe v. France (no. 1)*; *Funke v. France*; *Crémieux v. France*).

435. The Court considers the protection of citizens and institutions against the threats of terrorism and the specific problems bound up with the arrest and detention of persons suspected of terror-

istlinked offences when examining the compatibility of an interference with Article 8 § 2 of the Convention (*Murray v. the United Kingdom*, § 91; *H.E. v. Turkey*, §§ 48-49). Anti-terrorist legislation must provide adequate protection against abuse and be complied with by the authorities (*Khamidov v. Russia*, § 143). For an anti-terrorist operation, see also *Menteş and Others v. Turkey*, § 73.[53]

436. In the case of *Sher and Others v. the United Kingdom*, the authorities had suspected an imminent terrorist attack and initiated extremely complex investigations in order to foil the attack. The Court agreed that the search warrant had been couched in fairly broad terms. However, it considered that the fight against terrorism and the urgency of the situation could justify a search based on terms that were wider than would otherwise have been permissible. In cases of this nature, the police should be permitted some flexibility in assessing, on the basis of what is encountered during the search, which items might be linked to terrorist activities, and in seizing them for further examination (§§ 174-176).

C. Commercial premises

437. The rights guaranteed by Article 8 of the Convention may include the right to respect for a company's registered office, branches or other business premises (*Société Colas Est and Others v. France*, § 41). In connection with an individual's premises which were also the headquarters of a company which he controlled, see *Chappell v. the United Kingdom*, § 63.

438. The margin of appreciation afforded to the State in assessing the necessity of an interference is wider where the search measure concerns legal entities rather than individuals (*DELTA PEKÁRNY a.s. v. the Czech Republic*, § 82; *Bernh Larsen Holding AS and Others v. Norway*, § 159).

439. House searches or visits to and seizures on business premises may comply with the requirements of Article 8 (*Keslassy v. France* (dec.); *Société Canal Plus and Others v. France*, §§ 55-57). Such measures are disproportionate to the legitimate aims pursued and therefore contrary to the rights protected by Article 8, where there are no "relevant and sufficient" reasons to justify them and no appropriate and sufficient safeguards against abuse (*Posevini v. Bulgaria*, §§ 65-73 with further references therein; *Société Colas Est and Others v. France*, §§ 48-49).

440. As regards the extent of the tax authorities' powers of investigation regarding computer servers, for example, the Court has emphasised the public interest in ensuring efficiency in the inspection of information provided by applicant companies for tax assessment purposes and the importance of the existence of effective and adequate safeguards against abuse by the tax authorities (*Bernh Larsen Holding AS and Others v. Norway*, §§ 172-174, no violation).

441. As regards inspections of premises in the context of anticompetitive practices, the Court found a violation of Article 8 where no prior authorisation had been sought or given for an inspection by a judge, no effective ex post facto scrutiny had been conducted of the necessity of the interference, and no regulations existed on the possible destruction of the copies seized during the inspection (*DELTA PEKÁRNY a.s. v. the Czech Republic*, § 92).

D. Law firms

442. The concept of "home" in Article 8 § 1 of the Convention embraces not only a private individual's home but also a lawyer's office or a law firm (*Buck v. Germany*, §§ 31-32; *Niemietz v. Germany*,

[53] See the *Guide on Terrorism*.

§§ 30-33). Searches of the premises of a lawyer may breach legal professional privilege, which is the basis of the relationship of trust existing between a lawyer and his client (*André and Another v. France*, § 41). Consequently, such measures must be accompanied by "special procedural guarantees" and the lawyer must have access to a remedy affording "effective scrutiny" to contest them. That is not the case where a remedy fails to provide for the cancellation of the impugned search (*Xavier Da Silveira v. France*, §§ 37, 42 and 48). In *Kruglov and Others v. Russia*, the Court recapitulated its case-law on effective safeguards against abuse or arbitrariness and the elements to be taken into consideration in this regard (§§ 125-132). As persecution and harassment of members of the legal profession strikes at the very heart of the Convention system, searches of lawyers' homes or offices should be subject to "especially strict scrutiny" (see also, §§ 102-105, concerning international legal materials on the protection of the lawyer-client relationship). Particular safeguards are also required to protect the professional confidentiality of legal advisers who are not members of the Bar (§ 137).

443. In view of the impact of such measures, their adoption and implementation must be subject to very clear and precise rules (*Petri Sallinen and Others v. Finland*, § 90; *Wolland v. Norway*, § 62). The role played by lawyers in defending human rights is a further reason why searches of their premises should be subject to especially strict scrutiny (*Heino v. Finland*, § 43; *Kolesnichenko v. Russia*, § 31).

444. Such measures may concern offences which directly involve the lawyer or, on the contrary, have nothing to do with him or her. In some cases, the search in question was designed to obviate the difficulties encountered by the authorities in gathering incriminating evidence (*André and Another v. France*, § 47), in breach of legal professional privilege (*Smirnov v. Russia*, §§ 46 and 49, see also § 39). The importance of legal professional privilege has always been emphasised in relation to Article 6 of the Convention (rights of the defence) since *Niemietz v. Germany* (§ 37). The Court also refers to the protection of the lawyer's reputation (*ibid.*, § 37; *Buck v. Germany*, § 45).

445. The Convention does not prohibit the imposition on lawyers of certain obligations likely to concern their relationships with their clients. This is the case, in particular, where credible evidence is found of a lawyer's participation in an offence, or in connection with efforts to combat certain unlawful practices. The Court has emphasised that it is vital to provide a strict framework for such measures (*André and Another v. France*, § 42). For an example of a search conducted in a law firm in accordance with the requirements of the Convention, see *Jacquier v. France* (dec.) and *Wolland v. Norway* and contrast *Leotsakos v. Greece*, §§ 51-57.

446. The fact that a visit to a home took place in the presence of the chairman of the Bar Association is a "special procedural guarantee" (*Roemen and Schmit v. Luxembourg*, § 69; *André and Another v. France*, §§ 42-43) but the presence of that chairman is insufficient on its own (*ibid.*, §§ 44-46; and more generally, as to the need for an independant observer, *Leotsakos v. Greece*, §§ 40 and 52). The Court has found a violation on the grounds of the lack of a judicial warrant and of effective ex post facto judicial scrutiny (*Heino v. Finland*, § 45).

447. The existence of a search warrant providing relevant and sufficient reasons for issuing letters rogatory does not necessarily safeguard against all risks of abuse, because regard must also be had to its scope and the powers conferred on the inspectors. The Court has thus found a violation in cases of search warrants which were too broad in scope and conferred too much power on the investigators, and where no regard was had to the person's status as a lawyer and no action taken to properly protect his or her professional secrecy (*Kolesnichenko v. Russia*, §§ 32-35; *Iliya Stefanov v. Bulgaria*, §§ 39-44; *Smirnov v. Russia*, § 48; *Aleksanyan v. Russia*, § 216). In *Kruglov and Others v. Russia*, the Court found a violation of Article 8 because the national courts had issued a search warrant believing that the only safeguard to be ensured during the search of a lawyer's premises was a prior judicial authorization. The Court held that national courts could not authorise a breach of lawyer-client confidentiality in every case where there was a criminal investigation, even where such investigation was not against the lawyers but against their clients. Furthermore, the Court stated

that national courts have to weigh the obligation to protect lawyer-client confidentiality against the needs of criminal investigations (*ibid.*, §§ 126-129).

448. The Court has also taken issue with seizures and searches which, although accompanied by special procedural guarantees, were nonetheless disproportionate to the legitimate aim pursued (*Roemen and Schmit v. Luxembourg*, §§ 69-72). In assessing whether the extent of the interference was proportionate and therefore "necessary in a democratic society", the Court has taken into account the amount of documents that needed to be examined by the authorities, the time it took them to do so and the level of inconvenience the applicant had to suffer (*Wolland v. Norway*, § 80).

449. It should be noted that under Article 8 a search can raise issues from the angle of respect for "home", "correspondence" and "private life" (*Golovan v. Ukraine*, § 51 ; *Wolland v. Norway*, § 52).

E. Journalists' homes

450. Searches of press premises aimed at obtaining information on journalists' sources can raise an issue under Article 8 (and are therefore not liable solely to assessment under Article 10 of the Convention). Searches of lawyers' premises may be aimed at discovering journalists' sources (*Roemen and Schmit v. Luxembourg*, §§ 64-72).

451. In *Ernst and Others v. Belgium*, the Court considered disproportionate a series of searches conducted of journalists' professional and private premises, even though it acknowledged that they had afforded some procedural guarantees. The journalists had not been charged with any offences, and the search warrants had been couched in broad terms and had not included any information on the investigation in question, the premises to be inspected and the items to be seized. Consequently, those warrants conferred too many powers on the investigators, who had thus been able to copy and seize extensive data. Moreover, the journalists had not been informed of the reasons for the searches (§§ 115-116).

452. The Court has assessed a search of the headquarters of a company which published a newspaper with a view to confirming the identity of the author of an article published in the press. It held that the fact that the journalists and the employees of the company had cooperated with the police did not make the search and the associated seizure any less intrusive. The competent authorities should show restraint in implementing such measures, having regard to the practical requirements of the case (*Saint-Paul Luxembourg S.A. v. Luxembourg*, §§ 38 and 44).

453. As regards search-and-seizure operations during criminal proceedings against journalists, in *Man and Others v. Romania* (dec.) the Court listed the elements it has taken into account in examining whether domestic law and practice afforded adequate and effective safeguards against any abuse and arbitrariness (§ 86).

F. Home environment

1. General approach[54]

454. The Convention does not explicitly secure the right to a healthy, calm environment (*Kyrtatos v. Greece*, § 52), but where an individual is directly and seriously affected by noise or other pollution, an issue may arise under Article 8 (*Hatton and Others v. the United Kingdom* [GC], § 96; *Moreno*

[54] See also above.

Gómez v. Spain, § 53). Article 8 may be applicable whether the pollution is directly caused by the State or the latter is responsible in the absence of appropriate regulations governing the activities of the private sector in question (*Jugheli and Others v. Georgia*, §§ 73-75).

455. However, in order to raise an issue under Article 8, the environmental pollution must have direct and immediate consequences for the right to respect for the home (*Hatton and Others v. the United Kingdom* [GC], § 96). For example, a reference to risks of pollution from a future industrial activity is insufficient in itself to confer victim status on an applicant (*Asselbourg and Others v. Luxembourg* (dec.)).

456. The consequences of the environmental pollution must reach a certain "threshold of severity", without necessarily seriously endangering the person's health (*López Ostra v. Spain*, § 51). Indeed, severe environmental pollution may affect individuals' wellbeing and prevent them from enjoying their homes in such a way as to affect their private and family life adversely, without, however, seriously endangering their health (*Guerra and Others v. Italy*, § 60). In fact, an arguable claim under Article 8 may arise where an environmental hazard attains a level of severity resulting in significant impairment of the applicant's ability to enjoy his or her home or private or family life (*Jugheli and Others v. Georgia*, §§ 71-72). Assessment of this minimum level depends on the circumstances of the case, such as the intensity and duration of the nuisance (*Udovičić v. Croatia*, § 139), and its physical or mental effects on the individual's health or quality of life (*Fadeyeva v. Russia*, § 69).

457. Consequently, Article 8 covers neither "general deterioration of the environment" (*Martínez Martínez and Pino Manzano v. Spain*, § 42) nor the case of detriment which is negligible in comparison to the environmental hazards inherent to life in every modern city (*Hardy and Maile v. the United Kingdom*, § 188).

458. The requisite threshold of severity is not reached where a pulsating noise from wind turbines (*Fägerskiöld v. Sweden* (dec.)) or the noise emanating from a dentist's surgery (*Galev and Others v. Bulgaria* (dec.)) are insufficient to cause serious harm to residents and prevent them from enjoying the amenities of their home (see also, regarding a meatprocessing plant, *Koceniak v. Poland* (dec.)). On the other hand, the noise level of letting off fireworks near homes in the countryside can reach the requisite threshold of severity (*Zammit Maempel v. Malta*, § 38).

459. The mere fact that the activity causing the alleged nuisance is unlawful is insufficient in itself to bring it within the scope of Article 8. The Court must decide whether the nuisance reached the requisite threshold of severity (*Furlepa v. Poland* (dec.)).

460. The case of *Dzemyuk v. Ukraine* concerned a cemetery close to the applicant's house and water supply. The high level of bacteria found in the drinking water from the applicant's well, coupled with a blatant violation of environmental health safety regulations, confirmed the existence of environmental risks, in particular of serious water pollution, reaching a sufficient level of severity to trigger the application of Article 8 (compare, as concerns access to safe-drinking water and sanitation, *Hudorovič and Others v. Slovenia*, § 113). The unlawfulness of the siting of the cemetery had been recognised in various domestic court decisions, but the competent local authorities had failed to comply with the final judicial decision ordering the closure of the cemetery. The Court ruled that the interference with the applicant's right to respect for his home and his private and family life was not "in accordance with the law" (§§ 77-84 and 87-92). The case of *Yevgeniy Dmitriyev v. Russia*, §§ 33 and 53) concerned the noise and other nuisances emanating from a police station situated under the applicant's home and the need to strike a fair balance between the interest of the local community in benefiting from the protection of public peace and security and the effective implementation of laws by the police force (§§ 53-57).

461. The Court allows some flexibility in terms of proving the harmful effect of pollution on the right to respect for the home (*Fadeyeva v. Russia*, § 79). The fact that an applicant was unable to provide

an official document from the domestic authorities certifying the danger did not necessarily make his application inadmissible (*Tătar v. Romania*, § 96).

462. When dealing with an allegation of environmental pollution affecting the right to the "home", the Court adopts a two-stage approach. First of all, it considers the substantive merits of the domestic authorities' decisions, and secondly, it scrutinises the decision-makingprocess (*Hatton and Others v. the United Kingdom* [GC], § 99). The violation may involve an arbitrary interference by the public authorities or a failure to honour their positive obligations. The Court reiterates that in both contexts regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole (*Moreno Gómez v. Spain*, § 55).

463. The effective enjoyment of the right to respect for one's home requires the State adopt all the reasonable and appropriate measures needed to protect individuals from serious damage to their environment (*Tătar v. Romania*, § 88). That presupposes putting in place a legislative and administrative framework to prevent such damage, the context being of relevance (*Tolić and Others v. Croatia* (dec.), § 95). In a case concerning water contamination caused by private companies, the Court did not find it necessary for the State to apply the criminal law, the existing civil remedies being sufficient (*ibid.*, §§ 91-101).

464. The State has an extensive margin of appreciation in this sphere, because the Court does not recognise any special status of environmental human rights (*Hatton and Others v. the United Kingdom* [GC], §§ 100 and 122). The State must strike a fair balance between the competing interests at stake (*Fadeyeva v. Russia*, § 93; *Hardy and Maile v. the United Kingdom*, § 218). In the sphere of noise pollution, the Court has accepted the argument concerning the economic interests of operating major international airports close to residential areas (*Powell and Rayner v. the United Kingdom*, § 42), including night flights (*Hatton and Others v. the United Kingdom* [GC], § 126). However, the Court found that such a fair balance had not been struck in a case where the authorities had failed to offer an effective solution involving moving residents away from the dangerous area surrounding a major steel plant or to take action to reduce the industrial pollution to acceptable levels (*Fadeyeva v. Russia*, § 133). In *Jugheli*, the Court also found that the respondent State had not succeeded in striking a fair balance between the interests of the community in having an operational thermal power plant and the applicants' effective enjoyment of their right to respect for their home and private life (*Jugheli and Others v. Georgia*, §§ 77-78).

465. The Court takes into account the measures implemented by the domestic authorities. It found a violation of the right to respect for the home in the case of *López Ostra v. Spain*, §§ 56-58, where the authorities had impeded the closure of a plant treating hazardous wastewater. Local authority inertia vis-à-vis continuous noise pollution from a nightclub, where the noise exceeded permitted levels, led to a finding of a violation in *Moreno Gómez v. Spain*, § 61. The Court also found a violation of the right to respect for the home on account of the protracted inability of the Italian authorities to ensure the proper functioning of the waste collection, treatment and disposal service in *Di Sarno and Others v. Italy*, § 112). On the other hand, in *Tolić and Others v. Croatia* (dec.), the Court considered that the State had taken all reasonable measures to secure the protection of the applicants' rights (§§ 95-101).

466. The decision-making process must necessarily involve appropriate investigations and studies in order to assess the environmentally damaging effects of the impugned activities (*Hatton and Others v. the United Kingdom* [GC], § 128). In the case cited, however, the Court pointed out that that did not mean that the authorities could only take decisions if comprehensive and measurable data were available in relation to each and every aspect of the matter to be decided. The investigations must strike a fair balance between the competing interests at stake (*ibid.*).

467. The Court has emphasised the importance of public access to the findings of the investigations and studies conducted and to information enabling them to assess the danger to which the public are exposed (*Giacomelli v. Italy*, § 83). The Court accordingly criticised the fact that people living

close to an extraction plant using sodium cyanide had not been allowed to take part in the decision-makingprocess (*Tătar v. Romania*). Unlike in *Hatton and Others v. the United Kingdom* [GC] (§ 120), the local residents had not had access to the conclusions of the study forming the basis for granting operational authorisation to the plant, and they had been provided with no other official information on the subject. The domestic provisions governing public debates had been flouted (*Tătar v. Romania*, §§ 115-124). In another case, however, the Court noted that the public had had access to the necessary information to identify and assess the hazards associated with the operation of two liquefied natural gas terminals (*Hardy and Maile v. the United Kingdom*, §§ 247-250).

468. All individuals should also be able to appeal to a court if they consider that their interests have not been sufficiently taken into consideration in the decision-makingprocess (*Tătar v. Romania*, § 88). This presupposes that the authorities concerned must enforce final and binding decisions. The Court found a violation of Article 8 in a case where the local authorities had failed to enforce a final judicial decision to close a cemetery whose proximity to the applicant's home had caused bacteriological contamination of his water supply (*Dzemyuk v. Ukraine*, § 92).

469. The choice of the means of dealing with environmental issues is left to the discretion of the States, which are not required to implement any specific measure requested by individuals (in relation, for example, to protecting their health against particle emissions from motor vehicles: *Greenpeace e.V. and Others v. Germany* (dec.)). In such a complex sphere, Article 8 does not require the national authorities to ensure that every individual enjoys housing that meets particular environmental standards (*Grimkovskaya v. Ukraine*, § 65).

2. Noise disturbance, problems with neighbours and other nuisances

470. Where such nuisances go beyond the ordinary difficulties of living with neighbours (*Apanasewicz v. Poland*, § 98), they may affect peaceful enjoyment of one's home, whether they be caused by private individuals, business activities or public agencies (*Martínez Martínez v. Spain*, §§ 42 and 51). If the requisite threshold of severity is reached (*Yevgeniy Dmitriyev v. Russia*, §§ 32-33; *Grimkovskaya v. Ukraine*, § 58), the domestic authorities, having been duly informed about the nuisances, have an obligation to take effective measures to ensure respect for the right to the peaceful enjoyment of the home (*Mileva and Others v. Bulgaria*, § 97, violation owing to a failure to prevent the unlawful operation of a computer club causing a nuisance in a block of flats). The Court also found a violation of Article 8 on the grounds of nighttime disturbances caused by a discotheque (*Martínez Martínez v. Spain*, §§ 47-54 with further references therein) or a bar (*Udovičić v. Croatia*, § 159), or of the absence of an effective response by the authorities to complaints about serious and repetitive neighbourhood disturbances (*Surugiu v. Romania*, §§ 67-69). Inadequate action by the State as regards noise and other nuisances emanating from a police station situated under the applicant's home violated Article 8 in *Yevgeniy Dmitriyev v. Russia*, underlying the need to strike a fair balance between the interest of the local community in benefiting from the protection of public peace and security and the effective implementation of laws by the police force (§§ 53-57) or to reduce excessive road traffic noise level in a home (*Deés v. Hungary*, §§ 21-24, see also *Grimkovskaya v. Ukraine*, § 72). Introducing a sanction system requiring the building of a noise barrier wall is not enough if the system is not applied in a timely and effective manner (*Bor v. Hungary*, § 27).

471. The Court examines the practical consequences of alleged nuisances and the situation as a whole (*Zammit Maempel v. Malta*, § 73, no violation). For example, it did not find any issue under Article 8 where the appropriate technical measurements had been omitted (*Oluić v. Croatia*, § 51), or where the applicants had not shown that they had sustained any specific damage from the impugned nuisance (*Borysiewicz v. Poland*, concerning a tailoring workshop; *Frankowski v. Poland* (dec.), concerning road traffic; *Chiş v. Romania* (dec.), concerning the operation of a bar). Nor is there a violation where the authorities have taken action to limit the impact of nuisances and there

has been an adequate decision-making process (*Flamenbaum and Others v. France*, §§ 141-160; see also the reminder of the applicable general principles in §§ 133-138).

3. Pollutant and potentially dangerous activities

472. The resultant environmental hazards must have direct repercussions on the right to respect for the home and reach a minimum level of severity. One case in point is serious water pollution (*Dubetska and Others v. Ukraine*, §§ 110 and 113, see also *Tolić and Others v. Croatia* (dec.), §§ 91-96). Unsubstantiated fears and claims are insufficient (*Ivan Atanasov v. Bulgaria*, § 78; see also *Furlepa v. Poland* (dec.) regarding the operation of a car accessory shop and a car repair garage; *Walkuska v. Poland* (dec.) concerning a pig farm). Furthermore, applicants may be partly responsible for the impugned situation (*Martínez Martínez and Pino Manzano v. Spain*, §§ 48-50, no violation).

473. The Court has, in particular, found violations of Article 8 owing to shortcomings attributable to the authorities in cases involving the use of dangerous industrial procedures (*Tătar v. Romania*) and toxic emissions (*Fadeyeva v. Russia*), as well as the flooding of housing located downstream of a reservoir, attributable to negligence on the part of the authorities (*Kolyadenko and Others v. Russia*). In *Giacomelli v. Italy*, the Court found a violation in the absence of a prior environmental impact assessment and the failure to suspend the activities of a plant generating toxic emissions close to a residential area. On the other hand, it found no violation where the competent authorities had fulfilled their obligations to protect and inform residents (*Hardy and Maile v. the United Kingdom*). Sometimes the authorities have to take reasonable and adequate action, even in cases where they are not directly responsible for the pollution caused by a factory, if so required in order to protect the rights of individuals. For instance, pursuant to Article 8, domestic authorities must strike a fair balance between the economic interest of a municipality in maintaining the activities of its main jobprovider – a factory discharging dangerous chemical substances into the atmosphere – and the residents' interest in protecting their homes (*Băcilă v. Romania*, §§ 66-72, violation).

V. Correspondence[55]

A. General points

1. Scope of the concept of "correspondence"[56]

474. The right to respect for "correspondence" within the meaning of Article 8 § 1 aims to protect the confidentiality of communications in a wide range of different situations. This concept obviously covers letters of a private or professional nature (*Niemietz v. Germany*, § 32 in fine), including where the sender or recipient is a prisoner (*Silver and Others v. the United Kingdom*, § 84; *Mehmet Nuri Özen and Others v. Turkey*, § 41), but also packages seized by customs officers (*X v. the United Kingdom*, Commission decision). It also covers telephone conversations between family members (*Margareta and Roger Andersson v. Sweden*, § 72), or with others (*Lüdi v. Switzerland*, §§ 38-39; *Klass and Others v. Germany*, §§ 21 and 41; *Malone v. the United Kingdom*, § 64), telephone calls from private or business premises (*Amann v. Switzerland* [GC], § 44; *Halford v. the United Kingdom*, §§ 44-46; *Copland v. the United Kingdom*, § 41; *Kopp v. Switzerland*, § 50) and from a prison (*Petrov v. Bulgaria*, § 51), and the "interception" of information relating to such conversations (date, duration, numbers dialled) (*P.G. and J.H. v. the United Kingdom*, § 42).

475. Technologies also come within the scope of Article 8, in particular data from a smart phone and/or the mirror image copy of it (*Saber v. Norway*, § 48), electronic messages (emails) (*Copland v. the United Kingdom*, § 41; *Bărbulescu v. Romania* [GC], § 72), Internet use (*Copland v. the United Kingdom*, §§ 41-42), and data stored on computer servers (*Wieser and Bicos Beteiligungen GmbH v. Austria*, § 45), including hard drives (*Petri Sallinen and Others v. Finland*, § 71) and floppy disks (*Iliya Stefanov v. Bulgaria*, § 42).

476. Older forms of electronic communication are likewise concerned, such as telexes (*Christie v. the United Kingdom*, Commission decision), pager messages (*Taylor-Sabori v. the United Kingdom*), and private radio broadcasting (*X and Y v. Belgium*, Commission decision), not including broadcasts on a public wavelength that are thus accessible to others (*B.C. v. Switzerland*, Commission decision).

Examples of "interference"

477. The content and form of the correspondence is irrelevant to the question of interference (*A. v. France*, §§ 35-37; *Frérot v. France*, § 54). For instance, opening and reading a folded piece of paper on which a lawyer had written a message and handed it to his clients is considered an "interference" (*Laurent v. France*, § 36). There is no de minimis principle for interference to occur: opening one letter is enough (*Narinen v. Finland*, § 32; *Idalov v. Russia* [GC], § 197).

478. All forms of censorship, interception, monitoring, seizure and other hindrances come within the scope of Article 8. The mail and other communications of legal entities are covered by the notion of "correspondence". Impeding someone from even initiating correspondence constitutes the most farreaching form of "interference" with the exercise of the "right to respect for correspondence" (*Golder v. the United Kingdom*, § 43).

479. Other forms of interference with the right to respect for "correspondence" may include the following acts attributable to the public authorities:

[55] See also the *Guide on Data protection*.
[56] See also the *Guide on Data protection*.

- screening of correspondence (*Campbell v. the United Kingdom*, § 33), the making of copies (*Foxley v. the United Kingdom*, § 30) or the deletion of certain passages (*Pfeifer and Plankl v. Austria*, § 43);
- interception by various means and recording of personal or businessrelated conversations (*Amann v. Switzerland* [GC], § 45), for example by means of telephone tapping (*Malone v. the United Kingdom*, § 64, and, as regards metering, §§ 83-84; see also *P.G. and J.H. v. the United Kingdom*, § 42), even when carried out on the line of a third party (*Lambert v. France*, § 21); and
- storage of intercepted data concerning telephone, email and Internet use (*Copland v. the United Kingdom*, § 44). The mere fact that such data may be obtained legitimately, for example from telephone bills, is no bar to finding an "interference"; the fact that the information has not been disclosed to third parties or used in disciplinary or other proceedings against the person concerned is likewise immaterial (*ibid*., § 43).

This may also concern:

- the forwarding of mail to a third party (*Luordo v. Italy*, §§ 72 and 75, with regard to a trustee in bankruptcy; *Herczegfalvy v. Austria*, §§ 87-88, with regard to the guardian of a psychiatric detainee);
- the copying of electronic files, including those belonging to companies (*Bernh Larsen Holding AS and Others v. Norway*, § 106);
- the copying of documents containing banking data and their subsequent storage by the authorities (*M.N. and Others v. San Marino*, § 52); and
- secret surveillance measures (*Kennedy v. the United Kingdom*, §§ 122-124; *Roman Zakharov v. Russia* [GC] and the references cited therein). A situation where an individual under secret surveillance happens to be a member of a company's management board does not automatically lead to an interference with that company's Article 8 rights (*Liblik and others v. Estonia*, § 112, in which, however, the Court saw no reason to distinguish between the correspondence of a member of the management board of the applicant companies and that of the applicant companies themselves even if no secret surveillance authorisations had been formally issued in respect of the companies).

480. A "crucial contribution" by the authorities to a recording made by a private individual amounts to interference by a "public authority" (*A. v. France*, § 36; *Van Vondel v. the Netherlands*, § 49; *M.M. v. the Netherlands*, § 39, concerning a recording by a private individual with the prior permission of the public prosecutor).

2. Positive obligations

481. To date, the Court has identified several positive obligations for States in connection with the right to respect for correspondence, for instance:

- the State's positive obligation when it comes to communications of a non-professional nature in the workplace (*Bărbulescu v. Romania* [GC], §§ 113 and 115-120).
- an obligation to prevent disclosure into the public domain of private conversations (*Craxi v. Italy (no 2)*, §§ 68-76);
- an obligation to provide prisoners with the necessary materials to correspond with the Court in Strasbourg (*Cotleţ v. Romania*, §§ 60-65; *Gagiu v. Romania*, §§ 91-92);
- an obligation to execute a Constitutional Court judgment ordering the destruction of audio cassettes containing recordings of telephone conversations between a lawyer and his client (*Chadimová v. the Czech Republic*, § 146);

- an obligation to strike a fair balance between the right to respect for correspondence and the right to freedom of expression (*Benediktsdóttir v. Iceland* (dec.)); and
- an obligation to investigate the violation of the confidentiality of the applicant's correspondence in the context of domestic violence (*Buturugă v. Romania*, where the applicant's former husband had improperly consulted her electronic accounts, including her Facebook account, and had made copies of her private conversations, documents and photographs).

3. General approach

482. The situation complained of may fall within the scope of Article 8 § 1 both from the standpoint of respect for correspondence and from that of the other spheres protected by Article 8 (right to respect for the home, private life and family life) (*Chadimová v. the Czech Republic*, § 143 and the references cited therein).

483. An interference can only be justified if the conditions set out in the second paragraph of Article 8 are satisfied. Thus, if it is not to contravene Article 8, the interference must be "in accordance with the law", pursue one or more "legitimate aims" and be "necessary in a democratic society" in order to achieve them.

484. The concept of "law" in Article 8 § 2 covers common law and "continental" countries alike (*Kruslin v. France*, § 29). Where the Court considers that an interference is not "in accordance with the law", it will generally refrain from reviewing whether the other requirements of Article 8 § 2 have been complied with (*Messina v. Italy (no. 2)*, § 83; *Enea v. Italy* [GC], § 144; *Meimanis v. Latvia*, § 66).

485. The Court affords the Contracting States a margin of appreciation under Article 8 in regulating matters in this sphere, but this margin remains subject to the Court's review of compliance with the Convention (*Szuluk v. the United Kingdom*, § 45 and the references cited therein).

486. The Court has emphasised the importance of the relevant international instruments in this field, including the European Prison Rules (*Nusret Kaya and Others v. Turkey*, §§ 26-28 and 55).

B. Prisoners' correspondence[57]

1. General principles

487. Some measure of control over prisoners' correspondence is acceptable and is not of itself incompatible with the Convention, regard being paid to the ordinary and reasonable requirements of imprisonment (*Silver and Others v. the United Kingdom*, § 98; *Golder v. the United Kingdom*, § 45). However, such control must not exceed what is required by the legitimate aim pursued in accordance with Article 8 § 2 of the Convention. While it may be necessary to monitor detainees' contact with the outside world, including telephone contact, the rules applied must afford the prisoner appropriate protection against arbitrary interference by the national authorities (*Doerga v. the Netherlands*, § 53).

488. The opening (*Demirtepe v. France*, § 26), monitoring (*Kornakovs v. Latvia*, § 158) and seizure (*Birznieks v. Latvia*, § 124) of a prisoner's correspondence with the Court fall under Article 8. So too

[57] See also *Article 34 (individual applications)* and the *Guide on Prisoners' Rights*; and above.

may the refusal to provide a prisoner with the materials needed for correspondence with the Court (*Cotleţ v. Romania*, § 65).

489. In assessing the permissible extent of such control, it should be borne in mind that the opportunity to write and to receive letters is sometimes the prisoner's only link with the outside world (*Campbell v. the United Kingdom*, § 45). General, systematic monitoring of the entirety of prisoners' correspondence, without any rules as to the implementation of such a practice and without any reasons being given by the authorities, would breach the Convention (*Petrov v. Bulgaria*, § 44).

490. Examples of "interference" within the meaning of Article 8 § 1 include:

- interception by the prison authorities of a letter (*McCallum v. the United Kingdom*, § 31) or failure to post a letter (*William Faulkner v. the United Kingdom*, § 11; *Mehmet Nuri Özen and Others v. Turkey*, § 42);
- restrictions on (*Campbell and Fell v. the United Kingdom*, § 110) or the destruction of mail (*Fazıl Ahmet Tamer v. Turkey*, §§ 52 and 54 for a filtering system);
- opening of a letter (*Narinen v. Finland*, § 32) – including where there are operational defects within the prison mail service (*Demirtepe v. France*, § 26) or the mail is simply opened before being handed over straight away (*Faulkner v. the United Kingdom* (dec.)); and;
- delays in delivering mail (*Cotleţ v. Romania*, § 34) or a refusal to forward emails sent to the prison's address to a particular prisoner (*Helander v. Finland* (dec.), § 48).

Exchanges between two prisoners are also covered (*Pfeifer and Plankl v. Austria*, § 43), as is the refusal to hand over a book to a prisoner (*Ospina Vargas v. Italy*, § 44) or restrictions on a detainee's right to receive and subscribe to socio-political magazines and newspapers (*Mirgadirov v. Azerbaijan and Turkey*, §§ 115 and 118).

491. "Interference" may also result from:

- deleting certain passages (*Fazıl Ahmet Tamer v. Turkey*, §§ 10 and 53; *Pfeifer and Plankl v. Austria*, § 47);
- limiting the number of parcels and packets a prisoner is allowed to receive (*Aliev v. Ukraine*, § 180); and
- recording and storing a prisoner's telephone conversations (*Doerga v. the Netherlands*, § 50) or conversations between a prisoner and his relatives during visits (*Wisse v. France*, § 29).

The same applies to the imposition of a disciplinary penalty entailing an absolute ban on sending or receiving mail for 28 days (*McCallum v. the United Kingdom*, § 31) and to a restriction concerning prisoners' use of their mother tongue during telephone conversations (*Nusret Kaya and Others v. Turkey*, § 36).

492. The interference must satisfy the requirements of lawfulness set forth in Article 8 § 2. The law must be sufficiently clear in its terms to give everyone an indication as to the circumstances in which and the conditions on which public authorities are empowered to resort to such measures (*Lavents v. Latvia*, § 135). It is for the respondent Government before the Court to indicate the statutory provision on which the national authorities based their monitoring of the prisoner's correspondence (*Di Giovine v. Italy*, § 25).

493. The lawfulness requirement refers not only to the existence of a legal basis in domestic law but also to the quality of the law, which should be clear, foreseeable as to its effects and accessible to the person concerned, who must be in a position to foresee the consequences of his or her acts (*Lebois v. Bulgaria*, §§ 66-67; *Silver and Others v. the United Kingdom*, § 88).

494. Legislation is incompatible with the Convention if it does not regulate either the duration of measures to monitor prisoners' correspondence or the reasons that may justify them, if it does not

indicate with sufficient clarity the scope and manner of exercise of the discretion conferred on the authorities in the relevant sphere, or if it leaves them too wide a margin of appreciation (*Labita v. Italy* [GC], §§ 176 and 180-184; *Niedbała v. Poland*, §§ 81-82; *Lavents v. Latvia*, § 136).

495. The following measures, among others, are not "in accordance with the law":

- censorship carried out in breach of provisions expressly prohibiting it (*Idalov v. Russia* [GC], § 201) or insufficiently comprehensive (*Enea v. Italy* [GC], § 143), or in the absence of provisions authorising it (*Demirtepe v. France*, § 27), or by an authority exceeding its powers under the applicable legislation (*Labita v. Italy* [GC], § 182);
- censorship on the basis of an unpublished instrument not accessible to the public (*Poltoratskiy v. Ukraine*, §§ 158-160);
- rules on the monitoring of prisoners' telephone calls that are not sufficiently clear and detailed to afford the applicant appropriate protection (*Doerga v. the Netherlands*, § 53).

496. The Court has also found a violation of Article 8 on account of the refusal to pass on a letter from one prisoner to another, on the basis of an internal instruction without any binding force (*Frérot v. France*, § 59).

497. Where domestic law allows interference, it must include safeguards to prevent abuses of power by the prison authorities. A law that simply identifies the category of persons whose correspondence "may be censored" and the competent court, without saying anything about the length of the measure or the reasons that may warrant it, is not sufficient (*Calogero Diana v. Italy*, §§ 32-33).

498. The Court finds a violation where the domestic provisions concerning the monitoring of prisoners' correspondence leave the national authorities too much latitude and give prison governors the power to keep any correspondence "unsuited to the process of rehabilitating a prisoner", with the result that "monitoring of correspondence therefore seems to be automatic, independent of any decision by a judicial authority and unappealable" (*Petra v. Romania*, § 37). However, although a law which confers a discretion must indicate the scope of that discretion (*Domenichini v. Italy*, § 32), the Court accepts that it is impossible to attain absolute certainty in the framing of the law (*Calogero Diana v. Italy*, § 32).

499. Amendments to an impugned law do not serve to redress violations which occurred before they entered into force (*Enea v. Italy* [GC], § 147; *Argenti v. Italy*, § 38).

500. Interference with a prisoner's right to respect for his or her correspondence must also be necessary in a democratic society (*Yefimenko v. Russia*, § 142). Such "necessity" must be assessed with regard to the ordinary and reasonable requirements of imprisonment. The "prevention of disorder or crime" (*Kwiek v. Poland*, § 47; *Jankauskas v. Lithuania*, § 21), in particular, may justify more extensive interference in the case of a prisoner than for a person at liberty. Thus, to this extent, but to this extent only, lawful deprivation of liberty within the meaning of Article 5 will impinge on the application of Article 8 to persons deprived of their liberty (*Golder v. the United Kingdom*, § 45). In any event, the measure in question must be proportionate within the meaning of Article 8 § 2. The extent of the monitoring and the existence of adequate safeguards against abuse are fundamental criteria in this assessment (*Tsonyo Tsonev v. Bulgaria*, § 42).

501. The nature of the correspondence subject to monitoring may also be taken into consideration. Certain types of correspondence, for example with a lawyer, should enjoy an enhanced level of confidentiality, especially where it contains complaints against the prison authorities (*Yefimenko v. Russia*, § 144). As regards the extent and nature of the interference, monitoring of the entirety of a prisoner's correspondence, without any distinction between different types of correspondent, upsets the balance between the interests at stake (*Petrov v. Bulgaria*, § 44). The mere fear of the prisoner evading trial or influencing witnesses cannot in itself justify an open licence for routine checking of all of a prisoner's correspondence (*Jankauskas v. Lithuania*, § 22).

502. The interception of private letters because they contained "material deliberately calculated to hold the prison authorities up to contempt" was found not to have been "necessary in a democratic society" in the case of *Silver and Others v. the United Kingdom* (§§ 64, 91 and 99).

503. Furthermore, it is important to distinguish between minors placed under educational supervision and prisoners when assessing restrictions on correspondence and telephone communications. The authorities' margin of appreciation is narrower in the former case (*D.L. v. Bulgaria*, §§ 104-109).

504. Article 8 cannot be interpreted as guaranteeing prisoners the right to communicate with the outside world by way of online devices, particularly where facilities for contact *via* alternative means are available and adequate (*Ciupercescu v. Romania (no. 3)*, § 105, and concerning the right to telephone calls, *Lebois v. Bulgaria*, § 61).

2. Where interference with prisoners' correspondence may be necessary

505. Since the *Silver and Others v. the United Kingdom* judgment, the Court's case-law has acknowledged that some measure of control over prisoners' correspondence is called for and is not of itself incompatible with the Convention. The Court has held in particular that:

- the monitoring of prisoners' correspondence may be legitimate on the grounds of maintaining order in prisons (*Kepenekli̇oğlu v. Turkey*, § 31; *Silver and Others v. the United Kingdom*, § 101);
- some measure of control – as opposed to automatic, routine interference – aimed at preventing disorder or crime may be justified, for example in the case of correspondence with dangerous individuals or concerning non-legal matters (*Jankauskas v. Lithuania*, §§ 21-22; *Faulkner v. the United Kingdom* (dec.));
- where access to a telephone is permitted, it may – having regard to the ordinary and reasonable conditions of prison life – be subjected to legitimate restrictions, for example in the light of the need for the facilities to be shared with other prisoners and the requirements of the prevention of disorder and crime (*A.B. v. the Netherlands*, § 93; *Coşcodar v. Romania* (dec.), § 30);
- a prohibition on sending a letter not written on an official form does not raise an issue, provided that such forms are readily available (*Faulkner v. the United Kingdom* (dec.));
- a prohibition on a foreign prisoner sending a letter to his relatives in a language not understood by the prison authorities does not raise an issue where the applicant did not give a convincing reason for declining the offer of a translation free of charge and was allowed to send two other letters (*Chishti v. Portugal* (dec.));
- limiting the number of packages and parcels may be justified to safeguard prison security and avoid logistical problems, provided that a balance is maintained between the interests at stake (*Aliev v. Ukraine*, §§ 181-182);
- a minor disciplinary penalty of withholding a parcel sent to a prisoner – for breaching the requirement to send correspondence via the prison authorities – was not found to be disproportionate (*Puzinas v. Lithuania (no. 2)*, § 34; compare, however, with *Buglov v. Ukraine*, § 137);
- a delay of three weeks in posting a nonurgent letter because of the need to seek instructions from a superior official was likewise not found to constitute a violation (*Silver and Others v. the United Kingdom*, § 104).

3. Written correspondence

506. Article 8 does not guarantee prisoners the right to choose the materials to write with. The requirement for prisoners to use official prison paper for their correspondence does not amount to

interference with their right to respect for their correspondence, provided that the paper is immediately available (*Cotleţ v. Romania*, § 61).

507. Article 8 does not require States to pay the postage costs of all correspondence sent by prisoners (*Boyle and Rice v. the United Kingdom*, §§ 56-58). However, this matter should be assessed on a case by case basis as an issue could arise if a prisoner's correspondence was seriously hindered for lack of financial resources. Thus, the Court has held that:

- the refusal by the prison authorities to provide an applicant lacking the financial resources to buy such materials with the envelopes, stamps and writing paper needed for correspondence with the Court in Strasbourg may constitute a failure by the respondent State to comply with its positive obligation to ensure effective respect for the right to respect for correspondence (*Cotleţ v. Romania*, §§ 59 and 65);
- in the case of a prisoner without any means or any support who is entirely dependent on the prison authorities, those authorities must provide him with the necessary material, in particular stamps, for his correspondence with the Court (*Gagiu v. Romania*, §§ 91-92).

508. An interference with the right to correspondence that is found to have occurred by accident as a result of a mistake on the part of the prison authorities and is followed by an explicit acknowledgement and sufficient redress (for example, the adoption by the authorities of measures ensuring that the mistake will not be repeated) does not raise an issue under the Convention (*Armstrong v. the United Kingdom* (dec.); *Tsonyo Tsonev v. Bulgaria*, § 29).

509. Proof of actual receipt of mail by the prisoner is the State's responsibility; in the event of a disagreement between the applicant and the respondent Government before the Court as to whether a letter was actually handed over, the Government cannot simply produce a record of incoming mail addressed to the prisoner, without ascertaining that the item in question did in fact reach its addressee (*Messina v. Italy*, § 31).

510. The authorities responsible for posting outgoing letters and receiving incoming mail should inform prisoners of any problems in the postal service (*Grace v. the United Kingdom*, Commission report, § 97).

4. Telephone conversations

511. Article 8 of the Convention does not confer on prisoners the right to make telephone calls, in particular where the facilities for communication by letter are available and adequate (*A.B. v. the Netherlands*, § 92; *Ciszewski v. Poland* (dec.)). However, where domestic law allows prisoners to speak by telephone, for example to their relatives, under the supervision of the prison authorities, a restriction imposed on their telephone communications may amount to "interference" with the exercise of their right to respect for their correspondence within the meaning of Article 8 § 1 of the Convention (*Lebois v. Bulgaria*, §§ 61 and 64; *Nusret Kaya and Others v. Turkey*, § 36). In practice, consideration should be given to the fact that prisoners have to share a limited number of telephones (*Bădulescu v. Portugal*, on limited duration of the daily phone calls, §§ 35 and 36) and that the authorities have to prevent disorder and crime (*Daniliuc v. Romania* (dec.); see also *Davison v. the United Kingdom* (dec.), as regards the charges for telephone calls made from prison).

512. Prohibiting a prisoner from using the prison telephone booth for a certain period to call his partner of four years, with whom he had a child, on the grounds that they were not married was found to breach Articles 8 and 14 taken together (*Petrov v. Bulgaria*, § 54).

513. In a high security prison, the storage of the numbers that a prisoner wished to call – a measure of which he had been notified – was considered necessary for security reasons and to avoid the commission of further offences (the prisoner had other ways of remaining in contact with his relatives, such as letters and visits) (*Coşcodar v. Romania* (dec.), § 30 – see also in an ordinary prison, *Ciupercescu v. Romania (no. 3)*, §§ 114-117).

5. Correspondence between prisoners and their lawyer[58]

514. Article 8 applies indiscriminately to correspondence with a lawyer who has already been instructed by a client and a potential lawyer (*Schönenberger and Durmaz v. Switzerland*, § 29).

515. Correspondence between prisoners and their lawyer is "privileged" under Article 8 of the Convention" (*Campbell v. the United Kingdom*, § 48; *Piechowicz v. Poland*, § 239). It may constitute a preliminary step to the exercise of the right of appeal, for example in respect of treatment during detention (*Ekinci and Akalın v. Turkey*, § 47), and may have a bearing on the preparation of a defence, in other words the exercise of another Convention right set forth in Article 6 (*Golder v. the United Kingdom*, § 45 in fine; *S. v. Switzerland*, § 48; *Beuze v. Belgium* [GC], § 193).

516. The Court considers observance of the principle of lawyer-client confidentiality to be fundamental (*Helander v. Finland* (dec.), § 53). See also the *Recommendation of the Committee of Ministers to Membet States of the Council of Europe on the European Prison Rules Rec(2006)2*. Systematic monitoring of such correspondence sits ill with this principle (*Petrov v. Bulgaria*, § 43).

517. The Court accepts, however, that the prison authorities may open a letter from a lawyer to a prisoner when they have reasonable cause to believe that it contains an illicit enclosure which the normal means of detection have failed to disclose. The letter should, however, only be opened and should not be read (*Campbell v. the United Kingdom*, § 48; *Erdem v. Germany*, § 61). The protection of the prisoner's correspondence with the lawyer requires the Member States to provide suitable guarantees preventing the reading of the letter such as opening the letter in the presence of the prisoner (*Campbell v. the United Kingdom*, § 48).

518. The reading of a prisoner's mail to and from a lawyer should only be permitted in exceptional circumstances when the authorities have reasonable cause to believe that the "privilege is being abused" in that the contents of the letter endanger prison security or the safety of others or are otherwise of a criminal nature. What may be regarded as "reasonable cause" will depend on all the circumstances but it presupposes the existence of facts or information which would satisfy an objective observer that the privileged channel of communication is being abused (*Campbell v. the United Kingdom*, § 48; *Petrov v. Bulgaria*, § 43; *Boris Popov v. Russia*, § 111). Any exceptions to this privilege must be accompanied by adequate and sufficient safeguards against abuse (*Erdem v. Germany*, § 65).

519. The prevention of terrorism is an exceptional context and involves pursuing the legitimate aims of protecting "national security" and preventing "disorder or crime" (*Erdem v. Germany*, §§ 60 and 66-69). In the case cited, the context of the ongoing trial, the terrorist threat, security requirements, the procedural safeguards in place and the existence of another channel of communication between the accused and his lawyer led the Court to find no violation of Article 8.

520. The interception of letters complaining of prison conditions and certain actions by the prison authorities was found not to comply with Article 8 § 2 (*Ekinci and Akalın v. Turkey*, § 47).

521. The withholding by the public prosecutor of a letter from a lawyer informing an arrested person of his rights was held to breach Article 8 § 2 (*Schönenberger and Durmaz v. Switzerland*, §§ 28-29).

[58] See also *Article 34 (individual applications)* and the *Guide on Prisoners' Rights*; and above/below.

522. Article 34 of the Convention (see below Correspondence with the Court) may also be applicable in the case of a restriction of correspondence between a prisoner and a lawyer concerning an application to the Court and participation in proceedings before it (*Shtukaturov v. Russia*, § 140, concerning in particular a ban on telephone calls and correspondence[59]). For instance, the Court examined a case under Article 34 which dealt with the interception of letters sent to prisoners by their lawyers concerning applications before the Court (*Mehmet Ali Ayhan and Others v. Turkey*, §§ 39-45).

523. The Court has nevertheless specified that the State retains a certain margin of appreciation in determining the means of correspondence to which prisoners must have access. Thus, the refusal by the prison authorities to forward to a prisoner an email sent by his lawyer to the prison email address is justified where other effective and sufficient means of transmitting correspondence exist (*Helander v. Finland* (dec.), § 54, where domestic law provided that contact between prisoners and their lawyers had to take place by post, telephone or visits). The Court has also accepted that compliance by a representative with certain formal requirements might be necessary before obtaining access to a detainee, for instance for security reasons or in order to prevent collusion or perversion of the course of the investigation or justice (*Melnikov v. Russia*, § 96).

524. There is no reason to distinguish between the different categories of correspondence with lawyers. Whatever their purpose, they concerned matters of a private and confidential character. In the case of *Altay v. Turkey (no. 2)*, the Court ruled for the first time that, in principle, oral, face-to-face communication with a lawyer in the context of legal assistance falls within the scope of "private life" (§ 49 and § 51).[60]

6. Correspondence with the Court[61]

525. A prisoner's correspondence with the Convention institutions falls within the scope of Article 8. The Court has found that there was interference with the right to respect for correspondence where letters sent to prisoners by the Convention institutions had been opened (*Peers v. Greece*, § 81; *Valašinas v. Lithuania*, §§ 128-129; *Idalov v. Russia* [GC], §§ 197-201). As in other cases, such interference will breach Article 8 unless it is "in accordance with the law", pursued one of the legitimate aims set forth in Article 8 § 2 and was "necessary in a democratic society" in order to achieve that aim (*Petra v. Romania*, § 36).

526. In a specific case where only one of a significant number of letters had been "opened by mistake" at a facility to which the applicant had just been transferred, the Court found that there was no evidence of any deliberate intention on the authorities' part to undermine respect for the applicant's correspondence with the Convention institutions such as to constitute interference with his right to respect for his correspondence within the meaning of Article 8 § 1 (*Touroude v. France* (dec.); *Sayoud v. France* (dec.)).

527. On the other hand, where monitoring of correspondence is automatic, unconditional, independent of any decision by a judicial authority and unappealable, it is not "in accordance with the law" (*Petra v. Romania*, § 37; *Kornakovs v. Latvia*, § 159).

[59] See the *Guide on the Admissibility criteria*.
[60] See also Privacy during detention and imprisonment and below.
[61] See also *Article 34 (individual applications)* and the *Guide on Prisoners' Rights*; and above.

528. Disputes concerning correspondence between prisoners and the Court may also raise an issue under Article 34 of the Convention where there is hindrance of the "effective exercise" of the right of individual petition (*Shekhov v. Russia*, § 53 and the references cited therein; *Yefimenko v. Russia*, § 164[62]; *Mehmet Ali Ayhan and Others v. Turkey*, §§ 39-45).

529. The Contracting Parties to the Convention have undertaken to ensure that their authorities do not hinder "in any way" the effective exercise of the right to apply to the Court. It is therefore of the utmost importance that applicants or potential applicants are able to communicate freely with the Court without being dissuaded or discouraged by the authorities from pursuing a Convention remedy and without being subjected to any form of pressure to withdraw or modify their complaints (*Ilaşcu and Others v. Moldova and Russia* [GC], § 480; *Cotleţ v. Romania*, § 69). See also the *The European Agreement relating to Persons Participating in Proceedings of the European Court of Human Rights*, the *The Resolution CM/Res(2010)25 on Member States' duty to respect and protect the right of individual application to the European Court of Human Rights* and the *Recommendation of the Committee of Ministers to Member States of the Council of Europe on the European Prison Rules Rec(2006)2*.

530. Refusing to forward correspondence from an applicant that serves in principle to determine the issue of compliance with the six-month rule for the purposes of Article 35 § 1 of the Convention is a typical example of hindrance of the effective exercise of the right of application to the Court (*Kornakovs v. Latvia*, § 166). Situations falling under Article 34 of the Convention include the following (contrast with, for instance, *Dimcho Dimov v. Bulgaria*, §§ 94-102):

- interception by the prison authorities of letters from or to the Court (*Maksym v. Poland*, §§ 31-33 and the references cited therein), even simple acknowledgments of receipt (*Yefimenko v. Russia*, § 163);
- measures limiting an applicant's contacts with her/his representative (*Shtukaturov v. Russia*, § 140; *Mehmet Ali Ayhan and Others v. Turkey*, §§ 39-45[63])
- punishment of a prisoner for sending a letter to the Court (*Kornakovs v. Latvia*, §§ 168-169);
- acts constituting pressure or intimidation (*Ilaşcu and Others v. Moldova and Russia* [GC], § 481);
- refusal by the prison authorities to supply photocopies needing to be appended to the application form, or unjustified delays in doing so (*Igors Dmitrijevs v. Latvia*, §§ 91 and 100; *Gagiu v. Romania*, §§ 95-96; *Moisejevs v. Latvia*, § 184);
- in general, the lack of effective access to documents required for an application to the Court (*Vasiliy Ivashchenko v. Ukraine*, §§ 123 and 125).

531. It should be borne in mind that since they are confined within an enclosed space, have little contact with their relatives or the outside world and are constantly subject to the authority of the prison management, prisoners are undoubtedly in a position of vulnerability and dependence (*Cotleţ v. Romania*, § 71; *Kornakovs v. Latvia*, § 164). Accordingly, as well as the undertaking to refrain from hindering the exercise of the right of petition, the authorities may in certain circumstances have an obligation to furnish the necessary facilities to a prisoner who is in a position of particular vulnerability and dependence vis-à-vis the prison management (*Naydyon v. Ukraine*, § 64) and is unable to

[62] See the *Guide on the Admissibility criteria*.
[63] See also Correspondence between prisoners and their lawyer.

obtain by his own means the documents required by the Registry of the Court in order to submit a valid application (*Vasiliy Ivashchenko v. Ukraine*, §§ 103-107).

532. In accordance with Rule 47 of the *Rules of Court*, the application form must be accompanied by relevant documents enabling the Court to reach its decision. In these circumstances, the authorities have an obligation to provide applicants, on request, with the documents they need in order for the Court to carry out an adequate and effective examination of their application (*Naydyon v. Ukraine*, § 63 and the references cited therein). Failure to provide the applicant in good time with the documents needed for the application to the Court entails a breach by the State of its obligation under Article 34 of the Convention (*Iambor v. Romania (no. 1)*, § 216; and contrast *Ustyantsev v. Ukraine*, § 99). It should nevertheless be pointed out that:

- as the Court has emphasised, there is no automatic right to receive copies of all documents from the prison authorities (*Chaykovskiy v. Ukraine*, §§ 94-97);
- not all delays in posting mail to the Court are worthy of criticism (for 4 to 5 days: *Yefimenko v. Russia*, §§ 131 and 159; for 6 days: *Shchebetov v. Russia*, § 84), particularly where there is no deliberate intention to hinder the applicant's complaint to the Court (for a slightly longer delay, *Valašinas v. Lithuania*, § 134), but the authorities have an obligation to forward correspondence without undue delay (*Sevastyanov v. Russia*, § 86);
- allegations by an applicant of hindrance of correspondence with the Court must be sufficiently substantiated (*Valašinas v. Lithuania*, § 136; *Michael Edward Cooke v. Austria*, § 48) and must attain a minimum level of severity to qualify as acts or omissions in breach of Article 34 of the Convention (*Kornakovs v. Latvia*, § 173; *Moisejevs v. Latvia*, § 186);
- the respondent Government must provide the Court with a reasonable explanation in response to consistent and credible allegations of a hindrance of the right of petition (*Klyakhin v. Russia*, §§ 120-121);
- the possibility of envelopes from the Court being forged in order to smuggle prohibited material into the prison constitutes such a negligible risk as to be discounted (*Peers v. Greece*, § 84).

7. Correspondence with journalists

533. The right to freedom of expression in the context of correspondence is protected by Article 8 of the Convention. In principle, a prisoner may send material for publication (*Silver and Others v. the United Kingdom*, § 99; *Fazıl Ahmet Tamer v. Turkey*, § 53). In practice, the content of the material is a factor to be taken into consideration.

534. For example, an order prohibiting a remand prisoner from sending two letters to journalists was found to constitute an interference. However, the national authorities had noted that they contained defamatory allegations against witnesses and the prosecuting authorities while the criminal proceedings were in progress. Moreover, the applicant had had the opportunity to raise those allegations in the courts and had not been deprived of contact with the outside world. The prohibition of his correspondence with the press was therefore found by the Court to have been proportionate to the legitimate aim pursued, namely the prevention of crime (*Jöcks v. Germany* (dec.)).

535. More broadly, in the case of a letter that has not been sent to the press but is liable to be published, the protection of the rights of the prison staff named in the letter may be taken into consideration (*W. v. the United Kingdom*, §§ 52-57).

8. Correspondence between a prisoner and a doctor

536. The Court dealt for the first time with the monitoring of a prisoner's medical correspondence in the case of *Szuluk v. the United Kingdom*. The case concerned the monitoring by the prison medical officer of the prisoner's correspondence with the specialist supervising his treatment in hospital,

relating to his life-threatening medical condition. The Court accepted that a prisoner with a life-threatening medical condition would want to be reassured by an outside specialist that he was receiving adequate medical treatment in prison. Taking into account the circumstances of the case, the Court found that although the monitoring of the prisoner's medical correspondence had been limited to the prison medical officer, it had not struck a fair balance with his right to respect for his correspondence (§§ 49-53).

9. Correspondence with close relatives or other individuals

537. It is essential for the authorities to help prisoners maintain contact with their close relatives. In this connection the Court has stressed the importance of the recommendations set out in the European Prison Rules (*Nusret Kaya and Others v. Turkey*, § 55).

538. Some measure of control over prisoners' interaction with the outside world may be necessary (*Coşcodar v. Romania* (dec.); *Baybaşın v. the Netherlands* (dec.), in the case of detention in a maximum-security facility).

539. The Court makes a distinction between a prisoner's correspondence with criminals or other dangerous individuals and correspondence relating to private and family life (*Čiapas v. Lithuania*, § 25). However, the interception of letters from a close relative of a prisoner charged with serious offences may be necessary to prevent crime and to ensure the proper conduct of the ongoing trial (*Kwiek v. Poland*, § 48).

540. A prisoner in a maximum-security facility may be prohibited from corresponding with relatives in the language of his choice for particular security reasons – such as the prevention of the risk of escaping – where the prisoner speaks one or more of the languages permitted for contact with close relatives (*Baybaşın v. the Netherlands* (dec.)).

541. However, the Court has not accepted the practice of requiring prisoners wishing to speak to relatives on the telephone in the only language used within their family to undergo a preliminary procedure, at their own expense, to determine whether they were genuinely unable to speak the official language (*Nusret Kaya and Others v. Turkey*, §§ 59-60). The Court also found that it was contrary to Article 8 to require a prisoner to supply an advance translation into the official language, at his own expense, of his private letters written in his mother tongue (*Mehmet Nuri Özen and Others v. Turkey*, § 60).

542. A letter from a prisoner to his or her family (or a private letter from one prisoner to another as in *Pfeifer and Plankl v. Austria*, § 47) cannot be intercepted simply because it contains criticism of or inappropriate language about prison staff (*Vlasov v. Russia*, § 138), unless there is a threat to use violence (*Silver and Others v. the United Kingdom*, §§ 65 and 103).

10. Correspondence between a prisoner and other addressees

543. The Court dealt with correspondence between prisoners and other addressees notably in *Niedbała v. Poland*. In this case, the Court found that national law which allowed for automatic censorship of prisoners' correspondence, without drawing any distinction between different categories such as correspondence with the Ombudsman, violated Article 8 (§ 81). Similarly, the indiscriminate, routine checking of all of the applicant's correspondence, including letters to State authorities and non-governmental organisations, constituted a violation of Article 8 (*Jankauskas v. Lithuania*, § 22; *Dimcho Dimov v. Bulgaria*, § 90 with regard to letters addressed to the Bulgarian Helsinki Committee).

C. Lawyers' correspondence[64]

544. Correspondence between a lawyer and his or her client, whatever its purpose, is protected under Article 8 of the Convention, such protection being enhanced as far as confidentiality is concerned (*Michaud v. France*, §§ 117-119). This is justified by the fact that lawyers are assigned a fundamental role in a democratic society, that of defending litigants. The content of the documents intercepted is immaterial (*Laurent v. France*, § 47). Professional secrecy is "the basis of the relationship of confidence between lawyer and client" (*ibid.*) and any risk of impingement on it may have repercussions on the proper administration of justice, and hence on the rights guaranteed by Article 6 of the Convention (*Niemietz v. Germany*, § 37; *Wieser and Bicos Beteiligungen GmbH v. Austria*, § 65). Indirectly but necessarily dependent on the principle of professional secrecy is the right of everyone to a fair trial, including the right of anyone "charged with a criminal offence" not to incriminate themselves (*Michaud v. France*, § 118).

545. In *Kruglov and Others v. Russia*, the Court examined the protection of professional confidentiality of practising lawyers who are not members of the Bar and found a violation of Article 8. It held that it would be incompatible with the rule of law to leave without any particular safeguards at all the entire relationship between clients and legal advisers who, with few limitations, practise professionally and often independently, including by representing litigants before the courts (§ 137).

546. The Court has, for example, examined the compatibility with Article 8 of the Convention of the failure to forward a letter from a lawyer to his client (*Schönenberger and Durmaz v. Switzerland*) and the tapping of a law firm's telephone lines (*Kopp v. Switzerland*).

547. The term "correspondence" is construed broadly (see for instance, *Klaus Müller v. Germany*, §§ 37-41 as concerns general business exchanges between a lawyer and the representatives of his law firm's clients). It also covers lawyers' written files (*Niemietz v. Germany*, §§ 32-33; *Roemen and Schmit v. Luxembourg*, § 65), computer hard drives (*Petri Sallinen and Others v. Finland*, § 71), electronic data (*Wieser and Bicos Beteiligungen GmbH v. Austria*, §§ 66-68; *Robathin v. Austria*, § 39), USB keys (*Kırdök and Others v. Turkey*, § 32), computer files and email accounts (*Vinci Construction and GTM Génie Civil et Services v. France*, § 69) and a folded piece of paper on which a lawyer had written a message and handed it to his clients (*Laurent v. France*, § 36). It also concerns correspondence between an applicant and his lawyers contained in the applicant's own device (*Saber v. Norway*, § 52; see also *Versini-Campinchi and Crasnianski v. France*).

548. The simple fact that the authorities possessed a copy of professional data seized in the applicant's law firm constitutes an interference, regardless of whether the data was decrypted or not (*Kırdök and Others v. Turkey*, §§ 33 and 36-37)

549. Although professional privilege is of great importance for the lawyer, the client and the proper administration of justice, it is not inviolable (*Michaud v. France*, §§ 123 and 128-129). In the case cited, the Court examined whether the obligation for lawyers to report their suspicions of unlawful moneylaundering activities by their clients, where such suspicions came to light outside the context of their defence role, amounted to disproportionate interference with legal professional privilege (no violation). In *Versini-Campinchi and Crasnianski v. France* the Court examined the interception of a lawyer's conversation with a client whose telephone line had been tapped, thus disclosing the commission of an offence by the lawyer. The Court held that in certain circumstances an exception

[64] Not including the case of correspondence with prisoners, which is addressed in the previous chapter Prisoners' correspondence.

could be made to the principle of lawyerclient privilege (§§ 79-80). In *Klaus Müller v. Germany*, the Court addressed limitations on the scope of legal professional privilege under national law whereby lawyers no longer had a right not to testify as witnesses in criminal proceedings in respect of information gained in the course of professional activities, if they had been released from their obligation of secrecy by their client through a confidentiality waiver (§§ 67-73).

550. Legislation requiring a lawyer to report suspicions amounts to a "continuing" interference with the lawyer's right to respect for professional exchanges with clients (*Michaud v. France*, § 92). The obligation by means of an administrative fine to testify as a witness and provide in criminal proceedings information gained in course of professional activities constitutes an interference (*Klaus Müller v. Germany*, §§ 40-41). Interference may also occur in the context of proceedings against lawyers themselves (*Robathin v. Austria*; *Sérvulo & Associados - Sociedade de Advogados, RL and Others v. Portugal*).

551. A search of a lawyer's office in the context of criminal proceedings against a third party may, even if it pursues a legitimate aim, encroach disproportionately on the lawyer's professional privilege (*Kruglov and Others v. Russia*, §§ 125-129; *Kırdök and Others v. Turkey*, §§ 52-58; *Niemietz v. Germany*, § 37).

552. Interference with a lawyer's "correspondence" will result in a violation of Article 8 if it is not duly justified. To that end, it must be "in accordance with the law" (*Klaus Müller v. Germany*, §§ 48-51 citing notably *Robathin v. Austria*, §§ 40-41; and for a lack of clarity in the legal framework and a lack of procedural guarantees relating concretely to the protection of legal professional privilege, *Saber v. Norway*, § 57), pursue one of the "legitimate aims" listed in paragraph 2 of Article 8 (*Tamosius v. the United Kingdom* (dec.); *Michaud v. France*, §§ 99 and 131) and be "necessary in a democratic society" in order to achieve that aim. The notion of necessity within the meaning of Article 8 implies that there is a pressing social need and, in particular, that the interference is proportionate to the legitimate aim pursued (*ibid.*, § 120). Where a lawyer or law firm is affected by the interference, particular safeguards must be in place. Indeed, the Court has acknowledged the importance of specific procedural guarantees when it comes to protecting the confidentiality of exchanges between lawyers and their clients and of legal professional privilege (*Michaud v. France*, §§ 117-119 and 130).

553. The Court has emphasised that since telephone tapping constitutes serious interference with the right to respect for a lawyer's correspondence, it must be based on a "law" that is particularly precise, especially as the technology available for use is continually becoming more sophisticated (*Kopp v. Switzerland*, §§ 73-75). In the case cited, the Court found a violation of Article 8, firstly because the law did not state clearly how the distinction was to be drawn between matters specifically connected with a lawyer's work and those relating to activity other than that of counsel, and secondly, the telephone tapping had been carried out by the authorities without any supervision by an independent judge (see also, regarding the protection afforded by the "law", *Petri Sallinen and Others v. Finland*, § 92). Further, domestic law must provide for safeguards against abuse of power in cases where, when tapping a suspect's telephone, the authorities accidentally intercept the suspect's conversations with his or her counsel (*Dudchenko v. Russia*, §§ 109-110).

554. Above all, legislation and practice must afford adequate and effective safeguards against any abuse and arbitrariness (see, for a recapitulation of the effective safeguards, *Kruglov and Others v. Russia*, §§ 125-132; *Iliya Stefanov v. Bulgaria*, § 38). Factors taken into consideration by the Court include whether the search was based on a warrant issued on the basis of reasonable suspicion (for a case where the accused was subsequently acquitted, see *Robathin v. Austria*, § 46). The Court takes into account the severity of the offence in connection with which the search was carried out (*Kruglov and Others v. Russia*, § 125). The scope of the warrant must be reasonably limited. The Court has stressed the importance of carrying out the search in the presence of an independent observer in order to ensure that materials covered by professional secrecy are not removed (*Wieser*

and Bicos Beteiligungen GmbH v. Austria, § 57; *Tamosius v. the United Kingdom* (dec.); *Robathin v. Austria*, § 44). Furthermore, there must be sufficient scrutiny of the lawfulness and the execution of the warrant (*ibid.*, § 51; *Iliya Stefanov v. Bulgaria*, § 44; *Wolland v. Norway*, §§ 67-73). In addition, the Court considers whether other special safeguards were available to ensure that material covered by legal professional privilege was not removed. Lastly, the Court takes into account the extent of the possible repercussions on the work and the reputation of the persons affected by the search (*Kruglov and Others v. Russia*, § 125).

555. When examining substantiated allegations that specifically identified documents have been seized even though they were unconnected to the investigation or were covered by lawyerclient privilege, the judge must conduct a "specific review of proportionality" and order their restitution where appropriate (*Vinci Construction and GTM Génie Civil et Services v. France*, § 79; *Kırdök and Others v. Turkey*, § 51 and § 57). For instance in *Wolland v. Norway* (no violation), the Court emphasized that the electronic documents had been available to the applicant while the search process was ongoing, in so far as the hard disk and the laptop had been returned to him two days after the initial search at his premises (§§ 55-80; compare *Kırdök and Others v. Turkey*, §§ 55-58, in which there was no mechanism for filtering data covered by professional secrecy, no explicit prohibition of their seizure, and the Assize Court had refused - without good reason - to order the restitution or the destruction of the seized copies of the data).

556. Failure to observe the relevant procedural safeguards when conducting searches and seizures of data entails a violation of Article 8 (*Wieser and Bicos Beteiligungen GmbH v. Austria*, §§ 66-68; contrast *Tamosius v. the United Kingdom* (dec.)).

557. There is extensive case-law concerning the degree of precision of the warrant: it must contain sufficient information about the purpose of the search to allow an assessment of whether the investigation team acted unlawfully or exceeded their powers. The search must be carried out under the supervision of a sufficiently qualified and independent legal professional (*Iliya Stefanov v. Bulgaria*, § 43), whose task is to identify which documents are covered by legal professional privilege and should not be removed. There must be a practical safeguard against any interference with professional secrecy and with the proper administration of justice (*ibid.*).

558. For example, the Court has criticised the following:

- a search warrant formulated in excessively broad terms, which left the prosecution authorities unrestricted discretion in determining which documents were “of interest” for the criminal investigation (*Kruglov and Others v. Russia*, § 127; *Aleksanyan v. Russia*, § 216);
- a search warrant based on reasonable suspicion but worded in excessively general terms (*Robathin v. Austria*, § 52);
- a warrant authorising the police to seize, for a period of two full months, the applicant’s entire computer and all his floppy disks, containing material covered by legal professional privilege (*Iliya Stefanov v. Bulgari*a, §§ 41-42).
- a warrant allowing for the seizure of electronic data protected by lawyer-client professional secrecy for the purposes of criminal proceedings against another lawyer who had shared the applicant’s office; and the refusal to return or destroy them in the absence of sufficient procedural guarantees in the relevant legislation as interpreted and applied by the judicial authorities (*Kırdök and Others v. Turkey*, §§ 52-58).

559. The fact that protection of confidential documents is afforded by a judge is an important safeguard (*Tamosius v. the United Kingdom* (dec.)). The same applies where the impugned legislation preserves the very essence of the lawyer’s defence role and introduces a filter protecting professional privilege (*Michaud v. France*, §§ 126-129).

560. In many cases, the question of lawyers’ correspondence has been closely linked to that of searches of their offices (reference is accordingly made to the chapter on Law firms).

561. Lastly, covert surveillance of a detainee's consultations with his lawyer at a police station must be examined from the standpoint of the principles established by the Court in relation to the interception of telephone communications between a lawyer and a client, in view of the need to afford enhanced protection of this relationship, and in particular of the confidentiality of the exchanges characterising it (*R.E. v. the United Kingdom*, § 131).

562. As regard persons who had been formally charged and placed under police escort, control of their correspondence with a lawyer is not of itself incompatible with the Convention. However, such control is only permissible when the authorities have reasonable cause to believe that it contains an illicit enclosure (*Laurent v. France*, §§ 44 and 46).

D. Surveillance of telecommunications in a criminal context[65]

563. The abovementioned requirements of Article 8 § 2 must of course be satisfied in this context (*Kruslin v. France*, § 26; *Huvig v. France*, § 25). In particular, such surveillance must serve to uncover the truth. Since it represents a serious interference with the right to respect for correspondence, it must be based on a "law" that is particularly precise (*Huvig v. France*, § 32) and must form part of a legislative framework affording sufficient legal certainty (*ibid.*). The rules must be clear and detailed (the technology available for use is continually becoming more sophisticated), as well as being both accessible and foreseeable, so that anyone can foresee the consequences for themselves (*Valenzuela Contreras v. Spain*, §§ 59 and 61). This requirement of sufficiently clear rules concerns both the circumstances in which and the conditions on which the surveillance is authorised and carried out. Since the implementation of measures of secret surveillance of communications is not open to scrutiny by the individuals concerned or the public at large, the "law" would run counter to the rule of law if there were no limits to the legal discretion granted to the executive, or to a judge (*Karabeyoğlu v. Turkey*, §§ 67-69 and §§ 86-88, with further references therein). Consequently, the law must indicate the scope of any such discretion and the manner of its exercise with sufficient clarity to give the individual adequate protection against arbitrary interference (*Roman Zakharov v. Russia* [GC], §§ 229-230). If there is any risk of arbitrariness in its implementation, the law will not be compatible with the lawfulness requirement (*Bykov v. Russia* [GC], §§ 78-79). In such a sensitive area as recourse to secret surveillance, the competent authority must state the compelling reasons justifying such an intrusive measure, while complying with the applicable legal instruments (*Dragojević v. Croatia*, §§ 94-98; see also *Liblik and others v. Estonia*, §§ 132-143, as to the duly reasoning of authorisations of secret surveillance).

564. In this connection, the Court has emphasised the need for safeguards. The Court must be satisfied that there exist guarantees against abuse which are adequate and effective (*Karabeyoğlu v. Turkey*, §§ 101-103, § 106). This assessment depends on all the circumstances of the case, such as the nature, scope and duration of the possible measures, the grounds required for ordering them, the authorities competent to permit, carry out and supervise them, and the kind of remedy provided by the national law (*Roman Zakharov v. Russia* [GC], § 232). Review and supervision of secret surveillance measures may come into play at three stages: when the surveillance is first ordered, while it is being carried out, or after it has been terminated. As regards the first two stages, the very nature and logic of secret surveillance dictate that not only the surveillance itself but also the accompanying review should be effected without the individual's knowledge. Consequently, since the individual

[65] See also File or data gathering by security services or other organs of the State, and the *Guide on Data protection*.

will necessarily be prevented from seeking an effective remedy of his or her own accord or from taking a direct part in any review proceedings, it is essential that the procedures established should themselves provide adequate and equivalent guarantees safeguarding his or her rights (*Roman Zakharov v. Russia* [GC], § 233). This is particularly significant in deciding whether an interference was "necessary in a democratic society" in pursuit of a legitimate aim, since the Court has held that powers to instruct secret surveillance of citizens are only tolerated under Article 8 to the extent that they are strictly necessary for safeguarding democratic institutions. In assessing the existence and extent of such necessity, the Contracting States enjoy a certain margin of appreciation. However, this margin is subject to European supervision embracing both the legislation and the decisions applying it (*Roman Zakharov v. Russia* [GC], § 232).

565. The phone-tapping operations can only be ordered on the basis of suspicions that can be regarded as objectively reasonable (*Karabeyoğlu v. Turkey*, § 103). The Court has also underlined the importance of an authority empowered to authorise the use of secret surveillance being capable of verifying "the existence of a reasonable suspicion against the person concerned, in particular, whether there are factual indications for suspecting that person of planning, committing or having committed criminal acts or other acts that may give rise to secret surveillance measures" and "whether the requested interception meets the requirement of 'necessity in a democratic society' ... for example, whether it is possible to achieve the aims by less restrictive means" (*Roman Zakharov v. Russia* [GC], § 260; *Dragojević v. Croatia*, § 94). Such verification, together with the requirement to set out the relevant reasons in the decisions by which secret surveillance is authorised, constitute an important guarantee, ensuring that the measures are not ordered haphazardly, irregularly or without due and proper consideration.

566. The Court has found a violation of the right to respect for correspondence in the following cases, for example: *Kruslin v. France*, § 36; *Huvig v. France*, § 35; *Malone v. the United Kingdom*, § 79; *Valenzuela Contreras v. Spain*, §§ 60-61; *Prado Bugallo v. Spain*, § 30; *Matheron v. France*, § 43; *Dragojević v. Croatia*, § 101; *Šantare and Labaznikovs v. Latvia*, § 62; *Liblik and others v. Estonia*, §§ 140-142 concerning the retrospective justification of orders authorising secret surveillance during criminal proceedings. As for a non-violation, see, for instance, *Karabeyoğlu v. Turkey*, §§ 104-110).

567. A person who has been subjected to telephone tapping must have access to "effective scrutiny" to be able to challenge the measures in question (*Marchiani v. France* (dec.)). To deny a person the standing to complain of the interception of his or her telephone conversations, on the ground that it was a third party's line that had been tapped, infringes the Convention (*Lambert v. France*, §§ 38-41; compare *Bosak and Others v. Croatia*, §§ 63 and 65).

568. The Court has held that the lawful steps taken by the police to obtain the numbers dialled from a telephone in a flat were necessary in the context of an investigation into a suspected criminal offence (*P.G. and J.H. v. the United Kingdom*, §§ 42-51). It reached a similar conclusion where telephone tapping constituted one of the main investigative measures for establishing the involvement of individuals in a largescale drugtrafficking operation, and where the measure had been subjected to "effective scrutiny" (*Coban v. Spain* (dec.)).

569. In general, the Court acknowledges the role of telephone tapping in a criminal context where it is in accordance with the law and necessary in a democratic society for, inter alia, public safety or the prevention of disorder or crime. Such measures assist the police and the courts in their task of preventing and punishing criminal offences. However, the State must organise their practical implementation in such a way as to prevent any abuse or arbitrariness (*Dumitru Popescu v. Romania (no. 2)*).

570. In the context of a criminal case, telephone tapping operations that were ordered by a judge, carried out under the latter's supervision, accompanied by adequate and sufficient safeguards against abuse and subject to subsequent review by a court have been deemed proportionate to the legitimate aim pursued (*Aalmoes and Others v. the Netherlands* (dec.); *Coban v. Spain* (dec.)). The

Court also found that there had been no violation of Article 8 where there was no indication that the interpretation and application of the legal provisions relied on by the domestic authorities had been so arbitrary or manifestly unreasonable as to render the telephone tapping operations unlawful (*İrfan Güzel v. Turkey*, § 88).

571. Furthermore, the State must ensure effective protection of the data thus obtained and of the right of persons whose purely private conversations have been intercepted by the law-enforcement authorities (*Craxi v. Italy (no. 2)*, §§ 75 and 83, violation; compare *Man and Others v. Romania* (dec.), §§ 104-111). In *Drakšas v. Lithuania* the Court found a violation on account of leaks to the media and the broadcasting of a private conversation recorded, with the authorities' approval, on a telephone line belonging to a politician who was under investigation by the prosecuting authorities (§ 60). However, the lawful publication, in the context of constitutional proceedings, of recordings of conversations that were not private but professional and political was not found to have breached Article 8 (*ibid.,* § 61).

E. Correspondence of private individuals, professionals and companies[66]

572. The right to respect for correspondence covers the private, family and professional sphere. It also covers cyberbullying or cyber-surveillance by a person's intimate partner (*Buturugă v. Romania*, § 74).

573. In *Margareta and Roger Andersson v. Sweden* the Court found a violation on account of the restrictions imposed on communications by letter and telephone between a mother and her child who was in the care of social services, depriving them of almost all means of remaining in contact for a period of approximately one and a half years (§§ 95-97).

574. In *Copland v. the United Kingdom* the Court found a violation on account of the monitoring, without any legal basis, of a civil servant's telephone calls, email and Internet use (§§ 48-49). In *Halford v. the United Kingdom*, concerning workplace monitoring by a public employer, the Court found a violation in that no legal instrument regulated the interception of calls made on the telephone of the civil servant concerned (§ 51).

575. Communications from private business premises may be covered by the notion of "correspondence" (*Bărbulescu v. Romania* [GC], § 74). In this particular case, an employer had accused an employee of using an internet instant messaging service for private conversations on a work computer. The Court held that an employer's instructions could not reduce private social life in the workplace to zero. The right to respect for private life and for the privacy of correspondence continue to exist, even if these may be restricted in so far as necessary (*Bărbulescu v. Romania* [GC], § 80).

576. Contracting States have to be granted "a wide margin of appreciation" as regards the legal framework for regulating the conditions in which an employer may regulate electronic or other communications of a non-professional nature by its employees in the workplace. That said, the States' discretion is not unlimited; there is a positive obligation on the authorities to ensure that the introduction by an employer of measures to monitor correspondence and other communications, irrespective of the extent and duration of such measures, are "accompanied by adequate and sufficient safeguards against abuse". Proportionality and procedural guarantees against arbitrariness are essential in this regard (*Bărbulescu v. Romania* [GC], §§ 119-120).

[66] See also the *Guide on Data protection*.

577. In this context, the Court has set down a detailed list of factors by which compliance with this positive obligation should be assessed: (i) whether the employee has been notified clearly and in advance of the possibility that the employer might monitor correspondence and other communications, and of the implementation of such measures; (ii) the extent of the monitoring by the employer and the degree of intrusion into the employee's privacy (traffic and content); (iii) whether the employer has provided legitimate reasons to justify monitoring the communications and accessing their actual content; (iv) whether there is a possibility of establishing a monitoring system based on less intrusive methods and measures; (v) the seriousness of the consequences of the monitoring for the employee subjected to it as well as the use made of the results of monitoring; and (vi) whether the employee has been provided with adequate safeguards including, in particular, prior notification of the possibility of accessing the content of communications. Lastly, an employee whose communications have been monitored should have access to a "remedy before a judicial body with jurisdiction to determine, at least in substance, how the criteria outlined above were observed and whether the impugned measures were lawful" (*Bărbulescu v. Romania* [GC], §§ 121-122).

578. The case-law also covers the monitoring of correspondence in the context of a commercial bankruptcy (*Foxley v. the United Kingdom*, §§ 30 and 43). In *Luordo v. Italy* the Court found a violation of Article 8 on account of the repercussions of excessively lengthy bankruptcy proceedings on the bankrupt's right to respect for his correspondence (§ 78). However, the introduction of a system for monitoring the bankrupt's correspondence is not in itself open to criticism (see also *Narinen v. Finland*).

579. The question of companies' correspondence is closely linked to that of searches of their premises (reference is accordingly made to the chapter on Commercial premises). For example, in *Bernh Larsen Holding AS and Others v. Norway* the Court found no violation on account of a decision ordering a company to hand over a copy of all data on the computer server it used jointly with other companies. Although the applicable law did not require prior judicial authorisation, the Court took into account the existence of effective and adequate safeguards against abuse, the interests of the companies and their employees and the public interest in effective tax inspections (§§ 172-175). However, the Court found a violation in the case of *DELTA PEKÁRNY a.s. v. the Czech Republic*, concerning an inspection of business premises with a view to finding circumstantial and material evidence of an unlawful pricing agreement in breach of competition rules. The Court referred to the lack of prior judicial authorisation, the lack of ex post facto review of the necessity of the measure, and the lack of rules governing the possibility of destroying the data obtained (§§ 92-93).

F. Special secret surveillance of citizens/organisations

580. In its first judgment concerning secret surveillance, *Klass and Others v. Germany*, § 48, the Court stated, in particular: "Democratic societies nowadays find themselves threatened by highly sophisticated forms of espionage and by terrorism, with the result that the State must be able, in order effectively to counter such threats, to undertake the secret surveillance of subversive elements operating within its jurisdiction. The Court has therefore to accept that the existence of some legislation granting powers of secret surveillance over the mail, post and telecommunications is, under exceptional conditions, necessary in a democratic society in the interests of national security and/or for the prevention of disorder or crime." However, powers of secret surveillance of citizens, characterising as they do the police state, are tolerable under the Convention only in so far as strictly necessary for safeguarding the democratic institutions (*ibid.*, § 42; *Szabó and Vissy v. Hungary*, §§ 72-73). In the latter case, the Court clarified the concept of "strict necessity". Thus, a measure of secret surveillance must, in general, be strictly necessary for the safeguarding of democratic institutions and, in particular, for the obtaining of vital intelligence in an individual operation. Otherwise, there will be "abuse" on the part of the authorities (§ 73).

581. In principle, the Court does not recognise an actio popularis, with the result that in order to be able to lodge an application in accordance with Article 34, an individual must be able to show that he or she was "directly affected" by the measure complained of. However, in recognition of the particular features of secret surveillance measures and the importance of ensuring effective control and supervision of them, the Court has permitted general challenges to the relevant legislative regime (*Roman Zakharov v. Russia* [GC], § 165). In the case cited, it clarified the conditions in which an applicant could claim to be the "victim" of a violation of Article 8 without having to prove that secret surveillance measures had in fact been applied to him. It based its approach on the one taken in *Kennedy v. the United Kingdom*, which it found to be best tailored to the need to ensure that the secrecy of surveillance measures did not result in the measures being effectively unchallengeable and outside the supervision of the national judicial authorities and of the Court. Accordingly, an applicant can claim to be the victim of a violation of the Convention if he or she falls within the scope of the legislation permitting secret surveillance measures (either because he or she belongs to a group of persons targeted by the legislation or because the legislation directly affects everyone) and if no remedies are available for challenging the secret surveillance. Furthermore, even where remedies do exist, an applicant may still claim to be a victim on account of the mere existence of secret measures or of legislation permitting them, if he or she is able to show that, because of his or her personal situation, he or she is potentially at risk of being subjected to such measures (§§ 171-172). See also, in relation to "victim" status, *Szabó and Vissy v. Hungary*, §§ 32-39 and the references cited therein.

582. The judgment in *Roman Zakharov v. Russia* [GC] contains a thorough overview of the Court's case-law under Article 8 concerning the "lawfulness" ("quality of law") and "necessity" (adequacy and effectiveness of guarantees against arbitrariness and the risk of abuse) of a system of secret surveillance (§§ 227-303). In this Grand Chamber case, the deficiencies in the domestic legal framework governing the secret surveillance of mobile telephone communications gave rise to a finding of a violation of Article 8 (§§ 302-303).

583. Secret surveillance of an individual can only be justified under Article 8 if it is "in accordance with the law", pursues one or more of the "legitimate aims" to which paragraph 2 of Article 8 refers and is "necessary in a democratic society" in order to achieve such aims (*Szabó and Vissy v. Hungary*, § 54; *Kennedy v. the United Kingdom*, § 130).

584. As to the first point, this means that the surveillance measure must have some basis in domestic law and be compatible with the rule of law. The law must therefore meet quality requirements: it must be accessible to the person concerned and foreseeable as to its effects (*Kennedy v. the United Usmangdom*, § 151; *Roman Zakharov v. Russia* [GC], § 229). In the context of the interception of communications, "foreseeability" cannot be understood in the same way as in many other fields. Foreseeability in the special context of secret measures of surveillance cannot mean that individuals should be able to foresee when the authorities are likely to intercept their communications so that they can adapt their conduct accordingly (*Weber and Saravia v. Germany*, § 93). However, to avoid arbitrary interference, it is essential to have clear, detailed rules on the interception of telephone conversations. The law must be sufficiently clear to give citizens an adequate indication as to the circumstances in which and the conditions on which public authorities are empowered to resort to any such secret measures (*Roman Zakharov v. Russia* [GC], § 229; *Association for European Integration and Human Rights and Ekimdzhiev v. Bulgaria*, § 75). In addition, the law must indicate the scope of the discretion granted to the executive or to a judge and the manner of its exercise with sufficient clarity to give the individual adequate protection against arbitrary interference (*Roman Zakharov v. Russia*, § 230; *Malone v. the United Kingdom*, § 68; *Huvig v. France*, § 29; *Weber and Saravia v. Germany* (dec.), § 94).

585. A law on measures of secret surveillance must provide the following minimum safeguards against abuses of power: a definition of the nature of offences which may give rise to an interception order and the categories of people liable to have their telephones tapped; a limit on the dura-

tion of the measure; the procedure to be followed for examining, using and storing the data obtained; the precautions to be taken when communicating the data to other parties; and the circumstances in which recordings may or must be erased or destroyed (*Roman Zakharov v. Russia* [GC], §§ 231 and 238-301; *Amann v. Switzerland* [GC], §§ 56-58).

586. Lastly, the use of secret surveillance must pursue a legitimate aim and be "necessary in a democratic society" in order to achieve that aim.

The national authorities enjoy a certain margin of appreciation. However, this margin is subject to European supervision embracing both legislation and decisions applying it. The Court must be satisfied that there are adequate and effective guarantees against abuse (*Klass and Others v. Germany*, § 50). The assessment of this question depends on all the circumstances at issue in the case, such as the nature, scope and duration of the possible measures, the grounds required for ordering them, the authorities competent to authorise, carry out and supervise them, and the kind of remedy provided by the national law. The procedures for supervising the ordering and implementation of restrictive measures must be such as to keep the "interference" to what is "necessary in a democratic society" (*Roman Zakharov v. Russia* [GC], § 232 and the references cited therein).

587. Review and supervision of secret surveillance measures may come into play at three stages: when the surveillance is first ordered, while it is being carried out, or after it has been terminated (*ibid.*, §§ 233-234 and the references cited therein). As regards the first two stages, the existing procedures must themselves provide adequate and equivalent guarantees safeguarding the individual's rights. Since abuses are potentially easy, it is in principle desirable to entrust supervisory control to a judge, as judicial control offers the best guarantees of independence, impartiality and a proper procedure. As regards the third stage – after the surveillance has been terminated – the question of subsequent notification of surveillance measures is inextricably linked to the effectiveness of remedies before the courts and hence to the existence of effective safeguards against the abuse of monitoring powers. There is in principle little scope for recourse to the courts by the individual concerned unless the latter is advised of the measures taken without his or her knowledge and thus able to challenge their legality retrospectively or, in the alternative, unless any person who suspects that his or her communications are being or have been intercepted can apply to the courts, which retain jurisdiction even where the interception subject has not been notified of the measure (*ibid.*, §§ 233-234).

588. It should be noted that in cases where the legislation permitting secret surveillance is itself contested, the lawfulness of the interference is closely related to the question whether the "necessity" test has been complied with, and it is therefore appropriate to address jointly the "in accordance with the law" and "necessity" requirements (*Kennedy v. the United Kingdom*, § 155; *Kvasnica v. Slovakia*, § 84). The "quality of law" in this sense implies that the domestic law must not only be accessible and foreseeable in its application, it must also ensure that secret surveillance measures are applied only when "necessary in a democratic society", in particular by providing for adequate and effective safeguards and guarantees against abuse (*Roman Zakharov v. Russia* [GC], § 236). In the case cited, it was not disputed that the interceptions of mobile telephone communications had a basis in domestic law and pursued legitimate aims for the purposes of Article 8 § 2, namely the protection of national security and public safety, the prevention of crime and the protection of the economic wellbeing of the country. However, that is not enough. It is necessary to assess in addition the accessibility of the domestic law, the scope and duration of the secret surveillance measures, the procedures to be followed for storing, accessing, examining, using, communicating and destroying the intercepted data, the authorisation procedures, the arrangements for supervising the implementation of the measures, any notification mechanisms and the remedies provided for by national law (*ibid.*, §§ 238-301).

589. Scope of application of secret surveillance measures: citizens must be given an adequate indication as to the circumstances in which public authorities are empowered to resort to such

measures. In particular, it is important to set out clearly the nature of the offences which may give rise to an interception order and a definition of the categories of people liable to have their telephones tapped (*Roman Zakharov v. Russia* [GC], §§ 243 and 247). As regards the nature of the offences, the condition of foreseeability does not require States to set out exhaustively, by name, the specific offences which may give rise to interception. However, sufficient detail should be provided as to the nature of the offences in question (*Kennedy v. the United Kingdom*, § 159). Interception measures in respect of a person who has not been suspected of an offence but might possess information about such an offence may be justified under Article 8 of the Convention (*Greuter v. the Netherlands* (dec.), concerning telephone tapping ordered and supervised by a judge, of which the applicant had been informed). However, the categories of persons liable to have their telephones tapped are not defined sufficiently clearly where they cover not only suspects and defendants but also "any other person involved in a criminal offence", without any explanation as to how this term is to be interpreted (*Iordachi and Others v. Moldova*, § 44, where the applicants maintained that they ran a serious risk of having their telephones tapped because they were members of a nongovernmental organisation specialising in the representation of applicants before the Court; see also *Roman Zakharov v. Russia* [GC], § 245; *Szabó and Vissy v. Hungary*, §§ 67 and 73). In the case of *Amann v. Switzerland* [GC], concerning a file opened and stored by the authorities following the interception of a telephone conversation, the Court found a violation because, among other things, the relevant law did not regulate in detail the case of individuals who were monitored "fortuitously" (§ 61).

590. Duration of surveillance: the question of the overall duration of interception measures may be left to the discretion of the authorities responsible for issuing and renewing interception warrants, provided that adequate safeguards exist, such as a clear indication in domestic law of the period after which an interception warrant will expire, the conditions under which a warrant can be renewed and the circumstances in which it must be revoked (*Roman Zakharov v. Russia* [GC], § 250; *Kennedy v. the United Kingdom*, § 161). In *Iordachi and Others v. Moldova* the domestic legislation was criticised because it did not lay down a clear limitation in time for the authorisation of a surveillance measure (§ 45).

591. Procedures to be followed for storing, accessing, examining, using, communicating and destroying intercepted data (*Roman Zakharov v. Russia* [GC], §§ 253-256): The automatic storage for six months of clearly irrelevant data cannot be considered justified under Article 8 (*ibid.*, § 255). The case of *Liberty and Others v. the United Kingdom* concerned the interception by the Ministry of Defence, on the basis of a warrant, of the external communications of civil-liberties organisations. The Court found a violation, holding in particular that no indication of the procedure to be followed for selecting for examination, sharing, storing and destroying intercepted material had been accessible to the public (§ 69).

592. Authorisation procedures: in assessing whether the authorisation procedures are capable of ensuring that secret surveillance is not ordered haphazardly, unlawfully or without due and proper consideration, regard should be had to a number of factors, including in particular the authority competent to authorise the surveillance, the scope of its review and the contents of the interception authorisation (*Roman Zakharov v. Russia* [GC], §§ 257-267; see also *Szabó and Vissy v. Hungary*, § 73 and §§ 75-77, concerning surveillance measures subject to prior judicial authorisation by the Minister of Justice and the question of emergency measures, §§ 80-81). Where a system allows the secret services and the police to intercept directly the communications of any citizen without requiring them to show an interception authorisation to the communications service provider, or to anyone else, the need for safeguards against arbitrariness and abuse appears particularly strong (*Roman Zakharov v. Russia* [GC], § 270).

593. Supervision of the implementation of secret surveillance measures: an obligation on the intercepting agencies to keep records of interceptions is particularly important to ensure that the supervisory body has effective access to details of surveillance activities undertaken (*Kennedy v. the Unit-*

ed Kingdom, § 165; *Roman Zakharov v. Russia* [GC], §§ 275-285). Although it is in principle desirable to entrust supervisory control to a judge, supervision by nonjudicial bodies may be deemed compatible with the Convention, provided that the supervisory body is independent of the authorities carrying out the surveillance, and is vested with sufficient powers and competence to perform effective and continuous supervision (*ibid.*, § 272; *Klass and Others v. Germany*, § 56). The supervisory body's powers with respect to any breaches detected are also an important aspect for the assessment of the effectiveness of its supervision (*ibid.*, § 53, where the intercepting agency was required to terminate the interception immediately if the G10 Commission found it illegal or unnecessary; *Kennedy v. the United Kingdom*, § 168, where any intercept material was to be destroyed as soon as the Interception of Communications Commissioner discovered that the interception was unlawful; *Roman Zakharov v. Russia* [GC], § 282).

594. Notification of interception of communications and available remedies (*Roman Zakharov v. Russia* [GC], §§ 286-301): The secret nature of surveillance measures raises the question of notification of the person concerned so that the latter may challenge their lawfulness. Although the fact that persons affected by secret surveillance measures are not subsequently notified once the surveillance has ceased cannot by itself constitute a violation, it is nevertheless desirable to inform them after the termination of the measures "as soon as notification can be carried out without jeopardising the purpose of the restriction" (*Roman Zakharov v. Russia* [GC], §§ 287-290; *Cevat Özel v. Turkey*, §§ 34-37). The question whether it is necessary to notify an individual that he or she has been subjected to interception measures is inextricably linked to the effectiveness of domestic remedies (*Roman Zakharov v. Russia* [GC], § 286).

595. With regard to secret anti-terrorist surveillance operations, adequate and effective guarantees against abuses of the State's strategic monitoring powers should exist (*Weber and Saravia v. Germany* with further references therein): The Court accepts that it is a natural consequence of the forms taken by presentday terrorism that governments resort to cuttingedge technologies, including mass surveillance of communications, in order to preempt impending incidents. Nevertheless, legislation governing such operations must provide the necessary safeguards against abuse regarding the ordering and implementation of surveillance measures and any potential redress (*Szabó and Vissy v. Hungary*, §§ 64, 68 and 78-81). Although the Court accepts that there may be situations of extreme urgency in which the requirement of prior judicial authorisation would entail a risk of wasting precious time, in such cases any measures authorised in advance by a nonjudicial authority must be subject to an ex post facto judicial review (§ 81).

596. The case of *Kennedy v. the United Kingdom* concerned a former prisoner campaigning against miscarriages of justice and claiming to be the victim of surveillance measures. The Court pointed out that the power to order secret surveillance of citizens was not acceptable under Article 8 unless there were adequate and effective guarantees against abuse.

597. In the case of *Association for European Integration and Human Rights and Ekimdzhiev v. Bulgaria*, a nonprofit association and a lawyer who represented applicants in proceedings before the Strasbourg Court alleged that they could be subjected to surveillance measures at any point in time without any notification. The Court observed that the relevant domestic legislation did not afford sufficient guarantees against the risk of abuse inherent in any system of secret surveillance and that the interference with the applicants' Article 8 rights was therefore not "in accordance with the law".

598. The case of *Association "21 December 1989" and Others v. Romania* concerned an association protecting the interests of participants in and victims of antigovernment demonstrations. The Court found a violation of Article 8 (§§ 171-175; contrast *Kennedy v. the United Kingdom*, § 169, no violation).

List of cited cases

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

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

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

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

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

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June 2020
This Factsheet does not bind the Court and is not exhaustive

Unaccompanied migrant minors in detention

See also the factsheets on "Accompanied migrant children in detention" and "Migrants in detention".

"[I]t is important to bear in mind that [the child's extreme vulnerability] is the decisive factor and ... takes precedence over considerations relating to the ... status [of] illegal immigrant." (judgment Mubilanzila Mayeka and Kaniki Mitunga v. Belgium of 12 October 2006, § 55)

"Children have specific needs that are related in particular to their age and lack of independence, but also to their asylum-seeker status. The [European] Court [of Human Rights] has also observed that the Convention on the Rights of the Child encourages States to take appropriate measures to ensure that a child who is seeking to obtain refugee status enjoys protection and humanitarian assistance, whether the child is alone or accompanied by his or her parents ..." (judgment Abdullahi Elmi and Aweys Abubakar v. Malta of 22 November 2016, § 103)

Conditions of detention

Mubilanzila Mayeka and Kaniki Mitunga v. Belgium (see also below under "Deprivation of liberty" and "Right to respect for family life")

12 October 2006

This case concerned the nearly two months long detention at a transit centre for adults run by the Aliens Office near Brussels airport of a five-year old Congolese national travelling alone to join her mother who had obtained refugee status in Canada, and her subsequent removal to her country of origin. The applicants (the mother and the child) submitted in particular that the detention of the child had constituted inhuman or degrading treatment.

The European Court of Human Rights held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights in respect of the child, finding that her detention had demonstrated a lack of humanity and amounted to inhuman treatment. It noted in particular that the child, unaccompanied by her parents, had been detained for two months in a centre intended for adults, with no counselling or educational assistance from a qualified person specially mandated for that purpose. The care provided to her had also been insufficient to meet her needs. Furthermore, owing to her very young age, the fact that she was an illegal alien in a foreign land and the fact that she was unaccompanied by her family, the child was in an extremely vulnerable situation. However, no specific legal framework existed governing the situation of unaccompanied foreign minors and, although the authorities had been placed in a position to prevent or remedy the situation, they had failed to take adequate measures to discharge their obligation to take care of the child.

Rahimi v. Greece (see also below, under "Deprivation of liberty")

5 April 2011

This case concerned in particular the conditions in which a minor Afghan asylum-seeker, who had entered Greece illegally, was held in the Pagani detention centre on the island of Lesbos and subsequently released with a view to his expulsion.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention, finding that, even allowing for the fact that the detention had lasted for only two days, the applicant's conditions of detention had in themselves amounted to degrading treatment. It noted in particular that the conditions of detention in the centre, particularly with regard to the accommodation, hygiene and infrastructure, had been so bad that they undermined the very meaning of human dignity. Moreover, on account of his age and personal circumstances, the applicant had been in an extremely vulnerable position and the authorities had given no consideration to his individual circumstances when placing him in detention.

Mohamad v. Greece (see also below, under "Deprivation of liberty")

11 December 2014

This case concerned in particular the conditions of the detention of the applicant, an Iraqi national who was an unaccompanied minor at the time of his arrest, at the Soufli border post, pending his removal. He complained that his status as minor had not been taken into account when he had been held at the Soufli border post and about his conditions of detention there.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention, finding that the applicant's conditions of detention at the Soufli border post had amounted to inhuman and degrading treatment. The Court noted in particular that the applicant remained imprisoned for more than five months, in unacceptable conditions as described by, *inter alia*, the European Committee for the Prevention of Torture (CPT). The Court also held that there had been a **violation of Article 13** (right to an effective remedy) of the Convention **taken in conjunction with Article 3**, finding that the applicant had had no effective remedy by which to complain of the conditions of his detention.

Abdullahi Elmi and Aweys Abubakar v. Malta (see also below, under "Deprivation of liberty")

22 November 2016

This case concerned the detention in the Safi Barracks Centre of two Somalian nationals, during eight months, waiting for the outcome of their asylum procedure, and in particular, for the outcome of the procedure aiming at determining whether they were minors or not. They complained in particular about the conditions of their immigration detention.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention, finding that, in the present case, the cumulative effect of the conditions complained of, which had involved overcrowding, lack of light and ventilation, no organised activities and a tense, violent atmosphere, for a period of around eight months, had amounted to degrading treatment. These conditions had been all the more difficult in view of the applicants' vulnerable status as asylum-seekers and minor. Indeed, there had been no support mechanism for them and this, combined with the lack of information as to what was going to happen to them or how long they would be detained, had exacerbated their fears. Moreover, in the present case the applicants, who were sixteen and seventeen years of age respectively, were even more vulnerable than any other adult asylum seeker detained at the time because of their age.

H.A. and Others v. Greece (no. 19951/16)

28 February 2019

This case concerned the placement of nine migrants, unaccompanied minors, in different police stations in Greece, for periods ranging between 21 and 33 days. The migrants were subsequently transferred to the Diavata reception centre and then to special

facilities for minors. All the applicants complained in particular of their detention conditions and of a lack of an effective remedy by which to complain about those conditions. They also alleged that they had been placed in police cells and had been unable to lodge an appeal challenging the lawfulness of their detention.
The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention on account of the conditions of the applicants' detention in the police stations. It found in particular that the detention conditions to which the applicants had been subjected in the various police stations represented degrading treatment, and explained that detention on those premises could have caused them to feel isolated from the outside world, with potentially negative consequences for their physical and moral well-being. The Court also held that the living conditions in the Diavata centre, which had a safe zone for unaccompanied minors, had **not exceeded the threshold of seriousness required to engage Article 3** of the Convention. It further took the view that the applicants had not had an effective remedy and therefore held that there had been a **violation of Article 13** (right to an effective remedy) of the Convention **taken together with Article 3**. Lastly, the Court held that there had been a **violation of Article 5 §§ 1 and 4** (right to liberty and security / right to a speedy decision on the lawfulness of a detention measure) of the Convention, finding in particular that the applicants' placement in border posts and police stations could be regarded as a deprivation of liberty which was not lawful. The Court also noted that the applicants had spent several weeks in police stations before the National Service of Social Solidarity ("EKKA") recommended their placement in reception centres for unaccompanied minors; and that the public prosecutor at the Criminal Court, who was their statutory guardian, had not put them in contact with a lawyer and had not lodged an appeal on their behalf for the purpose of discontinuing their detention in the police stations in order to speed up their transfer to the appropriate facilities.

Sh.D. and Others v. Greece, Austria, Croatia, Hungary, North Macedonia, Serbia and Slovenia (no. 14165/16)

13 June 2019

This case concerned the living conditions of five unaccompanied migrant minors from Afghanistan, who entered Greece as unaccompanied migrant minors in 2016, when they were between 14 and 17 years of age. More specifically, two of the applicants complained about their living conditions at Polykastro and Filiata police stations, where they had been held in "protective custody", while four applicants complained about their living conditions at the camp in Idomeni. Three of the applicants also argued that their placement in protective custody at the police stations in Polykastro, Filiata and Aghios Stefanos had amounted to an unlawful deprivation of liberty.
The Court declared the complaints against Austria, Croatia, Hungary, North Macedonia, Serbia and Slovenia **inadmissible** as being manifestly ill-founded. It further held that there had been a **violation** by Greece **of Article 3** (prohibition of inhuman or degrading treatment) of the Convention. Firstly, the Court found that the conditions of detention of three of the applicants in various police stations had amounted to degrading treatment, observing that being detained in these places was liable to arouse in the persons concerned feelings of isolation from the outside world, with potentially negative repercussions on their physical and mental well-being. Secondly, it noted that the authorities had not done all that could reasonably be expected of them to fulfil the obligation to provide for and protect four of the applicants, who had lived for a month in the Idomeni camp in an environment unsuitable for adolescents. That obligation was incumbent on the Greek State with regard to persons who were particularly vulnerable because of their age. The Court also held that there had been a **violation** by Greece **of Article 5 § 1** (right to liberty and security) of the Convention with regard to three applicants, finding that the placement of these applicants in the police stations had amounted to a deprivation of liberty as the Greek Government had not explained why the authorities had first placed the applicants in police stations – and in degrading

conditions of detention – rather than in alternative temporary accommodation. The detention of those applicants had therefore not been lawful.

Moustahi v. France

25 June 2020 (Chamber judgment[1])

This case concerned the conditions in which two Comorian children, apprehended when they unlawfully entered French territory in Mayotte, were placed in administrative detention together with adults, arbitrarily associated with one of them for administrative purposes, and expeditiously returned to the Comoros without a careful and individual examination of their situation. Both children also complained that they had been deprived of their liberty unlawfully and unjustifiably. They both, and their father, further complained of the French authorities' refusal to entrust the children to their father rather than placing them alone in administrative detention and to allow contact between them during the children's detention.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention, in respect of both child applicants, on account of the conditions of their detention and on account of the conditions of their removal to the Comoros. Regarding the two children as unaccompanied minors, it found that they had been arbitrarily associated with one of the migrants present on the boat, who had reportedly declared that he was accompanying them. In particular, the Court was persuaded that this formality had not sought to preserve the children's best interests but rather to ensure their speedy removal to the Comoros. It also observed that the conditions of the two children's detention had been the same as those of the adults apprehended at the same time as them. Having regard to the age of the children (five and three at the time) and to the fact that they had been left to cope on their own, the Court concluded that their detention could only have caused them stress and anxiety, with particularly traumatic repercussions for their mental state. In the present case, the Court took the view that the authorities had failed to ensure that the children were treated in a manner compatible with the Convention provisions and found that this treatment exceeded the threshold of seriousness for the purposes of Article 3. The Court also held that there had been a **violation of Article 5 § 1** (right to liberty and security), a **violation of Article 5 § 4** (right to a speedy decision on the lawfulness of detention), a **violation of Article 8** (right to respect for private and family life) and a **violation of Article 4 of Protocol No. 4** (prohibition of collective expulsion of aliens) to the Convention in respect of the child applicants. It further held that there had been a **violation of Article 13** (right to an effective remedy) **in conjunction with Article 8, and of Article 13 in conjunction with Article 4 of Protocol No. 4**, as regards the complaint of a lack of effective remedies against the removal of the children. Lastly, it held that there had been **no violation of Article 13 in conjunction with Article 3** as regards the complaint of a lack of effective remedies against the conditions of removal.

Deprivation of liberty and challenging the lawfulness of detention

Mubilanzila Mayeka and Kaniki Mitunga v. Belgium (see also above, under "Conditions of detention", and below, under "Right to respect for family life")

12 October 2006

This case concerned in particular the nearly two months long detention at a transit centre for adults run by the Aliens Office near Brussels airport of a five-year old Congolese national travelling alone to join her mother who had obtained refugee status in Canada.

The Court held that there had been a **violation of Article 5 § 1** (right to liberty and security) of the Convention in respect of the minor applicant, finding that the Belgian

[1]. This judgment will become final in the circumstances set out in Article 44 § 2 (final judgments) of the European Convention on Human Rights.

legal system at the time and as it had functioned in the case before it had not sufficiently protected her right to liberty. It noted in particular that the child was detained in a closed centre intended for illegal foreign aliens in the same conditions as adults. Those conditions were not adapted to the position of extreme vulnerability in which she had found herself as a result of her status as an unaccompanied foreign minor. The Court also held that there had been a **violation of Article 5 § 4** (right to have lawfulness of detention decided speedily by a court) of the Convention, finding that the child's successful appeal against detention had been rendered futile. In this respect, it noted in particular that the Belgian authorities had decided on the date of the child's departure the day after she had lodged her application to the *chambre du conseil* for release from detention, that is to say even before the *chambre du conseil* had ruled on it. They had not sought to reconsider the position at any stage. Moreover, the deportation had proceeded despite the fact that the 24 hour-period for an appeal by the public prosecutor had not expired and that a stay applied during that period.

Bubullima v. Greece

28 October 2010

The first applicant, a minor Albanian national, lived in Greece with his uncle, who had parental rights over him. Arrested by the immigration police, who instituted deportation proceedings against him on the ground that he did not have a valid residence permit, he was subsequently temporarily placed in custody, and then, once the decision to deport him had been taken, kept in detention to prevent him from escaping. He alleged that the Greek courts had failed to decide speedily on his application for release and that he had had no remedy by which to challenge the lawfulness of his detention.

The Court held that there had been a **violation of Article 5 § 4** (right to have lawfulness of detention decided speedily by a court) of the Convention in respect of the first applicant, finding that the remedies provided to him by domestic law had not satisfied the requirements of that provision, in particular the requirement of "speediness".

Rahimi v. Greece (see also above, under "Conditions of detention")

5 April 2011

This case concerned the detention of an unaccompanied foreign minor in an adult detention centre. The applicant alleged in particular that he had not been informed of the reasons for his arrest or of any remedies in that connection.

The Court held that there had been a **violation of Article 5 § 1** (right to liberty and security) of the Convention, finding that the applicant's detention had not been lawful. It noted in particular that the applicant's detention had been based on the law and had been aimed at ensuring his deportation. Moreover, in principle, the length of his detention – two days – could not be said to have been unreasonable with a view to achieving that aim. However, the Greek authorities had given no consideration to the best interests of the applicant as a minor or his individual situation as an unaccompanied minor. Furthermore, they had not examined whether it had been necessary as a measure of last resort to place the applicant in the detention centre or whether less drastic action might not have sufficed to secure his deportation. These factors gave cause to doubt the authorities' good faith in executing the detention measure. The Court also held that there had been a **violation of Article 5 § 4** (right to have lawfulness of detention decided speedily by a court) of the Convention. In this regard, it noted in particular that the applicant had been unable in practice to contact a lawyer. Furthermore, the information brochure outlining some of the remedies available had been written in a language which he would not have understood, although the interview with him had been conducted in his native language. The applicant had also been registered as an accompanied minor although he had had no guardian who could act as his legal representative. Accordingly, even assuming that the remedies had been effective, the Court failed to see how the applicant could have exercised them.

See also: judgment in the case of **Housein v. Greece** of 24 October 2013.

Mohamad v. Greece (see also above, under "Conditions of detention")

11 December 2014

This case concerned in particular the lawfulness of the detention of the applicant, an Iraqi national who was an unaccompanied minor at the time of his arrest, at the Soufli border post, pending his removal.

The Court held that there had been a **violation of Article 5 § 1** (right to liberty and security) of the Convention, finding in particular that the applicant had been arrested and detained in disregard of his status as unaccompanied minor and that when he had reached the age of majority the Greek authorities had extended his detention without taking any steps with a view to his removal.

Abdullahi Elmi and Aweys Abubakar v. Malta (see also above, under "Conditions of detention")

22 November 2016

Both applicants alleged in particular that their detention in the Safi Barracks Centre, during eight months, had been arbitrary and unlawful and that they had not had a remedy to challenge the lawfulness of their detention.

The Court held that there had been a **violation of Article 5 § 1** (right to liberty and security) of the Convention, noting in particular that the applicants where minors and that their detention, in inappropriate conditions, had been particularly lengthy. It also held that there had been a **violation of Article 5 § 4** (right to have lawfulness of detention decided speedily by a court) of the Convention, as the applicants had not had an effective remedy to challenge the lawfulness of their detention.

H.A. and Others v. Greece (no. 19951/16)

28 February 2019

See above, under "Conditions of detention".

Sh.D. and Others v. Greece, Austria, Croatia, Hungary, North Macedonia, Serbia and Slovenia (no. 14165/16)

13 June 2019

See above, under "Conditions of detention".

Moustahi v. France

25 June 2020 (Chamber judgment[2])

See above, under "Conditions of detention".

Right to respect for family life

Mubilanzila Mayeka et Kaniki Mitunga c. Belgique (see also above, under "Conditions of detention" and "Deprivation of liberty")

12 October 2006

This case concerned the nearly two months long detention at a transit centre for adults run by the Aliens Office near Brussels airport of a five-year old Congolese national travelling alone to join her mother who had obtained refugee status in Canada, and her subsequent removal to her country of origin. The applicants (the mother and the child) submitted in particular that the child's detention had constituted disproportionate interference with their right to respect for family life.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention in respect of the child and her mother, on account of the child's detention. It observed in particular that one of the consequences of the child's detention was to separate her from her uncle (with whom she had arrived at Brussels airport), with the result that she had become an unaccompanied foreign minor, a category in respect of which there was a legal void at the time. The detention had significantly delayed her reunion with her mother. The Court further noted that, far from

[2]. This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention.

assisting her reunion with her mother, the Belgian authorities' actions had hindered it. Having been informed from the outset that the child's mother was in Canada, the Belgian authorities should have made detailed inquiries of the Canadian authorities in order to clarify the position and bring about an early reunion of mother and daughter. Lastly, the Court observed that, since there was no risk of the child's seeking to evade the supervision of the Belgian authorities, her detention in a closed centre for adults had served no purpose and that other measures more conducive to the higher interest of the child could have been taken. Furthermore, since the child was an unaccompanied foreign minor, Belgium was under an obligation to facilitate the family's reunification. The Court therefore found that there had been disproportionate interference with the applicants' right to respect for their family life. The Court also held in this case that there had been a **violation of Article 8** of the Convention in respect of the child and her mother, on account of the child's deportation to her country of origin.

Moustahi v. France

25 June 2020 (Chamber judgment[3])
See above, under "Conditions of detention".

Texts and documents

See in particular:

- **Handbook on European law relating to asylum, borders and immigration**, European Union Fundamental Rights Agency / European Court of Human Rights, 2013
- Council of Europe Commissioner for Human Rights **web page** on the thematic work "Migration"
- Special Representative of the Council of Europe Secretary General on migration and refugees **web page**

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[3]. This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention.

Section IV – ICJ Training materials (Fair Project)

The ICJ (International Commission of Jurists) has published a set of training materials on access to justice for migrant children that were developed as part of the FAIR (Fostering Access to Immigrant children's Rights) project. These training modules should help lawyers when representing migrant children to increase their knowledge of the rights of the migrant children, to increase their understanding of the use of international redress mechanisms for violations of human rights of migrant children and give some advice on how to effectively communicate with child clients.

For more information see ICJ website: https://www.icj.org/training-materials-on-access-to-justice-for-migrant-children/

The materials include the following training modules (click on the title to open the full text):

0. Guiding principles and definitions;

I. Access to fair procedures including the right to be heard and to participate in proceedings;

II. Access to justice in detention;

III. Access to justice for economic, social and cultural rights;

IV. Access to justice in the protection of their right to private and family life;

V. Redress through international human rights bodies and mechanisms;

VI. Practical handbook for lawyers when representing a child.

The modules are available in English, Spanish, Greek, Bulgarian, German and Italian.

FRA EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS

MIGRATION: KEY FUNDAMENTAL RIGHTS CONCERNS

1.10.2020 → 31.12.2020

QUARTERLY BULLETIN

3 Key fundamental rights concerns
6 Legal developments
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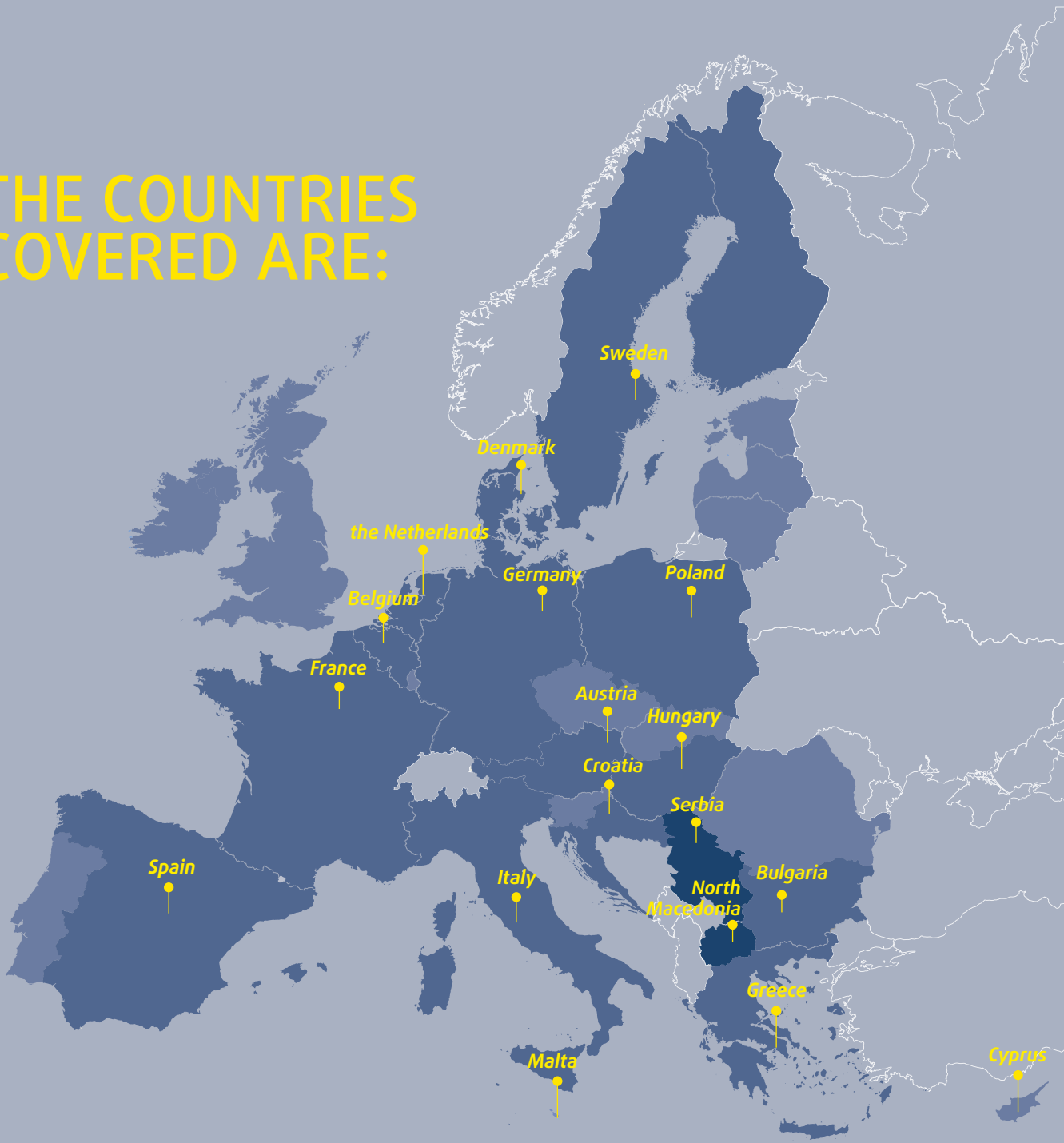
28 Stakeholders contacted for information (December 2020)

The EU Agency for Fundamental Rights has been regularly collecting data on asylum and migration since September 2015. This report focuses on the fundamental rights situation of people arriving in Member States and EU candidate countries particularly affected by migration. It addresses fundamental rights concerns between 1 October and 31 December 2020.

THE COUNTRIES COVERED ARE:



Key fundamental rights concerns

Key emerging fundamental rights concerns

ECRE noted that, in **Greece**, the new **regulation** for the operation of temporary reception and accommodation structures introduced controversial confidentiality clauses for all staff, including NGO staff and volunteers working in these structures. These require them not to disclose information they gather. Meanwhile, **media** reported that a three-year-old girl was raped in the Mavrovouni camp on Lesvos.

The **report of the United Nations Secretary General** on the UN operation in **Cyprus**, covering the second half of 2020, notes that 243 persons aboard six boats were either pushed back on the high seas by the Republic of Cyprus or, for those who had reached its shores, deported to Lebanon without having been granted access to asylum procedures.

UNHCR noted that measures to protect public health resulted in asylum applicants living in inadequate conditions in closed and overcrowded camps in Pournara and Kofinou. Requests for the release of vulnerable people, including seriously ill patients, required approval by the Interior Minister. The **Commissioner on Administration and the Protection of Human Rights** found the tent-based quarantine area in Pournara inadequate and exposing unaccompanied children or other vulnerable people to protection risks. The **Commissioner for the rights of the child** expressed concern about the transformation of both Pournara and Kofinou camps into closed centres and asked for clarification of the necessity and proportionality of the measures. Due to issues with the registration of new arrivals, as of November, people slept for several days on the pavement outside the immigration office, the NGO **KISA** reported.

In **Austria**, **UNHCR** warns of increased poverty among families eligible for subsidiary protection. When beneficiaries of subsidiary protection lose their jobs, they lose their entitlement to **family allowances** and **childcare benefits,** including special Covid-19 support of 360 Euros per child. They only receive basic-care support if they are in need.

In **Spain**, despite **significant** measures taken – including the creation of the new first-reception facility Barranco Seco – and others **planned**, reception conditions on the Canary Islands remain inadequate. The Ombudsperson said that conditions at the Arguineguin camp in Gran Canaria jeopardise physical integrity, and **called** for its immediate closure. More than 1,700 people had to sleep on the ground, were deprived of liberty for more than 72 hours waiting for their Covid-19 test results, and had no access to legal aid. The mayor of Mogán, where Arguineguin is located, filed a **complaint** against the Spanish government for failing to ensure reception conditions in line with human rights. In the meantime, the camp was **closed**. Some arrivals were accommodated on a **ship** before being relocated to centres run by the Red Cross.

In **Denmark**, the **Danish Parliamentary Ombudsperson** noted serious delays in processing cases on, for example, family reunification and permanent residence permits. Among applicants whose cases were decided on by the Immigration Appeals Board during the first six months of 2020, almost half had waited for over one year – and some for two years – for a decision.

Note on Quarterly Bulletins

This quarterly bulletin is the last edition of its kind. FRA is currently assessing in what format to provide future updates on this topic.

Note on sources

The evidence presented in this report is based on information available in the public domain (with hyperlinks to the references embedded on the relevant text) or on information provided orally or via e-mail by institutions and other organisations, as indicated in the Annex.

Key persisting fundamental rights concerns

In **Greece**, reception conditions in the Mavrovouni camp on Lesvos remain dire as thousands of asylum applicants live in tents without heating, exposed to harsh weather conditions. In mid-December, heavy rainfalls flooded parts of the camp, according to **NGO** reports. The NGO **Human Rights Watch** expressed concerns over a risk of lead poisoning, as the camp was built on a former military firing range. The Greek authorities **announced** that the hotel scheme for asylum applicants came to an end. The closure of PIKPA in Lesvos, a facility offering dignified accommodation to vulnerable persons, led 27 humanitarian organisations to issue a **joint statement** calling on the Greek authorities to "respect humanity and dignity".

In **Malta**, detention centres remain overcrowded with little access to clean water and sanitation, according to the **media** and the **UN Office of the High Commissioner for Human Rights** (OHCHR). The **OHCHR** reported multiple incidents of self-harm and suicide attempts in the detention centres, showing that mental health among migrants is a persisting concern, as highlighted also by the NGOs KOPIN and the African Media Association.

In **Cyprus**, Caritas **reported** an increase in homelessness amongst asylum applicants. Finding accommodation outside the camps is difficult. Landlords do not want to rent apartments to applicants, including because they reportedly experience delays in receiving rental payments from the social welfare services.

Migrant smuggling remained a persisting concern in **Hungary**. Detected cases increased during the reporting period – despite the re-introduction of border restrictions triggered by the second wave of the Covid-19 pandemic. According to the police, during the reporting period, the authorities placed into custody 166 human smugglers – a rise compared to the previous period (130 people). In most cases, people were smuggled in **cars**, the **cargo space of lorries**, as well as **cargo wagons of trains** crossing the border from Serbia and Romania and **small boats** crossing the river Tisza.

In **Croatia**, the Office of the Ombudsperson continues to receive complaints about the ill-treatment of migrants and refugees by the police. On Croatian television, the **EU Commissioner for Home Affairs**, Ylva Johansson, and, on Twitter, the **Council of Europe Commissioner for Human Rights**, Dunja Mijatović, underlined the importance of respecting human rights at EU borders and called for investigations and sanctions for those found guilty.

In **Poland**, according to the **NGO Helsinki Foundation for Human Rights**, access to asylum at border-crossing points remains a persisting concern, with a new case referred to the ECtHR (***J.S. v. Poland***).

In **France**, the Public Defender of Rights and several NGOs informed FRA of several persistent problems. These include: continued dangerous sea crossings over the Channel to the United Kingdom; summary returns and denial of access to the asylum procedure at the borders with Italy and Spain, also involving unaccompanied children; practical obstacles to lodging asylum applications at the prefectures; as well as further deteriorating living conditions for people staying in informal camps in the North of France, who also continue to face police violence.

North Macedonia has still not set up a fully-fledged protection-sensitive migration-management system, according to a European Commission 2020 report on the country. The arbitrary detention of migrants in the "Gazi Baba" centre to ensure their testimony as witnesses in court cases against smugglers continued. The European Commission noted progress in the implementation of standard operating procedures for unaccompanied and separated children and vulnerable persons.

Serbia needs to improve access to the asylum procedure and provision of information to applicants, according to the European Commission's 2020 **report** on the country. At the Belgrade international airport Nikola Tesla, the special procedures envisaged by the law on asylum have not yet been implemented, and adequate accommodation is lacking. The report also notes that legal changes are needed on effective access to the asylum procedure, appeal bodies, legal aid and on the safe-third-country procedure.

In numbers

In **North Macedonia**, there has been only one positive asylum decision since December 2018. Specifically, in 2019, one person was granted subsidiary protection status.

Legal developments

Case law of the Court of Justice of the European Union (CJEU)

In *European Commission v. Hungary* (**C-808/18**), the CJEU found that **Hungary** failed to fulfil its obligations under EU law on four different grounds. First, Hungary violated the Asylum Procedures Directive (**Directive 2013/32**), insofar protection seekers arriving through Serbia were allowed to submit applications for international protection only in transit zones with a very limited access, rendering access to asylum virtually impossible. Second, Hungary violated the Asylum Procedures Directive and the Reception Conditions Directive (**Directive 2013/33**) for systematically detaining applicants for international protection, not issuing detention orders in writing, not providing adequate support to vulnerable individuals and not limiting detention of children to only a measure of last resort.

Third, Hungary was in breach of the Return Directive (**Directive 2008/115/EC**) for returning migrants in an irregular situation without issuing a return decision and not respecting the safeguards. Finally, Hungary violated the right to an effective remedy under the Asylum Procedures Directive by not allowing asylum applicants whose claims were rejected at first instance to remain on its territory until the expiry of the time limit to appeal or, when an appeal was brought, until a decision on it had been taken.

In a preliminary ruling requested by a court in **Germany** (*EZ v. Bundesrepublik Deutschland* – **C-238/19**), the CJEU clarified the meaning of 'acts of persecution' consisting of prosecution or punishment for refusal to perform military service under the Qualification Directive (**Directive 2011/95/EU**). The CJEU clarified that, in the context of civil wars where war crimes or crimes against humanity are systematically committed, it should be assumed that the performance of military service would entail the direct or indirect commission of said crimes.

In a preliminary ruling requested by a court in **Spain** (*MO v. Subdelegación del Gobierno en Toledo* – **C-233/19**), the CJEU ruled that national authorities cannot adopt and enforce a removal order relying directly on the Return Directive (**Directive 2008/115/EC**), when the application of national law would lead to a different outcome, namely the imposition of a fine, instead of removal.

In a preliminary ruling requested by a court in the **Netherlands** (*R.N.N.S. and K.A. v. Minister van Buitenlandse Zaken* – joined **cases** C-225/19 and C-226/19), the CJEU stated that when a Member State rejects a visa under the EU Visa Code (**Regulation (EC) No. 810/2009**) due to an objection of another Member State, the decision of refusal should indicate: i) the identity of the objecting State, ii) the ground for refusal and the essence of the objection, iii) the competent authorities to obtain information on available remedies. The CJEU specified that an appeal should be brought before the refusing Member State if it relates to procedural guarantees and before the objecting Member State if it relates to the substantive legality of the objection.

Case law of the European Court of Human Rights (ECtHR)

In ***M.A. v. Belgium***, the ECtHR found that the **Belgian** authorities violated Article 3 of the ECHR by removing the applicant without assessing the risk of ill-treatment in the country of return. The assessment under Article 3 should take into account the general situation in the country of removal, as well as the practical obstacles in accessing asylum, such as being informed of the procedure in a familiar language and being granted access to a lawyer.

Decisions of United Nations (UN) human rights treaty bodies

M.B v. Spain (**CRC/C/85/D/28/2017**) concerned a child who was placed in a social residence for adults because the authorities considered his birth certificate to be false as it lacked biometric data. The UN Committee on the Rights of the Child (CRC) stated that documentation presented by children enjoys a presumption of authenticity. It further highlighted that age assessment procedures only relying on the physical features of children, without assessing their psychological maturity, fell short of standards of safety, child and gender sensitivity, as well as scientific reliability.

In *Denny Zhao v. The Netherlands* (**CCPR/C/130/D/2918/2016**), the UN Human Rights Committee found that **the Netherlands** violated Article 24 of the ICCPR (rights of the child) for registering "nationality unknown" in a child's civil records. Under Dutch law, this left him unable to be registered as stateless and therefore be given international protection. The mother of the child was born in China but was not registered in the civil registry and was therefore unable to obtain proof of Chinese citizenship.

National legal developments

In **Italy**, **Law No. 173** of 18 December 2020 partially reformed the law governing the activities of NGO vessels undertaking search and rescue (SAR) operations in the Mediterranean Sea. It provides that disembarkation can be refused only on grounds of public order and safety or in case of violations of anti-smuggling legislation. The refusal can be avoided if the vessels promptly communicate their rescue operations to the responsible Rescue Coordination Centre and comply with the instructions of the competent authorities. A violation of the prohibition to disembark is punishable with a fine of EUR 10,000 - 50,000 and imprisonment of up to two years. Other administrative sanctions, including confiscation of the vessel, were abolished.

In **Bulgaria**, **major amendments** were introduced to the Asylum and Refugees Act. The representation of unaccompanied children shifts from the municipal representatives, who lacked capacity, to lawyers from the National Legal Aid Bureau. The State Agency for Child Protection is authorised to monitor reception and protection measures for children. The amendments bring a number of changes to the asylum procedure, including on "safe third countries". Regarding the latter, the **European Commission** expressed some concern about effective remedies.

Policy developments

According to the media, **Greece**, **Italy**, **Malta** and **Spain** signed a **joint declaration** calling for more EU solidarity from the rest of the EU. The group also stressed the need to boost agreements with third countries to tackle irregular immigration.

In **Malta**, **Identity Malta**, a governmental agency in charge of residence permits, **updated** the requirements to obtain a Specific Residence Authorisation (SRA). Rejected asylum applicants who entered the country before 1 January 2016 are entitled to it, provided they lived in Malta for at least five years, worked for at least nine months per year, demonstrate 'good conduct', and prove their integration efforts through language certificates, integration course certificates or a formally submitted integration request. In a joint **statement**, 25 NGOs criticised the revised policy, as those wishing to obtain such status had only one month to apply. NGOs were further concerned over the lack of consultation on the policy change. Unsuccessful SRA applicants are offered a **voluntary return programme, according to the media**.

In **Poland**, a **coalition** of Polish NGOs sent **a letter** to the Ministry of Interior and Administration, accusing the Government of lack of transparency concerning plans for a new migration strategy; **the Polish Ombudsperson** urged the minister to consult with civil society and human rights actors.

France and Morocco signed a joint declaration on the protection of unaccompanied children, the **Ministry of Justice announced**. Multiple NGOs, including Amnesty International France, the League for Human Rights and GISTI, voiced criticism about the lack of consultation and transparency when drafting this document.

The government in **Belgium** adopted a **new strategy on migration and asylum**. It is based on respect for international and European law; the protection of vulnerable persons; quality reception arrangements; the fight against irregular stays; and tackling abuse. New actions envisaged include: support to the protection of EU external borders; external audits of all migration and asylum services; gradual digitalisation of the asylum procedure; increased use of voluntary departure; ending immigration detention of children; applying more alternatives to detention; building additional pre-removal detention capacity; and ensuring full respect of the prohibition of torture and other forms of ill-treatment, and the right to family life in return procedures.

Situation at the border

The EU Member States adopted a **Council Recommendation** on a coordinated approach to the restriction of free movement in response to the Covid-19 pandemic.

Figures and trends

According to **preliminary Frontex data**, some 124,000 people crossed the EU's external borders in an irregular manner in 2020, which is 13 % less than in 2019. This was the lowest number of irregular border crossings since 2013. Syrians remained the most frequently reported nationality. With over 22,600 people, the Canary Islands experienced a record number of arrivals in 2020.

According to IOM data provided to FRA, 515 people died or went missing while attempting to enter Europe through the Eastern, Central and Western Mediterranean routes between October and December 2020, a sharp increase compared to the previous reporting period (301 between July-September 2020). The Central Mediterranean route remains the **most dangerous** migration route in the world, claiming 367 out of 515 deaths. In addition, eight deaths were recorded in the English Channel. IOM also recorded five deaths on land routes in the EU territory (1 death in Greece, 2 deaths in Italy, 2 deaths in France); and six deaths on the Western Balkan route (five deaths in Bosnia and Herzegovina and one in Serbia).

Challenges at sea borders

In **Greece**, three women **died** in two different incidents involving migrant boats off the island of Lesvos, according to the **Hellenic Coastguard**.

In **Italy**, in a **meeting** with its Libyan counterpart, the Ministry of the Interior confirmed its commitment to a close partnership with Libya. The two authorities stressed the need to work out a comprehensive bilateral strategy of humanitarian evacuations from Libya to Italy and of voluntary returns from Libya to countries of origin.

In **Italy**, the associations *Association for Juridical Studies on Migration (ASGI)*, *Tunisian Forum for Economic and Social Right* and *Lawyers Without Borders* **submitted** a Freedom of Information request to the Italian and Tunisian governments after the non-publication of an agreement between the two countries. The agreement envisaged the Italian economic support of € 11 million for the strengthening of border control systems and training of security forces aimed at preventing the departure of migrants and intercepting vessels in Tunisian territorial waters, as reported by the **press**.

In **Malta**, humanitarian search-and-rescue vessels were unable to go to sea due to border restrictions and closures on grounds of Covid-19, as reported by the **UN Office of the High Commissioner for Human Rights**.

France and the United Kingdom agreed to establish a **new joint operational plan** to stem irregular sea crossings via the Channel. Measures include increased law enforcement deployments to prevent and investigate irregular sea crossings; deployment of modern surveillance technology; helping migrants find appropriate accommodation to evade smugglers; and enhanced border security. The French Ministry of the Interior also **announced** that that the United Kingdom will financially support these efforts with € 31.4 million.

In **the Netherlands**, the House of Representatives adopted a **motion** urging the government not to support the **European Commission's Guidance on the implementation of EU rules on the definition and prevention of the facilitation of unauthorised entry, transit and residence**, which is part of the new EU Pact on Migration and Asylum. The motion aims to allow the criminalisation of search-and-rescue operations by NGOs, a practice which the guidance deems to be in breach of international and EU law.

Challenges at land borders

In **Italy**, the Ministry of Interior **reported** that the Italian and French police started a 6-month pilot project deploying joint border police teams to patrol the border between the two countries. In the first operation, two third-country nationals were arrested when attempting to irregularly cross the border from France to Italy.

In **Hungary**, the **police** prevented 8,291 people from crossing its southern fenced border (three times as many as in the previous reporting period, July to October 2020). **New underground tunnels** were also discovered along the border fence at the border with Serbia. In response, according to **media** reports, the Ministry of the Interior started building underground fences along the Hungarian-Serbian border, of which a 10-km-long section was completed in October. The **police reported** that a group of some 120 migrants violently attempted to cross the border fence from Serbia at the end of December.

In **Poland**, according to the Polish Border Guard, Belarusian citizens who meet specific requirements are permitted to enter the country, while entry for people with other nationalities is currently restricted due to Covid-19-related measures.

In **France**, there were more attempts by migrants to board vehicles heading to the United Kingdom, the NGO **the Migrant Service in Calais** reported. This also led to police using force, including beating people with truncheons, and using tear gas and police dogs, according to the same source. Representatives of the National Assembly and the **European Parliament visited the Franco-Italian internal border** in December, finding that border police systematically issue refusals of entry also to people who have expressed the wish to claim asylum in France. Several NGOs, including Amnesty International and *Médecins du Monde*, **submitted a joint report** to the UN Committee on the Rights of the Child about the inappropriate treatment of unaccompanied children at the French borders. The **Administrative Court of Nice** found unlawful the refusal of access for NGOs to provide medical and legal assistance to migrants held in a police station at Menton (at the Italian border).

Risk of *refoulement* and police violence at borders

The NGO Border Violence Monitoring Network (BVMN) published the "**Black Book of Pushbacks**" documenting hundreds of pushbacks at the EU's external borders since 2017. The 1,500-page book presents 892 group testimonies, detailing the experiences of 12,654 people and the violence endured in **Italy**, **Greece**, **Croatia**, **Slovenia** and **Hungary**.

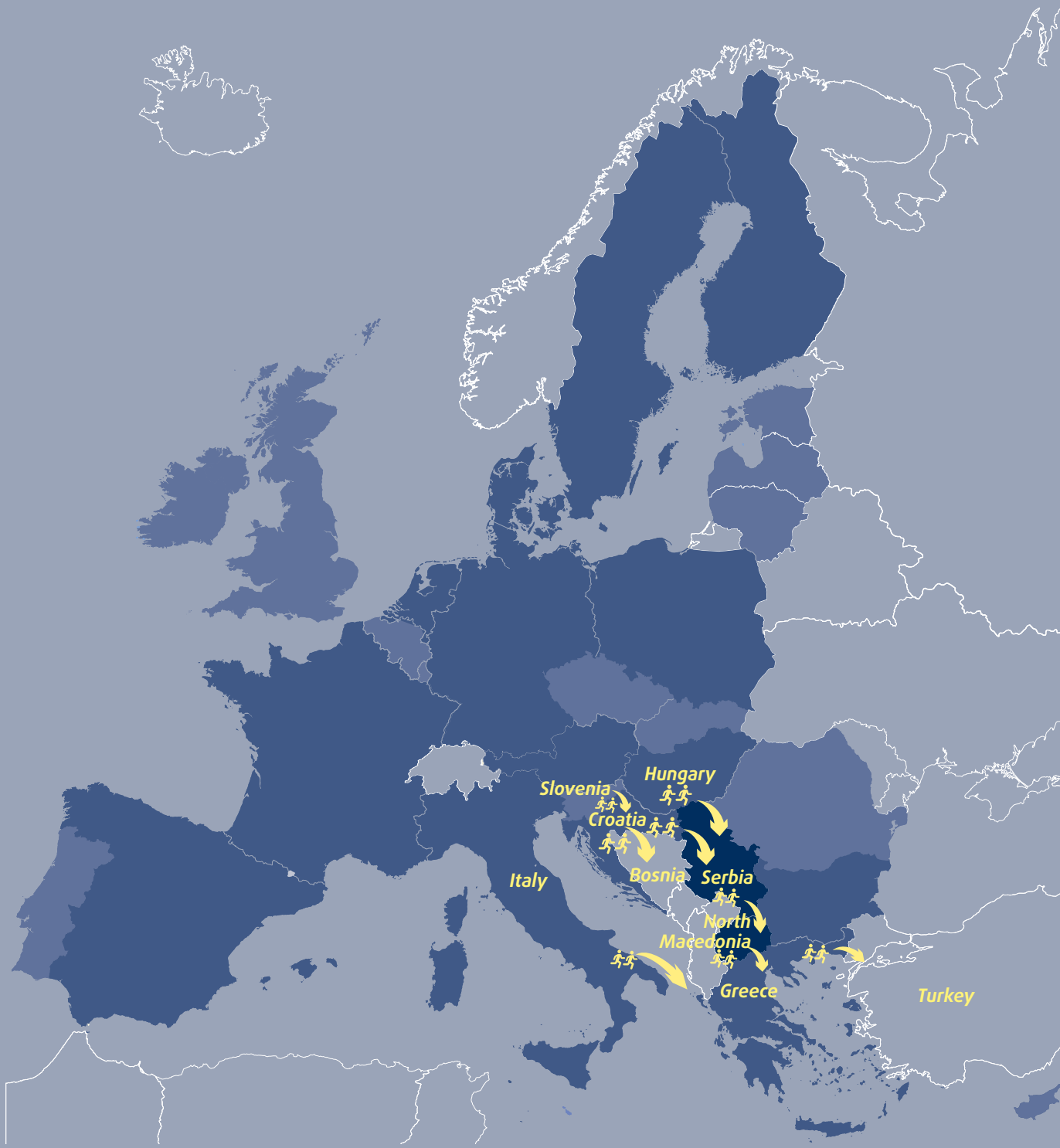
The Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) published a **report** on its ad hoc visit to **Greece**, which took place from 13 to 17 March 2020. The CPT reports consistent and credible allegations of migrants being pushed back across the Evros river to Turkey. The Committee also raised concerns over acts by the Hellenic Coast Guard to prevent boats carrying migrants from reaching Greek islands and questioned the role and engagement of Frontex in such operations.

Legal corner

The principle of *non-refoulement* is the core element of refugee protection and is enshrined in international and EU law. Article 33 (1) of the 1951 Refugee Convention and the authentic interpretation of Article 3 of the European Convention on Human Rights (ECHR) prohibit returning an individual to a risk of persecution, torture, inhuman or other degrading treatment or punishment. EU primary law reflects the prohibition of *refoulement* in Article 78 (1) of the Treaty on the Functioning of the EU (TFEU) and in Articles 18 and 19 of the EU Charter of Fundamental Rights.

The non-legal term *push-back* is used when a person seeking international protection is apprehended and returned back to a neighbouring country without being granted access to the territory and to a fair and efficient asylum procedure.

REPORTED ALLEGATIONS OF *REFOULEMENT*



Note: Unlawful refusals of entry at airports are not included.
Source: FRA, 2020

The report also includes a number of ill-treatment allegations against the police and the coastguards, such as slaps to the head and kicks and truncheon blows to the body. A **joint investigation** by Bellingcat, Lighthouse Reports, Der Spiegel, ARD and TV Asahi claims that FRONTEX vessels were either directly or indirectly involved in pushbacks from Greece to Turkey. The NGO **Human Rights 360** highlighted that allegations also concerned registered asylum applicants, reporting that an Afghan applicant was apprehended 700 km away from the Evros border and subsequently brought back to Turkey.

A group of people brought back to Libya from Malta in April 2020 initiated constitutional proceedings in **Malta**, the **media reported**.

In **Hungary, the police apprehended** 12,199 migrants in an irregular situation during the reporting period – twice as many as in the preceding period. The police escorted the migrants back to the outer side of the border fence. Authorities do not fingerprint or register these individuals before escorting them back to the border, nor do they record them as new arrivals or asylum applicants in the statistics. If they wish to ask for asylum, the **police direct them to the designated Hungarian diplomatic missions** located in Belgrade (Serbia) and Kiev (Ukraine). The **European Commission opened an infringement procedure** against Hungary by sending a letter of formal notice on the incorrect application of the EU asylum acquis.

In **Croatia**, according to the **Centre for Peace Studies (CPS) and media reports**, push-backs at the Croatian external borders continued. CPS submitted two criminal complaints concerning two incidents against unknown police officers, based on a reasonable suspicion that they held 13 migrants, including two children, in detention and then handed them over to ten armed men, dressed in black uniforms and balaclavas. The men allegedly tortured, humiliated and, in one case, sexually abused migrants before pushing them back to Bosnia and Herzegovina. The **Border Violence Monitoring Network** (BVMN) published a video of similar ill-treatment.

The Croatian Ministry of the Interior **denies** all accusations, pointing out that they are the first EU Member State which opened discussions with the European Commission, FRA and other stakeholders with a view to establishing an independent monitoring mechanism for actions taken at their border.

The **Slovenian** Asylum Working Group and the Workers' Counselling Association submitted a **complaint** regarding Slovenia's responsibility for the torture of migrants pushed back to Croatia **to the UN Committee against Torture**.

In **Spain,** on 22 December 2020, the **Constitutional Court** found constitutional the provisions in the Aliens Law that regulate the automatic return to Morocco of third-country nationals scaling the fence in Ceuta and Melilla. The court recalled the safeguards in the Aliens Law, whereby these provisions must be applied in conformity with national and international law. It also underlined the need to take account of peoples' vulnerabilities and that there must be real and effective legal entry procedures to access asylum.

In **North Macedonia**, the practice of collective expulsions at the border with Greece continues, the Ombudsperson, the NGO Legis, the Jesuit Refugee Service and the NGO EUROTHINK reported to FRA.

UNHCR noted that 159 persons were reportedly pushed back from **Serbia** to North Macedonia in October 2020, and that 30 were pushed back in November. A **total** of **10,900 pushbacks** from neighbouring countries into Serbia were reported for the months of October, November and December 2020.

FRA activity

Analysing the fundamental rights situation at the EU's external land borders

In December 2020, FRA published a report on '*Migration: Fundamental rights issues at land borders*'. The report describes the applicable EU law governing border controls and clarifies how EU countries' duty to protect their borders can affect fundamental rights. It reviews different aspects of border management, such as border surveillance, preventing irregular border crossings, and checks at border crossing points.

The report is available on **FRA's website**.

Asylum procedure

Figures and trends

According to the **European Asylum Support Office (EASO)**, between January and November 2020, 422,000 applications for international protection were lodged in the EU+, a 31 % decrease compared to the same period in 2019. This indicates that reduced mobility and Covid-19 pandemic-related emergency measures are still affecting the number of applications lodged with national asylum authorities. The share of applications lodged by unaccompanied children in November was 5 %, remaining approximately the same as the previous month. In November 2020, Syrians (5,787 or 14 % of the total), Afghans (5,365 or 13 %), Pakistanis (2,068 or 5 %) lodged most applications. EASO notes that the EU+ recognition rate for EU-regulated types of protection at first instance was 35 % in November 2020, up one percentage point compared to October.

In **Croatia**, according to information provided by the Ministry of the Interior to FRA, between 1 October and 31 December 2020, 561 applications for international protection were submitted and eight applications for international protection were granted.

In **Austria**, the number of asylum applications has risen again, according to the **Austrian Asylum Statistics**. In November 2020, 1,453 asylum applications were filed, an increase of almost 38 % compared to November 2019.

In **Poland**, **the Office for Foreigners** registered in 2020 the lowest number of applications for international protection since 1999. However, the number of Belarusian citizens filing asylum applications increased (407 in 2020, of which 240 were filed between October and December).

In **Spain**, according to the **Ministry of the Interior**, in 2020, asylum authorities decided on 116,614 applications for international protection – nearly **double** the 2019 figure (62,592 decisions).

Access to asylum procedures

In **Greece, legal aid organisations** raised concerns regarding the implementation of remote asylum interviews in Lesvos. The issues raised include notifications at very short notice, technical issues during the interviews, facilities not ensuring confidentiality, lack of measures against Covid-19, and lack of access to transcripts of interviews for applicants without a lawyer.

In **Italy**, the **Law-Decree** No. 130 of 21 October 2020, converted with amendments into **Law No. 173** of 18 December 2020, introduced a two-year residence permit for "special protection" for third-country citizens whose removal would pose a risk of inhuman and degrading treatment, as well as of a violation of the right to life, family unity and health.

In **Malta**, a significant backlog of cases persists, with some applicants waiting up to two years for their case to be assessed, according to the NGO KOPIN.

In **Austria**, the **Federal Minister of the Interior** announced that, on 1 December 2020, the new Federal Agency for Care and Support Services became responsible for the reception of asylum applicants at federal level. In 2021, the work of the agency will also include legal counselling and representation for asylum applicants, return counselling and assistance, human rights monitoring as well as translation and interpreting services. **Media** outlets and **NGOs** voiced concern about the agency's independence given that it is part of the federal government.

In numbers

In **Austria**, 60 % of all cases before the Constitutional Court in 2019 involved legislation relating to asylum and aliens.

See Federal Ministry of Finances, **Strategy Report 2021 to 2024**.

Bright spots

In **Malta**, the **International Protection Agency** developed guidance on the fast-tracking of vulnerable applicants in need of special procedural guarantees, as well as guidance on claims based on sexual orientation and gender identity.

In **France**, several NGOs, including the League of Human Rights and *La Cimade*, **initiated a class action** before the Council of State (*Conseil d'Etat*) to require prefectures to issue timely appointments to people seeking asylum. They criticised widespread practices, due to online appointment scheduling, which 'invisibly' block people from accessing asylum procedures, who are thus at risk of being arrested, detained and removed.

In Mayotte – a French overseas department in the Indian Ocean – when the prefecture registers asylum applications, applicants do not get appointments until over four months later. This practice deprives asylum applicants of documents proving the legality of their stay and exposes them to a risk of arrest and removal at any time, the NGOs ***La Cimade*** and **GISTI** stated. According to the same NGOs, the prefecture of Mayotte even conducted apprehensions near NGOs and other places receiving vulnerable persons in an irregular situation.

In **Belgium**, the **Council of State suspended the practice** of the Office of the Commissioner General for Refugees and Stateless Persons to conduct asylum interviews via videoconference, as this would require a royal decree.

In **Spain**, UNCHR reports long waiting times for first appointments to apply for asylum. In Girona or Lugo, for example, appointments are scheduled only for 2022. Applicants also face difficulties to renew their documentation due to Covid-19 restrictions. They are generally unaware of the rights they may be entitled to in line with **Order 9/2020 of the Directorate-General of the Police**, especially concerning work authorizations. A new form of documentation when formalising the application with a validity of three months has been issued throughout Spain since the end of 2020; however, there is no public reference to this new practice.

A **Supreme Court judgment** recognised the right to apply for asylum at Spanish embassies abroad in certain circumstances in line with the **Law on Asylum** (Article 38), but also noted the lack of regulatory development concerning this option. The case concerned a Kurdish-Iraqi family who arrived in Greece in 2016. The mother and daughters were relocated to Spain. The father applied for asylum at the Spanish Embassy in Greece in 2017, but had not received a response.

The **Swedish** Federation for Lesbian, Gay, Bisexual, Transgender, Queer and Intersex Rights **reported** that the migration authorities base their assessments of asylum applicants' sexual orientation, gender identity or gender expression on requirements contravening the Swedish Migration Agency's judicial guidelines, UNHCR guidelines, and the CJEU's case law.

In **the Netherlands**, the **District Court of The Hague** and the **Administrative Jurisdiction Division of the Council of State** ruled in two different cases that it is possible to be granted asylum in the Netherlands even if a person already enjoys protection status in Bulgaria.

Bright spots

In **Sweden**, to accelerate asylum procedures, the government allocated additional funding to migration courts in 2021.

Family reunification

In **Austria**, the Red Cross reported to FRA that procedures for family reunifications are taking longer than usual, because the laboratories that usually perform DNA tests to establish family relationships are currently busy with Covid-19 tests.

In **France**, due to the Covid-19 pandemic, hundreds of foreign families remained unable to join their relatives in France, even though they have been authorised to do so. Nine NGOs, including the League of Human Rights, Amnesty International France and ANAFÉ, **filed a class action** before the Council of State (*Conseil d'Etat*) to challenge the non-issuing of family reunification visas.

In **Germany**, family reunification remains limited, due to corona-related delays in visa processing. According to **the German Foreign Ministry**, the waiting time for an appointment is between 18 weeks to over one year. In addition, corona-related unemployment lowers the chances of earning sufficient income to secure one's livelihood, a precondition for family reunification. Family reunification with persons entitled to subsidiary protection is limited to **1,000 people per month**. If the quota is not exhausted, it expires.

Bright spots

In **Italy**, the **Tribunal of Rome** recognised that the right to family reunification also applies to adopted offspring, when a stable household can be demonstrated. A different interpretation would violate the right to family unity and not be in the best interests of the child.

The court also stressed that DNA testing must be considered as a measure of last resort, when official documents or other evidence proving a family relationship is missing or unavailable.

Bright spots

In **Austria**, according to the Federal Ministry of the Interior, as a Covid-19-related safety measure, the maximum occupancy rate at reception centres is 75 %.

Caritas Styria also reports to FRA that persons who receive a negative asylum decision may currently remain in the reception centres due to the Covid-19 crisis.

In **Malta**, the **Agency for the Welfare of Asylum Seekers** (AWAS) reported having improved the conditions in AWAS centres throughout 2020. Among others, they set up a quality assurance department, introduced internet access in all AWAS centres, and initiated two pilot community projects.

In addition, AWAS formed a new Information and Guidance Service, as well as a new service called UAMs (Unaccompanied Minors) Protection Service, which follows unaccompanied children more closely in the specialised reception centres.

Reception

Reception capacity

Sufficient reception capacity was available in **Austria**, **Belgium**, **Bulgaria**, **Croatia**, **Denmark**, **Germany**, **Hungary**, **Poland**, **Sweden** and **North Macedonia**.

In the reporting period or parts thereof, reception facilities in **France**, **Italy**, **Malta**, **the Netherlands**, **Spain**, and **Serbia** were (almost) full or overcrowded. In **Greece** and in **Cyprus**, some facilities remained severely overcrowded.

Reception conditions

In **Greece,** the **European Commission** agreed on a detailed plan with Greek authorities and EU agencies to establish a new, up-to-standard reception centre on the island of Lesvos by September 2021. The memorandum sets out the respective responsibilities and areas of cooperation between the Commission, the Greek authorities and EU agencies. The areas of cooperation include the development and construction of a reception centre; improved management of arrivals; seamless asylum and return procedures and integration measures; reception conditions in line with EU law; and staff training, capacity and planning.

In **Italy**, the **Law-Decree** No. 130 of 21 October 2020, converted with amendments into **Law No. 173** of 18 December 2020, reintroduced the right of asylum applicants to stay in second-level reception centres. These will be divided into two types: one hosting asylum applicants and another hosting beneficiaries of international protection. While basic services – such as legal and health assistance and language courses – will be provided to all people accommodated in reception facilities, access to professional training, labour-market orientation and housing services will be available only to protection-status holders. The Italian Refugee Council (CRI) **criticised** the reform, stating that asylum applicants should access qualified services facilitating their inclusion and integration as soon as they arrive on the Italian territory.

In **Italy**, the Authority for the Protection of People who are Detained or Deprived of their Personal Freedom **noted** that some 1,195 people were kept on five quarantine vessels, as of 27 November 2020. Some 150 civil-society organisations, experts and academics **expressed concern** over the use of quarantine vessels.

In **Malta**, homelessness continues to increase due to evictions from open centres as well as job losses and difficulties in finding stable work, according to the **media**.

In **Cyprus**, the food coupons system phased out. Asylum applicants are now entitled to cash deposited to bank accounts or sent by post. The Cyprus Refugee Council told FRA that applicants faced practical difficulties in opening bank accounts, with banks asking for excessive documentation. Following interventions by NGOs, the Central Bank issued detailed instructions to resolve the issue.

In **Cyprus**, the Interior Minister **issued an order** prohibiting new asylum applicants from settling in the village of Chloraka in Paphos, on grounds of public order and public interest. The **president of the ruling party** as well as **media reports** had objected to a larger presence of third-country nationals in the area, with **some media outlets** linking them to increased criminality.

In **France**, the **Police Prefecture of the *Île-de-France* region** ordered the evacuation of informal camps in Paris. Following these operations, some 3,400 people were accommodated elsewhere in the country, the **Ministry of the Interior** stated. The **Public Defender of Rights** and the **General Inspectorate of the National Police** carried out investigations about excessive use of force by police, following witness testimonies and **NGO statements**.

In **Belgium**, upon a class action initiated by a **group of NGOs**, the Francophone Tribunal of First instance of Brussels ruled that not allowing asylum seekers to get material support from the moment of expressing their intent to request asylum through the online registration system, put in place in response to the Covid-19 pandemic, was unlawful. Following the court's judgment, the Immigration Office **discontinued the online system and reinstated** the in-person registration of asylum applicants.

In **Germany**, according to information provided to FRA by the United Nations High Commissioner for Refugees, the German Red Cross, the Berlin Refugee Council and the Federal Workers' Welfare Association, measures to counter the spread of Covid-19 continue to affect asylum applicants particularly hard. Unreliable internet connections and lack of access to computers leads to children doing their schoolwork on cell phones and adults being unable to participate effectively in their online integration courses.

In **Sweden**, the **Supreme Administrative Court** found that persons who are not assigned to a municipality for settlement upon being granted a residence permit still have the right to assistance, including accommodation. Thus, persons granted temporary residence permits, for example due to temporary impediments to return, can remain in the reception centres and receive daily allowances.

In **North Macedonia**, due to the measures imposed against Covid-19, only basic services were provided in the reception facilities, and there was no additional support for vulnerable persons, the Jesuit Refugee Service and the NGO Legis reported to FRA. According to a **report** published by NGO Legis, persons in quarantine can leave their rooms only for hygiene purposes and accompanied by two police officers. They have no access to fresh air and outdoor exercise. Children in reception centers did not go to school during the reporting period, the Jesuit Refugee Service reported to FRA.

Vulnerable groups

In **Italy**, the NGO "Doctors for Human Rights" **published** a study on posttraumatic stress disorder (PTSD) among refugees and asylum applicants. The study concludes that overcrowding, geographical isolation, prolonged stay, length of legal proceedings, as well as episodes of violence particularly in large reception centres, have detrimental effects on asylum seekers' and refugees' mental health. In a **public appeal**, 18 civil society organisations – including MEDU, ASGI, Action Aid, Oxfam, and Refugees Welcome Italia – call for a policy that avoids the use of large reception facilities.

In **Croatia**, the NGO *Médecins du Monde*-BE noted a rise in the number of asylum statuses granted to applicants who were victims of gender-based violence in their countries of origin.

In **Germany**, the **Federal Working Group of Psycho-Social Support Centres for Refugees and Victims of Torture** criticises the complicated bureaucratic requirements to access the German health system for asylum applicants. The rejection rate of psychotherapies for asylum applicants is almost seven times higher than for patients with statutory health insurance. The waiting time for psychotherapy for asylum applicants is on average seven months. In another **study**, the organisation shows that structured procedures with clear responsibilities for identifying special needs exist in only three out of 16 federal states (Berlin, Brandenburg and Lower Saxony).

In **Sweden**, traumatised applicants continue to face long waiting times to access specific care, according to the Red Cross.

In **Serbia**, migrant victims of sexual and gender-based violence are insufficiently protected, according to the Belgrade Centre for Human Rights. Assistance has been mainly provided by NGOs and remains affected by the Covid-19 pandemic.

Bright spots

In **Cyprus**, residents of closed facilities, and in **Germany**, residents of refugee accommodations, have been deemed priority groups for vaccination against the coronavirus SARS-CoV-2.

In **Spain**, in line with the July 2020 Supreme Court **judgment** confirming the right to free movement in Spain of asylum applicants in Ceuta and Melilla, the Ministry of the Interior **ordered** the State Attorney's Office to stop rejecting applicants' appeals against the restriction of movement to the enclaves, according to the Spanish Commission for Refugees.

In **Germany**, the **Berlin Senate Department for Education, Youth and Family** announced that, as of January 2021, it would lend tablets with a mobile learning tool to children and young people living in youth welfare facilities, including asylum-seeking children.

Child protection

Figures and trends

In **Greece**, according to the **National Centre for Social Solidarity**, as of 31 December 2020, 4,027 unaccompanied children were estimated to be in the country, including 181 separated children (who are accompanied by an adult other than their parents or legal caregivers). Only 1,715 were in appropriate and long-term accommodation (shelters and semi-independent living apartments); 1,080 were in temporary accommodation ('safe zones', emergency accommodation for UAC and hotels); 127 stayed in Reception and Identification Centres; 30 were in 'protective custody', mainly at police stations; and 151 were in open temporary accommodation facilities. EKKA also reports that 924 live in informal or insecure housing conditions, such as temporarily in apartments with others, in squats, or being homeless and moving frequently between different types of accommodation.

In **Italy**, the Ministry of the Interior **reported** that 4,687 unaccompanied children disembarked in Italy in 2020 (compared to 1,680 in 2019).

After closing down the transit zones at the southern border of **Hungary** at the end of May, the police apprehended eight unaccompanied children in an irregular situation, who were transferred to the children's home in Fót near Budapest, the National Headquarters of the Police stated.

In **Croatia**, according to information provided by the Ministry of the Interior to FRA, between 1 October and 31 December 2020, out of 561 applications for international protection, 204 applicants were below the age of 13 and 83 were between 14 and 17. Meanwhile, 34 were unaccompanied.

In **Austria**, the **Federal Minister of the Interior** reported that, between 1 January and 30 September 2020, 888 unaccompanied children (44 of them girls) filed applications for international protection in the country. The same ministry reported to FRA that, as of 1 December 2020, 207 missing children who were third-country nationals were registered in the Schengen Information System. (These included 70 children between the age of 0 to 14, and 137 children between the age of 14 and 18).

In **Spain**, UNICEF reported the presence of about 2,200 unaccompanied migrant children in the Canary Islands protection system in November 2020 – a 300 % increase compared to the beginning of the year. The Canary government as a guardian of these children **urged** to have them transferred to the mainland in view of the overburdened child protection system on the islands, according to media reports.

Age assessment

In **Belgium**, four persons who claimed they were children were detained to determine their age. Due to delays in the age assessment caused by compulsory quarantine, two of them were subsequently recognised as children after spending 20 days in closed detention centres, the Jesuit Refugee Service reported to FRA.

The CRC Committee **found** in several **decisions** that **Spain**'s age-assessment procedures violate migrant children's rights, in particular the right to identity, the right to be heard, and the right to special protection of children deprived of their family environment.

In **the Netherlands**, an Advisory Committee on Migration Affairs **report** urged the Immigration and Naturalisation Service to conduct further investigations when assessing the age of unaccompanied children, instead of relying on the

age assessment conducted by the country of first arrival, as mistakes in the registration procedure are common. Meanwhile, the Inspectorate for Justice and Security concluded in a **report** that the age-assessment procedure for asylum seekers, as carried out by the Immigration and Naturalisation Service, the Aliens Police and the Royal Netherlands Marechaussee, has overall improved.

Relocation

In **Croatia**, a project funded by the EU Asylum, Migration and Integration Fund, called "New Home", intends to relocate 12 unaccompanied children from Greece to Croatia. The project's purpose is to ensure early integration through reception, accommodation, care, psychosocial support, and the inclusion of unaccompanied children in the local community, as well as to provide the children with interpretation and translation services.

Belgium **relocated 11 unaccompanied children** from Greece following the fires in the Moria camp (Lesvos).

In **Germany**, UNHCR **reported** that, by mid-December, over 2,000 refugees, asylum applicants and unaccompanied children had been relocated from Greece, three quarters of them (1,519) to Germany. The media reported about a "**Christmas-plea**" of 243 members of parliament from various parliamentary groups, calling on the federal government to accept more refugees from the Greek islands. In their **open letter**, they point out that more than 200 municipalities as well as some federal states have offered to take in more refugees and asylum applicants than the federal government intends to do.

In **the Netherlands**, the State Secretary for Justice and Security **informed** the House of Representatives about the arrival of approximately 50 refugees from Greece. This is part of the government's **decision** to relocate 50 children and 50 vulnerable adults from the Greek island of Lesvos.

Reception conditions

The Public Defender of Rights in **France** **visited the informal camp near Calais** in September 2020 and noted the "shameful living conditions" of about 1,200 to 1,500 persons still living there. She raised special concerns about the situation of women and children, including unaccompanied children as young as 12 years old. She provided several recommendations for the protection of unaccompanied children and called for effective family reunification for children with relatives in the United Kingdom.

In **North Macedonia**, throughout 2020, some of the unaccompanied children in the Vinojug centre were placed in a room together with unrelated adults, the **Macedonian Young Lawyers Association** noted. According to the same source, guardians did not always have access to children held in Vinojug.

Guardianship

In **Malta**, the Agency for the Welfare of Asylum Seekers (AWAS) reports continued efforts to streamline the process of appointing guardians in cooperation with the Child Protection Services.

In **Croatia,** the NGO Croatian Law Centre reported to FRA that the measures for the prevention of the spread of Covid-19 have restricted, but not prevented, the guardians' access to unaccompanied children under their supervision. The NGO Rehabilitation Centre for Stress and Trauma however mentioned that some children never get the opportunity to meet or talk to their guardian.

In **Sweden**, Save the Children remains concerned over the impact of transfers on children as accommodation centres are closed. Transfers involve the change of schools and loss of friends and networks without sufficiently considering the child's perspective. In 2020 Sweden closed four centres and plans to close another two in 2021, as the number of asylum applicants decrease.

Safeguards and specific support measures

In **Malta**, children in open and reception centres continue to face difficulties in participating in online schooling, according to the NGO **KOPIN**.

In **Austria**, **UNHCR** again stressed that unaccompanied children between the ages of 14 and 18 have to cope by themselves with all aspects of accessing the asylum procedure, such as interrogations by the police, medical examinations and age assessment. Only when children are admitted to the asylum procedure and are transferred to a local basic care quarter, which can take several weeks or months, do child and youth aid services provide support.

In **Poland**, in December 2020, **the Ombudsperson** urged the Polish Minister of National Education to report on measures taken to address the findings of the assessment by the **Supreme Audit Office (NIK)** on the situation of foreign children in Polish schools. Citing the findings of the NIK's report, the Ombudsperson stated that foreign children in Polish schools lack textbooks to learn Polish, struggle to integrate, and several incidents of discrimination against children due to national and ethnic origin have been reported.

In **France**, the **Court of Auditors** pointed out several deficiencies in the childcare system regarding unaccompanied migrant and asylum-seeking children, notably as concerns age-assessment practices in different regions and the lack of capacity to support children. It recommended external audits.

In **Denmark**, a **Committee** set up by the **Ministry of Justice** deemed illegal the Minister of Immigration and Integration's instruction of 2016 to accommodate all asylum-seeking couples separately if one of the couple was below the age of 18, even if the couple had children.

Bright spots

In **Bulgaria**, the Bulgarian Red Cross donated ninety laptops for students and ten laptops for school administrations to the State Agency for Refugees, to support the participation of children living in reception centres in remote schooling.

Immigration detention

Figures and trends

In **Greece**, the Hellenic Police reported to FRA that 2,932 persons, including 1,855 asylum applicants, were detained for administrative purposes in December 2020.

In **Italy**, the Authority for the Protection of People who are Detained or Deprived of their Personal Freedom **reported** that, as of 28 November, the number of detainees in Italian pre-removal centres (CPR) amounted to 450, less than the maximum capacity of 661. Among them, only two people tested positive for Covid-19.

In **Malta**, 1080 persons were held in detention centres as of November 2020, according to **UNHCR Malta**.

In **Cyprus**, as the Menoyia detention centre reached its full capacity, pre-removal detention in police stations resumed, the Cyprus Refugee Council reported to FRA. According to the Cypriot police, in November, out of the 169 detainees, 115 were held in the Menoyia and 54 in police stations. Many detainees in Menoyia have been held there for more than six months.

In **Hungary**, 122 people were placed in pre-removal detention during the reporting period, a slight increase compared to the previous period (90 people), according to data of the National Directorate-General for Aliens Policing and the National Headquarters of the Police provided to FRA.

In total, 141 people were held in pre-removal detention centres in **Belgium** at the beginning of November, while 126 people (43 of whom asked for asylum) were detained at airports upon entry between September and 30 November, according to data the Immigration Office provided to FRA.

In **Spain**, a judge **refused** the pre-removal detention of 31 newly arrived migrants before a removal decision was issued, noting their intention to apply for asylum, as the **ECtHR** had confirmed judges' competence to receive asylum applications in June 2020. The applicants were moved to an **open centre**.

In **Sweden**, 176 persons were released from detention during the reporting period. On 31 December 2020, 376 persons were placed in detention. None of them were children.

In **North Macedonia**, the number of detained persons between January and September 2020 (317) is higher compared to the same period in 2019 (225), the Macedonian Young Lawyers Association highlights in its report "**Immigration Detention in North Macedonia through numbers**". Ensuring the testimony of migrants in criminal proceedings against smugglers remains the main reason for their detention. The number of detained children between January and September 2020 (76) is more than double than that during the same period in 2019 (30). The length of their detention has also increased significantly (average 20 days, maximum 55 days) compared to the same period in 2019 (average 10 days, maximum 19 days).

Detention conditions

In its **report** on its visit to Greece in March 2020, the CPT found that detention conditions in certain facilities in the Evros region and on Samos could amount to inhuman and degrading treatment. Migrants continued to be held in detention centres composed of large barred cells crammed with beds, with poor lighting and ventilation, dilapidated and broken toilets and washrooms, insufficient personal hygiene products and cleaning materials, inadequate food, and limited access to outdoor exercise. Extreme overcrowding has aggravated the situation in several facilities. In addition, migrants are not provided with clear information about their situation. The CPT, once again, found that families with children, unaccompanied and separated children and other vulnerable persons were detained with no appropriate support.

In **Italy**, the **Law-Decree** No. 130 of 21 October 2020, converted with amendments into **Law No. 173** of 18 December 2020, reduced the maximum detention period for irregularly staying third-country citizens awaiting removal from 180 to 90 days. However, the period can be extended by 30 days if the returnee comes from a country with whom Italy has established bilateral readmission agreements. This possibility was **criticised** by activists and civil-society organisations as it introduces discrimination among detainees on grounds of nationality.

In **Italy**, the Authority for the Protection of People who are Detained or Deprived of their Personal Freedom **reported** that, in all CPRs, measures have been implemented to allow for isolation of those who have tested positive. However, the Authority noted that not all of the facilities comply with international safety standards and that the right to privacy is not always ensured. Moreover, most of the associations providing crucial services, such as anti-trafficking support, still are not operating. Two independent reports entitled "**No one is looking at us anymore, Migrant detention and Covid-19 in Italy**" and "**Locked up and excluded. Informal and illegal detention in Spain, Greece, Italy and Germany**" highlight inadequate material and hygienic conditions, isolation, and lack of complaint mechanisms.

In **Malta**, migrants detained for several months report little access to daylight, clean water and sanitation, according to the **Aditus Foundation**. **OHCHR** reported severe overcrowding, poor living conditions, and limited contact with the outside world, including lawyers and civil society organisations. In a ***habeas corpus* case**, a court ordered the release of four men who had been detained in the Safi and Lyster Barracks for 166 days. **The African Media Association** expressed concern regarding the use of vessels as detention facilities.

In **Cyprus**, the police stations are inappropriate for holding persons for more than 24 hours, the Cyprus Refugee Council reported to FRA. On average, third-country nationals have been detained in police detention cells for two weeks. Applicants who had to attend court hearings or visit a doctor had to submit a request for an exit permit to the Minister of Interior. Although the authorisations to exit were granted, this usually happened following interventions from NGOs and, in some cases, after the court hearing or appointment date.

In **Hungary**, Covid-19 infections in the Nyírbátor pre-removal detention centre resulted in rising tensions amongst detainees, **media reported**. According to interviewed detainees, when some had fever and started to cough, the authorities did not test them. Tests were only ordered when a Nigerian detainee complained about the loss of smell, which confirmed the infection of two individuals. After separating the infected detainees within the facility (they were not in need of hospitalisation), the authorities disinfected the centre.

In **Bulgaria**, the Parliament adopted further **amendments** to the Act on Foreigners in the Republic of Bulgaria, according to which the maximum duration of short-term detention (30 days) will no longer include the period during which the detained person has been in isolation, hospital treatment or quarantine due to an infectious disease.

In **France**, the **Controller General of Places of Deprivation of Liberty** and the NGO **La Cimade** voiced serious concerns about the health situation of returnees in pre-removal detention centres. Although the capacity of these facilities were limited to 50 % in previous months to prevent the spread of Covid-19, the occupancy rates have been, in some cases, gradually increased up to 90 %, which led to multiple Covid-19 infections in these closed centres. For instance, the **press** reported about a cluster in the pre-removal detention centre at Coquelles (Pas-de-Calais), with twenty people diagnosed positive in November, while 26 positive cases were recorded in Lyon in October and November.

In **Belgium**, the Immigration Office adopted new instructions restricting visits to pre-removal detention centres, in response to an increase in Covid-19 cases. Under the new rules, visits by NGOs are limited to one visit a week by a maximum of two visitors; and visits by friends and family are limited to one adult (with minor children) per resident a week, the Jesuit Refugee Service and the NGO NANSEN reported to FRA. According to the Jesuit Refugee Service, the immigration detention centre in Bruges was closed down and emptied because of a Covid-19 outbreak among the guards. Detainees were relocated to other closed facilities.

In **Spain**, on 20 October 2020, the **National Ombudsperson** expressed concern over the conditions at facilities where migrants are deprived of liberty. At the Centres for Temporary Attention for Foreigners (*Centros de Atención Temporal de Extranjeros, CATE*) deficiencies relate to overcrowding, the presence of mothers with children and of sick people, and insufficient guarantees to access asylum. Concerning the Detention Centres for Foreigners (*Centros de Internamiento de Extranjeros, CIE*), recommendations recurring in several centres **relate to** the availability of medical care, interpretation, legal and social assistance, possibility to communicate with lawyers, access by NGOs, video surveillance and the registration of the use of coercive measures.

According to Amnesty **Sweden**, detention conditions differ depending on the regional division of the Migration Agency. At some locations, physical visits are not possible and information on alternative ways to keep in touch with the outside world does not seem to reach the detainees. The Red Cross offered detainees the possibility to video chat, but the interest has been limited so far.

In **the Netherlands**, the National Preventive Mechanism examining the conditions of detention and treatment of detainees reported in **its annual review** that the rights of persons restricted in their freedom in the Netherlands are generally respected. However, the report shed light on the lack of meaningful daytime activities, the lack of privacy and in particular the frequent and prolonged placement in seclusion as punishment, common in Dutch detention facilities.

In **Serbia**, access to free legal aid at the Shelter for Foreigners may be limited as legal aid providers such as the Belgrade Centre for Human Rights are only allowed to visit the centre to meet the management on a monthly basis, as well as third-country nationals who previously contacted the organisation or are referred to them. Moreover, statistical information on the number of persons held and their status is not available, according to the Belgrade Centre for Human Rights.

Bright spots

Greece adopted **legal amendments** providing that unaccompanied children shall not be placed in protective custody only based on the fact that they are deprived of a safe or known place of residence. Due to a lack of accommodation places in dedicated facilities for children, unaccompanied children were often held in pre-removal detention facilities or police stations pending their transfer. These provisions are expected to put an end to this practice.

Alternatives to detention

In **Poland**, the Border Guard issued guidelines to ensure that alternatives to detention (reporting duties) are implemented in a way that limits the possibility of direct contact.

In **Bulgaria**, **media research** on the situation of irregular migrants published for the first time statistical data on the limited use of alternatives to detention. According to the study, regular reporting to the police was imposed on 24 persons for the first eight months of 2020 and on 53 persons in 2019. In the same period, of all detained irregular migrants, 80 persons remained in detention for more than six months (52 in 2019 and 28 in the period January – August 2020) despite the fact that, according to the national **law**, detention for more than 6 months can be used only exceptionally in cases of non-cooperation with the authorities or of delays in the receipt of return documentation.

Detention of children

In **Austria**, the **Federal Minister of the Interior** reported on 6 October 2020 that, as of that date in 2020, 12 unaccompanied children were held in detention pending removal.

Return

In **Poland**, the Ombudsperson communicated to FRA that he still receives complains regarding the lack of access to the case files classified as 'secret' by national authorities, applying administrative procedural law while granting residence permits and during return procedures.

In **Germany**, in view of the increased dangers during the corona pandemic, the Federal Workers' Welfare Association, together with the Federal Association for Unaccompanied Minors, Pro Asyl and a large number of civil society organisations, are calling for a **deportation freeze** until at least April 2021. The German Red Cross expressed concern about the plan to **end the return ban to Syria** as of January 2021. For **practical reasons**, however, it is expected that returns to Syria remain impossible, as there are no direct flight connections and no diplomatic relations with Syria.

The authorities in France returned a person infected with Covid-19 to Morocco, the NGO **ANAFÉ reported**. After having been detained for eight days, the person was removed without the result of his PCR test, which proved to be positive. Also in France, an HIV-positive asylum-seeking woman was held for 14 days at the Charles de Gaulle International Airport, deprived of access to medical treatment, before being removed to Egypt, the NGOs ANAFÉ reported in a **statement**.

In **Sweden**, many rejected asylum applicants cannot return or get information about when they will be able to return due to the on-going pandemic, according to the Stockholm City Mission, the Swedish Refugee Centre and Save the Children. They are not entitled to housing nor any financial assistance, according to the Red Cross. Save the Children, Amnesty and the Swedish Refugee Law Centre also expressed concerns over plans to resume returns to Afghanistan given the deteriorating security situation. A return flight to Afghanistan in December 2020 **was cancelled** due to a positive Covid-19 case among the flight staff.

In **Denmark**, the **Danish Parliamentary Ombudsperson** criticised the use of force during a return procedure. The police had allegedly used a belt fixation on both arms for almost 3.5 hours, including for 45 minutes after the flight company had cancelled the flight and there was no longer a tenable prospect that the return could take place.

In the **Netherlands**, a **report** published by Amnesty International states that the Immigration and Naturalisation Service (IND) places heavy demands on asylum applicants to prove their identity. According to the report, lack of evidence of nationality may result in a dismissal of the asylum request and potential deportation. Furthermore, the report shows that the Dutch Repatriation and Departure Service (*Dienst Terugkeer en Vertrek* or DT&V) does not check whether the IND has investigated whether an applicant is at risk of persecution in the country of deportation, before returning him/her. If the nationality of the asylum applicant is established during the return process, the Dutch Repatriation and Departure Service usually does not pass this new information on to the Immigration and Naturalisation Service for an assessment of the risks.

Bright spots

In **Poland**, due to the 'state of epidemic threat' announced on 20 March 2020, many third-country nationals **have been allowed** to remain legally in the country during the epidemic and until 30 days after its end. These measures also apply to rejected asylum applicants and returnees.

Hate speech and violent crime

In **Greece**, a group of people attacked a shelter for unaccompanied children, according to **media reports**. Twelve persons gathered outside the facility with knives, sticks and iron bars, chanting racist slogans. Four children were **reportedly** injured, while a 38-year-old man and his 14-year-old son were identified as perpetrators. The incident prompted the intervention of the Deputy Prosecutor of the Supreme Court for racist violence.

In **Greece**, according to **media reports**, the National Council Against Racism and Intolerance adopted the first national action plan against racism and intolerance.

In **Italy**, the National Office against Racial Discrimination (*Ufficio Nazionale Antidiscriminazioni Razziali*, UNAR) and the association "Carta di Roma" **adopted** a joint statement on 11 October, criticising an Italian newspaper for conveying a racist message and inviting newspaper editors to refuse to give visibility to similar articles and avoid publishing statements containing dehumanising messages.

In **Malta**, the **Hate Crime and Speech Unit** reported having received 40 reports against 35 individual perpetrators of hate speech, including nine concerning migrant victims.

In **Croatia**, the **Ministry of the Interior** recorded 34 incidences of hate crime and hate speech in the first half of 2020. According to the **Office for Democratic Institutions and Human Rights OSCE-ODIHR**, 48 cases of hate crime were recorded by the police in 2019. Two cases reported by civil society organisations refer to attacks against migrants.

In **Austria**, a deadly terrorist attack in Vienna left four civilians dead and 13 severely injured, **the media reported**.

The Federal Agency for State Protection and Counter Terrorism informed FRA that, between July and September 2020, some 29 xenophobic/racist, eight anti-Semitic, and two Islamophobic crimes were reported to the authorities. In Styria, the regional Antidiscrimination Office of Styria reported to FRA that 52 insults were registered between 1 October 2020 and 31 December 2020. Some 46 % were based on ethnicity, 19 % on religion and 19 % on multiple discrimination. During the same period, 1,703 incidents of online hate speech were reported to the Antidiscrimination Office Styria. Some 29 % of these incidents were based on ethnicity, 23 % on political opinion and 12.8 % had an anti-Muslim content.

In **Poland**, in December 2020, the Ombudsperson published his latest **report** on discrimination, which indicates that racial discrimination is the most common form of discrimination in Poland. The Ombudsperson told FRA that complaints regarding hate crimes are increasing in Poland, pointing out that the Polish Public Prosecutor's Office often fails to disclose information regarding hate crimes to them despite an obligation to do so.

Bright spots

In **Italy**, on 24 November 2020, the National Office against Racial Discrimination (UNAR) signed a **protocol** with the major Italian trade unions and employer organisations. It commits the entities to working jointly to prevent and tackle, in the workplace, discrimination based on ethnic origin, race, and other grounds; and to foster a culture of integration, inclusion, and social promotion in the labour market, including through shared training initiatives and awareness-raising campaigns.

In **Bulgaria**, **UNHCR** published the results of two surveys conducted in 2019 and 2020 on the attitudes of Bulgarian society towards refugees and asylum seekers. The studies concluded that awareness among Bulgarians about refugee issues is deficient and has decreased significantly over the years. In addition, most Bulgarians have never communicated with refugees. The conclusions also show that Bulgarians demonstrate higher tolerance towards refugees than towards migrants.

In **Spain,** a **survey** by the Observatory on Racism and Xenophobia (*Observatorio Español del Racismo y la Xenofobia*) **concluded** that nine out of ten Muslims living in Spain (87 %) are discriminated against when buying or renting a home, and 83 % when they look for a job. It concludes that prejudice towards Muslims places them among the most discriminated groups in Spain, alongside Roma. The **report** '*Covid-19 health crisis: Racism and xenophobia during the state of emergency in Spain*' (*Crisis sanitaria Covid-19: Racismo y xenofobia durante el estado de alarma en España*) describes racist incidents and hate speech since the beginning of the Covid-19 epidemic.

In **Denmark**, the Danish National Police reported to FRA that, between October and December 2020, 13 people were convicted for offences committed based on the victims' race, color, national or ethnic origin, religion or sexual orientation.

In **Serbia**, anti-migrant **protests** took place on 25 October in Belgrade. A group of extreme right-wing organisations **shouted** paroles such as "Let's clean the park", in a park where migrants have often gathered since 2015. The police cordoned off counter-protesters.

ANNEX – Stakeholders contacted for information (December 2020)

COUNTRY	STAKEHOLDERS INTERVIEWED OR CONSULTED VIA E-MAIL
AUSTRIA	→ Federal Ministry of the Interior, Department V/9/a (*Bundesministerium für Inneres, Abteilung V/9/a Grundversorgung und Bundesbetreuung*); → Federal Ministry of the Interior, Department V/8 (*Bundesministerium für Inneres, Abteilung V/8 Asyl und Fremdenwesen*); → Federal Ministry of the Interior, Criminal Intelligence Service, Competence Centre for Missing Children (*Bundesministerium für Inneres, Bundeskriminalamt, Kompetenzzentrum für Abgängige Personen*); → Federal Agency for State Protection and Counter Terrorism (*Bundesamt für Verfassungsschutz und Terrorismusbekämpfung, BVT*); → Austrian Ombudsperson Board (*Volksanwaltschaft*); → Antidiscrimination Office Styria (*Antidiskriminierungsstelle Steiermark*); → Caritas Vienna (*Caritas Wien*); → Austrian Red Cross (*Österreichisches Rotes Kreuz*).
BELGIUM	→ Ministry of Justice (unaccompanied refugee children unit); → Immigration Office (*Dienst Vreemdelingenzaken/Office des Étrangers*); → FEDASIL – Federal Agency for the Reception of Asylum Seekers (*Federaal agentschap voor de opvang van asielzoekers/Agence fédérale pour l'accueil des demandeurs d'asile*); → Myria – Federal Migration Centre (*Federaal Migratiecentrum/Centre fédéral Migration*); → UNICEF Belgium; → Jesuit Refugee Service Belgium; → *Vluchtelingenwerk Vlaanderen* NGO; → NANSEN NGO.
BULGARIA	→ State Agency for Refugees (SAR) (*Държавна агенция за бежанците, ДАБ*); → Ministry of the Interior, Directorate General Border Police (MoI – DGBP) (*Министерство на вътрешните работи, Главна дирекция „Гранична полиция", МВР – ГДГП*); → Ombudsperson of the Republic of Bulgaria, National Preventive Mechanism and Fundamental Human rights and Freedoms Directorate (*Омбудсман на Република България, Дирекция „Национален превантивен механизъм и основни права и свободи на човека"*); → State Agency for Child Protection (SACP) (*Държавна агенция за закрила на детето, ДАЗД*); → Ministry of the Interior, Directorate General National Police (MoI – DGNP) (*Министерство на вътрешните работи, Главна дирекция „Национална полиция", МВР – ГДНП*); → UNHCR Bulgaria (based on weekly updates, other reports and information presented during the regular meetings of the Working Group on Integration of Beneficiaries of International Protection in Bulgaria (*Работна група по интеграция на лица с предоставена международна закрила в България*) coordinated by UNHCR); → Bulgarian Red Cross, Refugee Migrant Service (BRC – RMS) (*Български червен кръст, Бежанско-мигрантска служба, БЧК – БМС*); → Center for Legal Aid Voice in Bulgaria (*Център за правна помощ – Глас в България*).

COUNTRY	STAKEHOLDERS INTERVIEWED OR CONSULTED VIA E-MAIL
CROATIA	→ Centre for Peace Studies (*Centar za mirovne studije*); → Croatian Law Centre (*Hrvatski pravni centar*); → Croatian Red Cross (*Hrvatski crveni križ*); → Jesuit Refugee Service (*Isusovačka služba za izbjeglice*); → Ministry of Labour, Pension System, Family and Social Policy (*Ministarstvo rada, mirovinskog sustava, obitelji i socijalne politike*); → Médecins du Monde-BE (*Liječnici svijeta*); → Ombudsperson for Children (*Pravobraniteljica za djecu*); → Rehabilitation Centre for Stress and Trauma (*Rehabilitacijski centar za stres i traumu*); → The Office of the Ombudswoman (*Ured pučke pravobraniteljice*); → The State Attorney's Office (*Državno odvjetništvo*); → Welcome! Initiative (*Inicijativa Dobrodošli*).
CYPRUS	→ Asylum Service (*Υπηρεσία Ασύλου*), Ministry of the Interior (*Υπουργείο Εσωτερικών*); → Social Welfare Office (*Υπηρεσίες Κοινωνικής Ευημερίας*), Ministry of Labour, Welfare and Social Insurance; → Menoyia Detention Centre (*Χώρος Κράτησης Μεταναστών Μενόγειας – ΧΩΚΑΜ*), Ministry of Justice and Public Order (*Υπουργείο Δικαιοσύνης και Δημόσιας Τάξης*); → UNHCR Representation in Cyprus (*Αντιπροσωπεία της Ύπατης Αρμοστείας του ΟΗΕ για τους πρόσφυγες στην Κύπρο*); → Cyprus Refugee Council (*Κυπριακό Συμβούλιο για τους Πρόσφυγες*) (NGO acting as implementing partner of UNHCR, offering legal, social and other assistance to asylum applicants and refugees); → Legal expert of the University of Cyprus (*Πανεπιστήμιο Κύπρου*) advising the Ministry of Justice and Public Order (*Υπουργείο Δικαιοσύνης και Δημόσιας Τάξης*) on human rights; → KISA (*Κίνηση γία Ισότητα, Στήριξη και Αντιρατσισμό- ΚΙΣΑ*) national NGO offering support to migrants and refugees. → Caritas Cyprus.
DENMARK	→ Danish Ministry of Justice (*Justitsministeriet*), including the Danish National Police (*Rigspolitiet*); → Danish Immigration Service (*Udlændingestyrelsen*); → The Danish Parliamentary Ombudsperson (*Folketingets Ombudspersond*); → Danish Refugee Council (*Dansk Flygtningehjælp*); → Danish Red Cross (*Dansk Røde Kors*); → Amnesty International Denmark; → SOS Racism (SOS Racisme); → UNHCR Regional Representation for Northern Europe.

ANNEX – Stakeholders contacted for information (December 2020)

COUNTRY	STAKEHOLDERS INTERVIEWED OR CONSULTED VIA E-MAIL
FRANCE	→ Ministry of the Interior (*Ministère de l'Intérieur*); → Public Defender of Rights (*Le Défenseur des droits – DDD*), General Authority and Department for the Protection of the Rights of the Child; → Controller General of Places of Deprivation of Liberty (*Contrôleur général des lieux de privation de liberté – CGLPL*); → National Association of Border Assistance for Foreigners (*Association nationale d'assistance aux frontières pour les étrangers – ANAFÉ*); → *La Cimade* NGO (*Inter-Movement Committee for Evacuees – Comité inter mouvements auprès des évacués*); → Doctors of the World (*Médecins du Monde*); → League for Human Rights – France (*Ligue des droits de l'homme – France*); → The Immigrant Information and Support Group (*Groupe d'information et de soutien des immigrés*); → Service centre for migrants in Calais (*Plateforme de service aux migrants à Calais*).
GERMANY	→ Jesuit Refugee Service (*Jesuitenflüchtlingsdienst – JRS*); → Federal Association for Unaccompanied Minors (*Bundesfachverband unbegleitete minderjährige Flüchtlinge – BumF*); → United Nations High Commissioner for Refugees Berlin (UNHCR); → Federal Working Group of Psycho-Social Support Centres for Refugees and Victims of Torture (*Bundesweite Arbeitsgemeinschaft der psychosozialen Zentren für Flüchtlinge und Folteropfer – BAfF*); → German Red Cross (*Deutsches Rotes Kreuz*); → Federal Workers' Welfare Association (*Bundesverband der Arbeiterwohlfahrt AWO*); → Berlin Refugee Council (*Flüchtlingsrat Berlin e.V.*); → The Berlin Senate Department for Education, Youth and Family (*Berliner Senatsverwaltung für Bildung, Jugend und Familie*).
GREECE	→ Hellenic Police Headquarters - Migration Management Division (*Αρχηγείο Ελληνικής Αστυνομίας-Τμήμα Διαχείρισης Μετανάστευσης*); → The Greek Asylum Service (*Ελληνική Υπηρεσία Ασύλου*); → The Greek Ombudsperson (*Συνήγορος του Πολίτη*) → United Nations High Commissioner for Refugees (UNHCR) Greece (*Ύπατη Αρμοστεία του ΟΗΕ για τους Πρόσφυγες*); → Racist Violence Recording Network (*Δίκτυο Καταγραφής Περιστατικών Ρατσιστικής Βίας*); → Greek Council for Refugees (*Ελληνικό Συμβούλιο για τους Πρόσφυγες*); → Hellenic League for Human Rights (*Ελληνική Ένωση για τα Δικαιώματα του Ανθρώπου*); → Human Rights 360 (*Ανθρώπινα Δικαιώματα 360*).
HUNGARY	→ Ministry of the Interior (*Belügyminisztérium*); → Ministry of Human Capacities (*Emberi Erőforrások Minisztériuma*); → National Headquarters of the Police (*Országos Rendőr-főkapitányság*); → National Directorate-General for Aliens Policing (*Országos Idegenrendészeti Főigazgatóság*); → UNHCR Hungary; → Migrant Solidarity Group of Hungary (*Migráns Szolidaritás – MigSzol*); → Hungarian Association for Migrants (*Menedék Migránsokat Segítő Egyesület*); → Cordelia Foundation (*Cordelia Alapítvány*).

COUNTRY	STAKEHOLDERS INTERVIEWED OR CONSULTED VIA E-MAIL
ITALY	→ Ministry of Labour and Social Policies; → Ministry of the Interior; → Public Security Department of the Ministry of the Interior – Directorate General for Immigration and Border Police (*Ministero dell'Interno Dipartimento della Pubblica Sicurezza - Direzione Centrale dell'Immigrazione e della Polizia delle Frontiere*); → National Commission for the Right of Asylum (*Commissione Nazionale per il Diritto d'Asilo*) of the Ministry of the Interior; → Authority for the Protection of People who are Detained or Deprived of their Personal Freedom (*Garante nazionale per i diritti delle persone detenute o private della libertà personale*); → Authority for the Protection of Childhood and Adolescence (*Autorità Garante per l'Infanzia e l'Adolescenza*); → National Office against Racial Discrimination (*Ufficio Nazionale Antidiscriminazioni Razziali, UNAR*); → Association for Legal Studies on Immigration (*Associazione per gli studi giuridici sull'immigrazione, ASGI*); → Italian Refugees Council (*Consiglio Italiano per i Rifugiati, CIR*); → United Nations High Commissioner for Refugees (UNHCR); → 'Melting Pot Europa' project; → Observatory for the Security against Discriminations of the Italian Police (*Osservatorio per la Sicurezza Contro gli Atti Discriminatori – OSCAD*); → Chronicles of Ordinary Racism (*Cronache di ordinario razzismo*).
MALTA	→ Ministry for Home Affairs, National Security and Law Enforcement – Hate Crime and Hate Speech Unit; → International Protection Agency (formerly the Office of the Refugee Commissioner); → Agency for the Welfare of Asylum Seekers → Detention Service; → NGO 'KOPIN'; → NGO 'African Media Association'.
NETHERLANDS	→ Dutch Council for Refugees (*Vluchtelingenwerk Nederland*); → Amnesty International – Netherlands; → Netherlands Institute for Human Rights (*College voor de Rechten van de Mens*); → Defence for Children the Netherlands; → Ministry for Justice and Security: central information point, providing information on behalf of: Immigration and Naturalisation Service, Aliens Police, Central Agency for the Reception of Asylum Seekers (all members of the so-called 'Alien Chain'); → Stichting LOS (knowledge centre for people and organisations that support migrants in an irregular situation); → UNICEF the Netherlands; → NIDOS (independent family guardian organisation, fulfilling the guardianship task for Unaccompanied Minor Asylum Seekers).
NORTH MACEDONIA	→ Ministry of Interior; → Ombudsperson; → UNHCR North Macedonia; → IOM North Macedonia; → Jesuit Refugee Service JRS; → NGO Legis (*НВО Легис*); → NGO Helsinki Committee of Human Rights of the Republic of Macedonia (*НВО Хелсиншки комитет за човекови права на Република Македонија*); → NGO EUROTHINK – Center for European Strategies.

ANNEX – Stakeholders contacted for information (December 2020)

COUNTRY	STAKEHOLDERS INTERVIEWED OR CONSULTED VIA E-MAIL
POLAND	→ Ombudsperson for Children, (*Rzecznik Praw Dziecka*); → United Nations High Commissioner for Refugees, Office in Poland (UNHCR); → Ombudsperson (*Rzecznik Praw Obywatelskich*); → Border Guard, Border Guard Headquarters (*Straż Graniczna, SG*); → Police, Police Headquarters (*Policja*); Plenipotentiary for human rights of the Police Headquarters; → Head of the Office for Foreigners (*Szef Urzędu do Spraw Cudzoziemców*); → Association for Legal Intervention (*Stowarzyszenie Interwencji Prawnej*); → Helsinki Foundation for Human Rights (*Helsińska Fundacja Praw Człowieka*).
SPAIN	→ Asylum and Refugee Office of the Spanish Ministry of the Interior (*Oficina de Asilo y Refugio del Ministerio del Interior – OAR*); → Spanish Ombudsperson (*Defensor del Pueblo*); → UNHCR (*Oficina de la Agencia de la ONU para los Refugiados en España – ACNUR*); → Spanish Committee of UNICEF (*Comité español de UNICEF*); → Spanish Observatory for Racism and Xenophobia (*Observatorio Español del Racismo y la Xenofobia, OBERAXE*); → Spanish Refugee Aid Commission (*Comisión Española de Ayuda al Refugiado – CEAR*); → Jesuit Migrant Service (*Servicio Jesuita Migrantes*); → General Directorate for International Protection Programs of the Ministry of Labour Ministry of Labour, Migration and Social Security (*Subdirección General de Programas de Protección Internacional del Ministerio de Trabajo Ministerio de Trabajo, Migraciones y Seguridad Social*); → Chair of Refugees and Forced Migrants of Comillas ICAI-ICADE, INDITEX (*Cátedra de Refugiados y Migrantes Forzosos de Comillas ICAI-ICADE, INDITEX*).
SERBIA	→ Asylum Office; → Shelter for Foreigners; → Centre for the Youth care in Niš; → Home for children without care Jovan Jovanović Zmaj in Belgrade; → INDIGO- Group for Children and Youth; → UNHCR Serbia.
SWEDEN	→ Swedish Migration Agency, Department of digitalisation and development (*Migrationsverket, enheten för digitalisering och utveckling*); → Swedish Migration Agency, Statistics Department; → Swedish Migration Agency, Detention Department; → Swedish Police Authority, Border Department; → National Board of Health and Welfare (*Socialstyrelsen*); → Save the Children Sweden (*Rädda barnen*); → Red Cross Sweden (*Röda Korset*); → The Swedish Refugee Law Centre (*Asylrättscentrum*); → Stockholm City Mission (*Stockholms Stadsmission*); → Amnesty Sweden.

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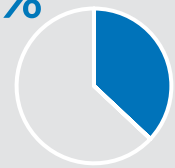
Refugee and Migrant Children in Europe Accompanied, Unaccompanied and Separated

Overview of Trends January to June 2020

Some **6,200** children arrived in Greece, Italy, Bulgaria, Spain, Cyprus and Malta between January and June 2020 (**14% girls and 86% boys**). Child arrivals in Greece, Italy, Bulgaria and Spain in the first half of 2020 decreased by **32%** compared to the first half of 2019 (**8,236**).

37%



Some **2,302** children who arrived in Europe between January and June 2020 were **unaccompanied and separated**.

Some **5,800** children (**24% girls and 28% boys**) were under resettlement procedures in Europe in the first half of 2020.

Out of the total number of children

who sought international protection in Europe between January and June 2020, about 80% were registered in just five countries: **Germany (37%), France (14%), Greece and Spain (12% each) and the United Kingdom (5%).**

Arrivals to Europe between January and June 2020[1]

Between January and June 2020, **6,177** children arrived in Greece, Italy, Spain, Bulgaria, Cyprus and Malta. Of these, **2,302** (37%) were unaccompanied or separated children (UASC)[2]. Child arrivals in Greece, Italy, Bulgaria and Spain in the first half of 2020 decreased by **32%** compared to the first half in 2019 (**8,236**).

Greece

Between January and June 2020, some 3,340[3] children arrived in Greece by land and sea, including 391 UASC (12%)[4]. Like the number of people arriving overall in 2020 so far, the number of children also decreased, with 43% fewer children arriving than in the first half of 2019 (5,905). The number of children arriving unaccompanied or separated also decreased, with 61% less children compared to the same period in 2019 (994). Most children, including UASC, were from Afghanistan, the Syrian Arab Republic, the Democratic Republic of Congo, Iraq and State of Palestine.

Spain

Between January and June 2020, some 870[5] children were estimated to have arrived by sea and land, including some 329 (38%) UASC. This is a 50% decrease compared to the same period in 2019 (1,750). Arrivals of UASC in the first half of 2020 also decreased by 39% compared to the same period in 2019 (538). Based on estimates, most children, including UASC, originated from Algeria, Morocco, Guinea and Côte d'Ivoire.

Italy

Among the 1,289 children who arrived in Italy between January and June 2020, 1,080 (84%) were UASC – a ratio amongst all children that has remained consistent in recent years. Arrivals of children in the first half of 2020 more than doubled compared to the same period in 2019 (486). Most children originated from Bangladesh, Tunisia, Côte d'Ivoire, and Guinea.[6]

Bulgaria

Between January and June 2020, some 101 children lodged their asylum applications in Bulgaria. Among them, 48% were UASC (48). Most asylum-seeking children originated from Afghanistan, the Syrian Arab Republic and Iraq.[7]

Malta

Between January and June 2020, some 446[8] children, including 415 (93%) UASC were among arrivals resulting from search and rescue activities. Most children, including UASC, originated from Sudan, Somalia and Bangladesh.

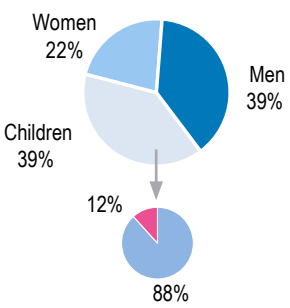
Cyprus

Among the 131 children who arrived in Cyprus between January and June 2020 by sea, 39 (30%) were UASC. Most children, including UASC, originated from the Syrian Arab Republic and Somalia.

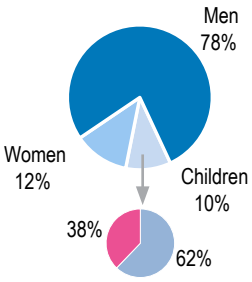
UNHCR The UN Refugee Agency unicef IOM UN MIGRATION

Demographic of Arrivals, including Accompanied, Unaccompanied and Separated Children

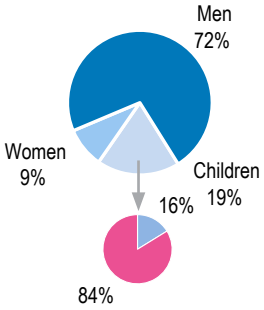
GREECE



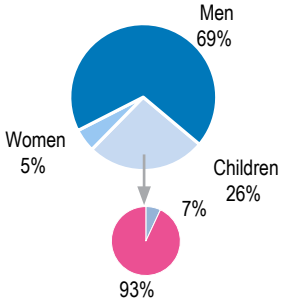
SPAIN



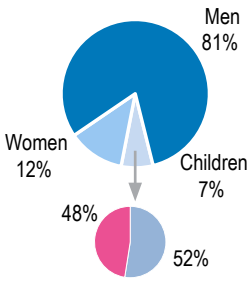
ITALY



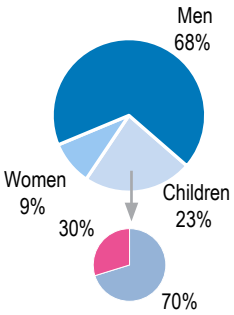
MALTA



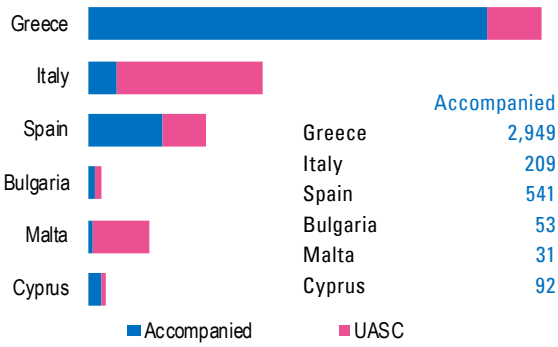
BULGARIA



CYPRUS



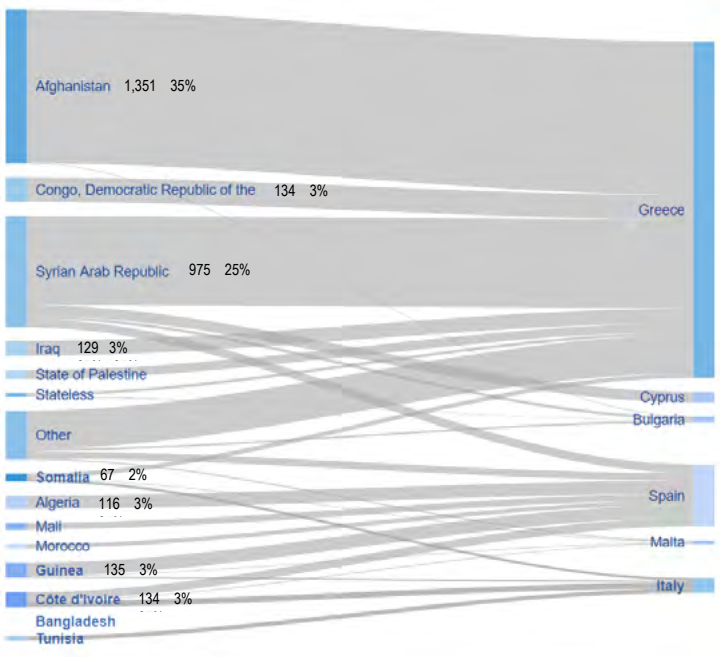
Accompanied, Unaccompanied and Separated Children by Country of Arrival



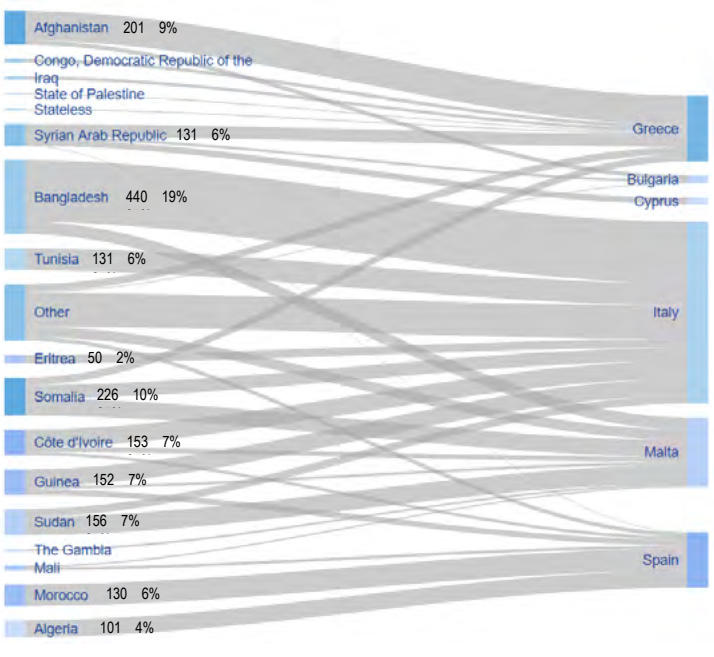
	Accompanied	UASC
Greece	2,949	391
Italy	209	1,080
Spain	541	329
Bulgaria	53	48
Malta	31	415
Cyprus	92	39

Nationality of Accompanied, Unaccompanied and Separated Children by Country of Arrival

Accompanied Children by Country of Origin and Arrival



UASC by Country of Origin and Arrival

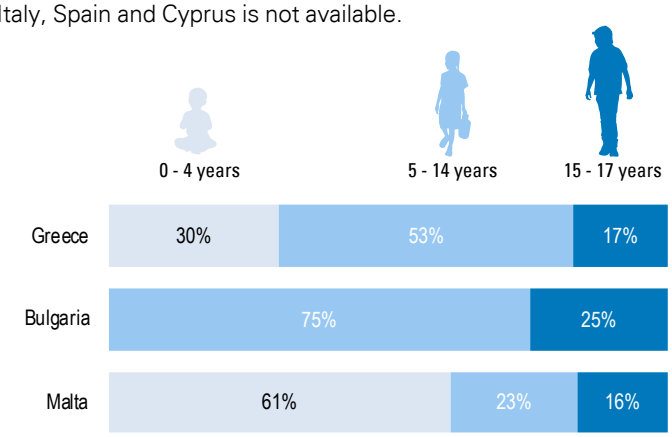


Source: Hellenic Police, EKKA; Italian Ministry of Interior; Bulgaria State Agency for Refugees; Spanish Ministry of Interior; Malta Immigration Police; and Ministry for Home Affairs, National Security and Law Enforcement, Malta (MHAS).

Age and sex breakdown of all Children by Country of Arrival

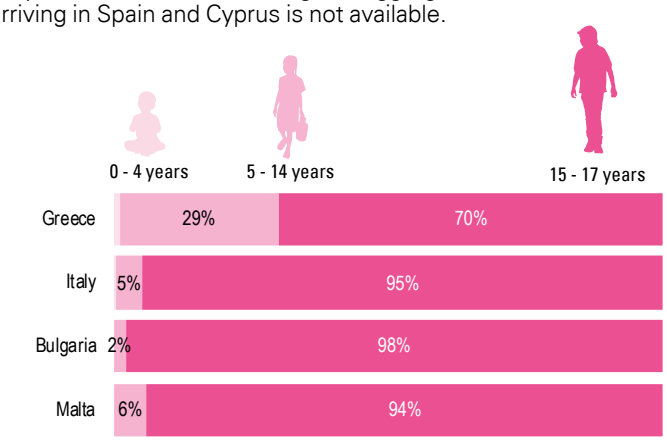
Accompanied Children - Age Breakdown

Among the 3,033 accompanied children who arrived in Greece, Bulgaria and Malta between January and June 2020, 30% were 0 to 4 years old, 53% were 5 to 14 years old and 17% were 15 to 17 years old. The age breakdown for accompanied children in Italy, Spain and Cyprus is not available.



Unaccompanied Children - Age Breakdown

The majority of UASC who arrived in Italy, Greece, Bulgaria and Malta between January and June 2020 were between 15 and 17 years old (90% overall). Age disaggregated data on children arriving in Spain and Cyprus is not available.

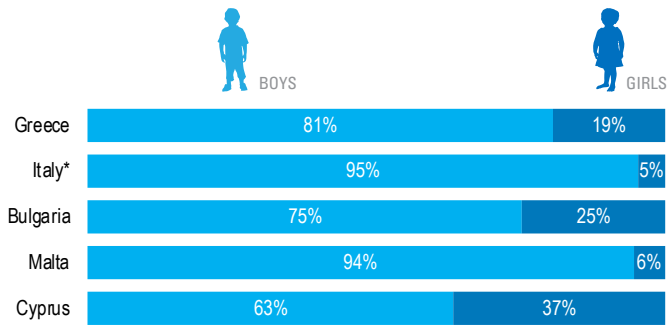


Source: Hellenic Police, EKKA, Italian Ministry of Labour and Social Policies on UASC in reception, Spanish Ministry of Interior and Social Policy, Bulgarian State Agency for Refugees, Maltese Ministry for Home Affairs, National Security and Law Enforcement (MHSE).

Note: Due to the limited disaggregation or inconsistency of data by age and sex across countries, these graphs refer to estimates.

Sex Breakdown of Children by Country of Arrival

Overall, the proportion of boys among arrivals remains high: 85% of children who arrived through various Mediterranean routes between January and June 2020 were boys. The proportion of girls arriving alone in Greece in the same period decreased by half (19%) compared to the first half in 2019 (42%), whereas the proportion of boys arriving unaccompanied in Italy remained consistent with previous trends. The proportion of boys among arrivals to Malta remained similar compared to the children arrived in the whole of 2019.



**For Italy, the calculation is based on the estimated 5,016 UASC registered in the reception system as of 30 June 2020 according to the Italian Ministry of Labour and Social Policies.*

Reception on arrival as of June 2020

Greece

- Of all children present in Greece, 48% were living in urban areas (apartments, hotels, shelters for unaccompanied children, self-settled, etc.); 28% were in accommodation sites; 1% were in safe zones for unaccompanied children and 23% were in Reception and Identification Centres.
- An estimated 45,100 children were present in Greece as of 30 June 2020, an increase from 32,000 in June 2019.

Italy

- The majority of UASC registered at the end of June 2020 (94%) were in shelters for unaccompanied children run by state authorities and non-profit entities, while the rest were in family care arrangements (6%).
- As of June 2020, some 5,016 unaccompanied migrant and asylum-seeking children (95% boys and 5% girls) were present in the country.

Spain

- There are specialised government-run reception centers across the 17 Autonomous communities and the 2 autonomous cities of Ceuta and Melilla available to accommodate children.
- As of the end of February 2020, there were 11,978 UASC in reception (1,099 female and 10,879 male), according to the ADEXTTRA registry of unaccompanied migrant children.

Malta

- Upon arrival, unaccompanied children awaiting age assessment are placed in detention facilities. After the age assessment has been conducted, those found to be underage may be placed in open reception centers with dedicated sections for unaccompanied children over the age of 16. Unaccompanied children below the age of 16 are usually accommodated in Dar Il-Liedna open centre, designated for children.
- At the end of June 2020, an estimated 350 unaccompanied children were accommodated in open centers, while a further 338 remained in detention facilities. Another 90 unaccompanied children were hosted at the Initial Reception Center.

Bulgaria

- 101 children, including 48 unaccompanied children, were accommodated in reception facilities in Sofia and Southern Bulgaria.

Bosnia and Herzegovina

- Migrant and asylum-seeking/refugee children are hosted in Temporary Reception Centres and other formal accommodation throughout Bosnia and Herzegovina.
- Unaccompanied children were accommodated in Usivak, Bira, Miral, Borici, Sedra, and Blazuj Temporary Reception Centers.
- As of June 2020, a total of 817 migrant and asylum-seeking/ refugee children were present in the country. Of these 468 children (268 boys and 200 girls) were accommodated with family members and 349 were unaccompanied (348 boys, one girl).

Croatia

- The Croatian government designated two facilities for children in Zagreb and in Split for the initial reception of UASC during which best interests' procedures are undertaken. These should be completed within 3 months to determine appropriate solutions, including on accommodation and care. The children, irrespective of their legal status, are largely entitled to the same protection and care as Croatian children.
- From January to June 2020 there were 104 UASC registered as seeking international protection in Croatia, of which 97 boys (10 boys of 0-13 years old, 13 boys of 14-15 years old, 74 boys of 16-17 years old) and 7 girls (2 girls of 0-13 years old, 1 girls 14-15 years old, 4 girls 16-17 years old).

Hungary

- Unaccompanied children cannot legally be detained in Hungary, while accompanied children may be detained for up to 30 days with their families. Unaccompanied children are accommodated in a dedicated children's home in Budapest.
- From 1 January to 21 May 2020, about 207 children, including 6 separated children, were detained in the transit zones.
- In June, there were about 50 accompanied children in the reception centres. 7 unaccompanied (6 boys, 1 girl) were additionally accommodated in the Children's Home as of June.

Montenegro

- A total of 78 children were accommodated in closed and open receptions centers in facilities in Podgorica, Spuz and Konik. Of those, 38 were accompanied boys, 4 unaccompanied boys, and 36 accompanied girls. There were no unaccompanied girls.

Poland

- Accompanied children may be placed in detention, reception facilities or private accommodation together with their parents or legal guardians. Unaccompanied children are placed in childcare facilities together with Polish children.
- On 30 June, there was one unaccompanied child in the asylum procedure in Poland.

Romania

- Families with children, who do not have sufficient resources for private accommodation, are hosted in one of six existing reception facilities.
- UAC under the age of 16 are usually referred to national child protection services and placed in residential facilities run by the Child Protection Directorate, where they are accommodated together with Romanian children in similar situations. Older adolescents typically remain in government-run reception facilities for asylum seekers and refugees of all ages.
- As of June 2020, some 89 unaccompanied children submitted their asylum requests.

Slovenia

- Asylum-seeking UAC are placed in quarantine (related to COVID) at Logatec closed accommodation facility for 10 days. Some are then transferred to student dormitories in Postojna. One of these has been designated for the reception of UAC and can accommodate up to 22 children.
- Unaccompanied children who do not apply for asylum may be confined (related to COVID) in accordance with the Foreigners Act. Also asylum-seeking children accompanied by their parents may be confined.

Reception systems for children vary greatly across and within countries and can pose protection risks if not appropriate for the needs of children, particularly unaccompanied and separated children. A significant number of unaccompanied children are not hosted in formal shelters or family-based care arrangements. While official information is unavailable, reports suggest many of these children have moved onwards, residing in informal accommodation or on the streets.

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AFGHAN CHILD IN FYLAKIO CENTRE NEAR THE GREEK-TURKISH BORDER, GREECE, FEB 2020.

Impact of COVID

The impact which COVID-19 has had on entire systems and population groups of course extends to refugee and migrant children. Suspension of procedures such as registration, age assessment and asylum impacted access to services for children, including guardianship, and in some contexts access to appropriate shelter. Family reunion/reunification has been delayed with the suspension of asylum procedures, consular services in third countries and limited flight options to facilitate transfers. Physical distancing and confinement measures have exacerbated previous challenges of individual oversight and case management, effective information provision to children as well as support for caregivers and parents. Access to education has been a challenge particularly in reception facilities, as refugee and migrant children may not have the same levels of connectivity for online learning, and with crowded reception conditions being far less conducive to learning than school environments. Integration may also be hindered as regular interaction in schools and with host community children and teachers has been disrupted. Overall, heightened risk factors such as increased poverty and food insecurity, limited access to education, disruption of peer and social support networks for children/caregivers, as well as community and social support services, have had a detrimental effect on mental health and psycho-social well-being, and exacerbated the risk of violence, abuse and neglect for children, both unaccompanied and within families.

Positive practices:

- In France, self-declared minority was accepted to facilitate access to child protection services while age assessment procedures remained suspended
- In a number of national contexts, remote case management for children continued while confinement measures prevented in-person support and visits
- In a number of national contexts, the validity of residence permits – including those for unaccompanied children and asylum seekers - due to expire in the first half of 2020 has been extended, as access to police and administration offices was delayed due to COVID-19 restrictive measures.
- The storybook "My Hero is You" is a child-friendly publication developed by the IASC MHPSS reference group and already translated into several languages to explain covid to children.
- In Bulgaria, the child protection agency has set up a hotline accessible for covid-related advice and information for parents and children.

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Asylum Applications and Decisions

During the first half of 2020, countries in Europe[9] recorded some **218,755** new asylum seekers. Nearly a third of them (**69,010**) were children – a decrease of **29%** compared to the number of child asylum applicants in the first half in 2019 (97,235).

During the first half of 2020, the **Syrian Arab Republic** continued to be most common country of origin among child asylum seekers (22%), followed by Afghanistan (13%), **Iraq** (6%), **Venezuela, Colombia** and **Eritrea** (4% each).

45% of all child asylum seekers were female. Among the top countries of origin for child asylum seekers, females represented a high proportion of those from **Côte d'Ivoire** (64%), followed by **Guinea (54%), Nigeria** (52%), **Venezuela** (50%), **Turkey** and the **Democratic Republic of Congo** (49%), **Colombia** (48%), **Russian Federation** (47%), **Eritrea** and **Syrian Arab Republic** (46% each).

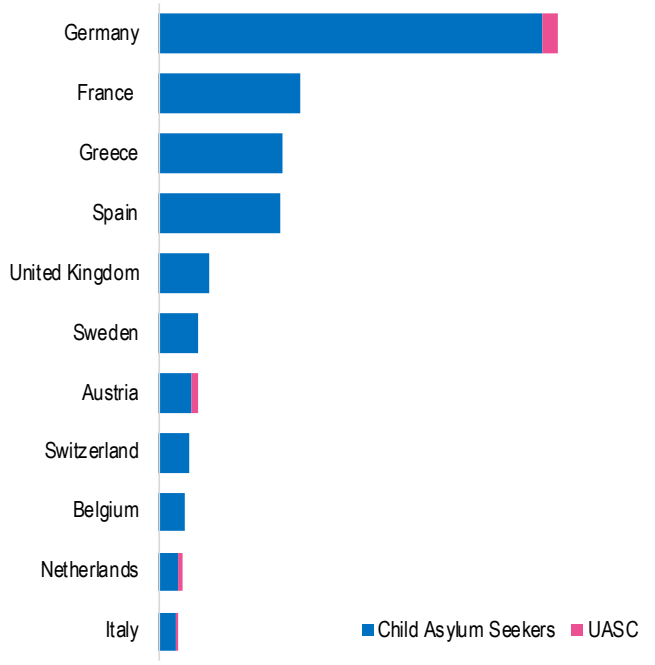
Like previous years, **Germany** remained the top destination for refugee and migrant children, registering 37% of all child asylum applications between January and June 2020 (25,755 children). Other countries that recorded large numbers of child asylum seekers included **France** (9,590 children, 14%), **Greece** (8,385 children, 12%), **Spain** (8,115 children, 12%), and the **United Kingdom** (3,445 children, 5%).

Between January and June 2020, a total of **74,635** decisions were issued for child asylum claims by national authorities across Europe. Among those, **60%** were positive – a similar percentage as compared to the first half of 2019 (59%). Most decisions granting refugee status and subsidiary protection were issued by Germany to Syrian, Iraqi and Afghan children, while the majority of decisions granting humanitarian status were issued by Spain to Venezuelan and Ukrainian children.

Of all children who received a positive decision, **68%** were granted **refugee status** (slightly down from 72% same period in 2019), 18% were granted subsidiary protection (19% same period in 2019) and 15% humanitarian status (up from 9% same period in 2019).

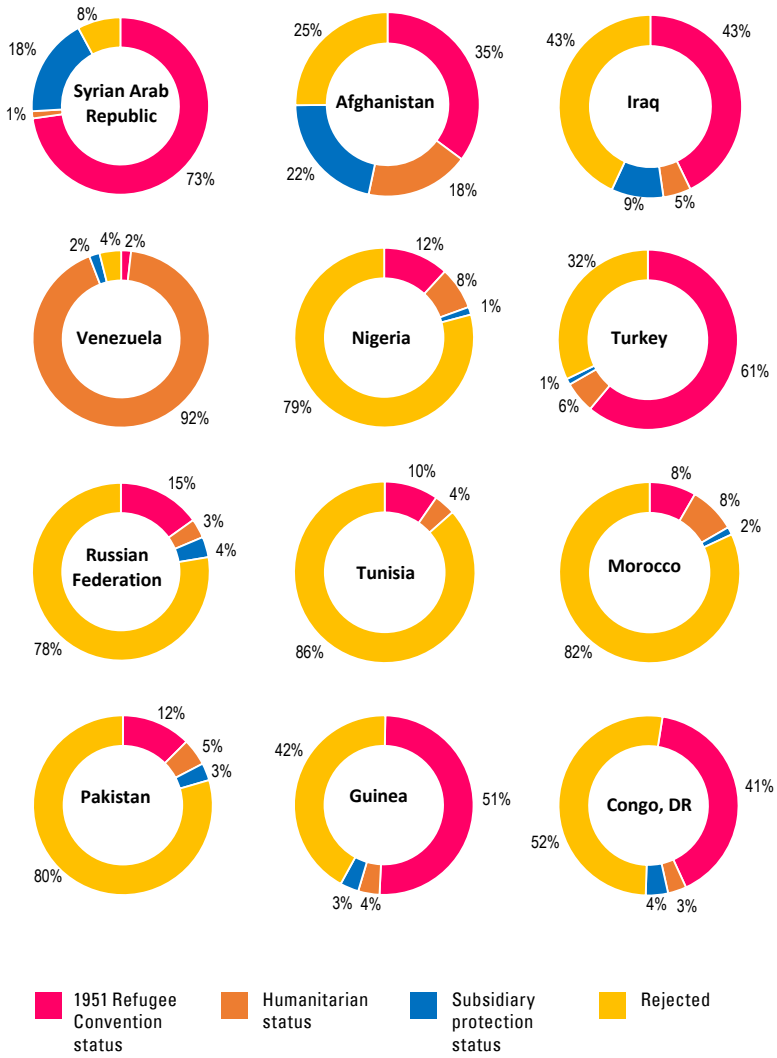
Among top countries of origin, the share of negative decisions was notably higher among those coming from North and West African countries, as well as children from Pakistan (80%), Russian Federation (78%) and Iraq (43%).

First-time Asylum Applications Lodged by Children, and Asylum Applicants considered to be Unaccompanied and Separated Children, between January and June 2020, by Country of Asylum*



*The difference in numbers of arrivals and asylum applications can be explained by the long waiting times before people can claim asylum, backlogs in national asylum systems, as well as the fact that applications can be submitted by persons who have arrived previously or did not necessarily come through the Mediterranean Routes.

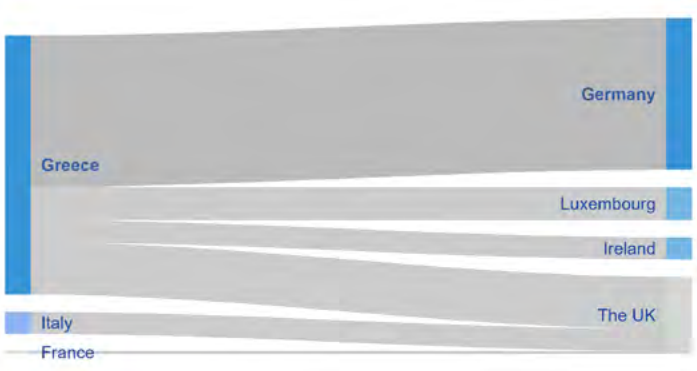
Decisions on Child Asylum Applications between January and June 2020



Source: Eurostat 2019

Relocation

After the official closure of the EU emergency relocation scheme in 2018, IOM has continued to support national authorities to relocate migrants and refugees arriving by sea to other EU Member States through bilateral agreements between countries involved, as well as increasingly through EC funded projects implemented by IOM in Greece and Malta in coordination with UNHCR and UNICEF. Despite the challenges faced due to COVID-19, IOM relocation efforts continued throughout all months of the reporting period. Between January and June 2020, a total of 108 children (95 boys, 13 girls) were relocated from Greece, Italy, France and Malta. Of them, 103 were unaccompanied children and were relocated to Germany (55), Ireland (8) and Luxembourg (12) under relocation projects, while others were relocated to the UK (28) under the Dubs scheme.



[source]

Returns from Greece to Turkey

Of all returnees from Greece to Turkey under the EU-Turkey Statement between 2016 and March 2020 (2,140), 107 (5%) were children. All of them were returned with their families.

[source]

Assisted with Voluntary Return and Reintegration (AVRR) to Children and UASC

Between January and June 2020, IOM provided AVRR support to 17,793 migrants globally (37% less than the same period in 2019). About 9% of them were children, including 14 unaccompanied and separated children. Overall, 5,834 beneficiaries were assisted to return from countries of the European Economic Area (EEA) and Switzerland. Of these, 29% (1,68) were assisted to return from Germany only and 19% (1,142) were children, including 14 who were unaccompanied or separated. Out of all beneficiaries assisted to return from the EEA and Switzerland, around 15% (881) returned to countries of South-Eastern, Eastern Europe and Central Asia; 8% (487) returned to the Middle East and Northern Africa, 8% (433) to countries of South America and the remaining 69% (4,033) to other regions.

Children Resettled to Europe

Of the total 11,200 people in resettlement procedures in Europe between January and June 2020, 52% were children (28% boys and 24% girls). Children's resettlement cases in Europe were most commonly being considered by Sweden, France, Germany, Norway, the United Kingdom and Netherlands. The most common nationalities of children whose cases were being considered by European stats for resettlement included Syrians, Congolese (DRC), South Sudanese, Sudanese and Eritreans.

Source: Hellenic Police, Greek National Centre for Social Solidarity (EKKA), Italian Ministry of Interior, Bulgarian State Agency for Refugees, Spanish Ministry of Interior, Eurostat, BAMF-Germany, IOM, UNHCR resettlement portal and UNICEF.

Definitions:

A "**separated child**" is a child separated from both parents or from his/her previous legal or customary primary care-giver, but not necessarily from other relatives. This may, therefore, mean that the child is accompanied by other adult family members.

An "**unaccompanied child**" is a child separated from both parents and other relatives and are not being cared for by any other adult who, by law or custom, is responsible for doing so. [source]

A "**refugee**" is a person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his nationality and is unable to or, owing to such fear, is unwilling to avail himself of the protection of that country (Article 1 A 1951 Refugee Convention).

An "**asylum seeker**" is a person who has applied for asylum and is waiting for a decision as to whether or not they are a refugee. Determination of refugee status can only be of a declaratory nature. Indeed, any person is a refugee within the framework of a given instrument if he meets the criteria of the refugee definition in that instrument, whether he is formally recognized as a refugee or not (UNHCR Note on Determination of Refugee Status under International Instruments). [source]

A "**migrant**" refers to any person who is moving or has moved across an international border or within a State away from his/her habitual place of residence, regardless of (1) the person's legal status; (2) whether the movement is voluntary or involuntary; (3) what the causes for the movement are; or (4) what the length of the stay is. [source]

About the factsheet

This factsheet is jointly produced by UNHCR, UNICEF and IOM with the aim to support evidence-based decision-making and advocacy on issues related to refugee and migrant children.

The document provides an overview of the situation in Europe with regards to refugee and migrant children (accompanied and UASC). It compiles key child-related data based on available official sources: arrival, asylum applications, asylum decisions, profiling of arrivals, relocation from Greece and Italy under the EU relocation scheme, as well as returns from Greece to Turkey under the EU-Turkey statement.

The present factsheet covers the period January to June 2020 and is produced every six months to provide up-to-date information on refugee and migrant children, including unaccompanied and separated children.

Endnotes

1. Data on arrivals is partial due to the large scale of irregular movements and reflects only sea arrivals for Greece and Italy. Data for Spain includes both sea and land arrivals and is based on UNHCR estimates, pending provision of final figures by Spanish Ministry of Interior (MOI); figures for UASC are only available for arrivals by sea (not for Ceuta or Melilla).
2. Separated children are children separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members. Unaccompanied children are children who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so (IASC).
3. Arrival figures for Greece are collected in the framework of UNHCR border activities and are provided by Hellenic Police.
4. During the same period of time, a total of 739 referrals were made to the Greek National Centre for Social Solidarity (EKKA) based on children identified on islands and mainland Greece, including near the land border with Turkey in January-June 2020.
5. UNHCR estimated figures pending provision of final figures by Spanish Ministry of Interior (MOI); figures on UASC arrivals to Ceuta and Melilla are not included. Children arriving in the Canary Islands from Western Africa through the Atlantic are included.
6. Data on arrivals and demographic of refugees and migrants registered in Italy is based on information received from the Italian Ministry of Interior.
7. Statistics for Bulgaria are collected by the State Agency for Refugees. Observations on data and trends that isn't typically compiled by government institutions are collected by the Bulgarian Helsinki Committee.
8. Estimate on data provided by the Immigration Police and the Ministry for Home Affairs, National Security and Law Enforcement (MHAS), Malta. UASC figures are based on age declared by the refugees and migrants upon arrival. Not all the persons who make such a declaration are recognised to be UASC by the authorities after the age assessment is conducted.
9. European Union Member States + Iceland, Liechtenstein, Norway and Switzerland and the United Kingdom.

Limitation of available data on Children and UASC:

There is no comprehensive data on arrivals (both adults and children) in Europe, especially by land and air, as such movements are largely irregular and involve smuggling networks, which are difficult to track. If collected, data is rarely disaggregated by nationalities, risk category, gender or age. Reliable data on the number of UASC either arriving to, or currently residing in, different European countries is often unavailable. The number of asylum applications filed by UASC is used to provide an indication of trends but does not necessarily provide an accurate picture of the caseload due to backlogs in national asylum systems, onward irregular movements or children not applying for asylum at all. In addition, due to different definitions and national procedures and practices, collecting accurate data on separated children specifically is very challenging (e.g. separated children being registered as either accompanied or unaccompanied). It should also be noted that for UASC asylum claims for the period January to June 2020, since Eurostat publish UASC data on annual basis, data was available only for few countries at the time when this factsheet was released.

Jointly compiled and produced by:

UNHCR The UN Refugee Agency

unicef

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FRA Opinion – 3/2019
[Hotspots Update]

Vienna, 4 March 2019

Update of the 2016 Opinion of the European Union Agency for Fundamental Rights on fundamental rights in the 'hotspots' set up in Greece and Italy

February 2019

Luxembourg: Publications Office of the European Union, 2019

Print	ISBN 978-92-9474-251-3	doi:10.2811/475395	TK-01-19-165-EN-C
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Acronyms

AEMY	Health Units Societe Anonyme (Ανώνυμη Εταρεία Μονάδων Υγείας)
AMIF	EU Asylum, Migration and Integration Fund
Charter	Charter of Fundamental Rights of the European Union
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
DYEP	Reception/ Preparatory Classes for the Education of Refugees (Δομές Υποδοχής και Εκπαίδευσης Προσφύγων)
EASO	European Asylum Support Office
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EKKA	National Centre for Social Solidarity (Εθνικό Κέντρο Κοινωνικής Αλληλεγγύης)
EU	European Union
Eurodac	European Dactyloscopy
Eurojust	European Union Agency for Criminal Justice Cooperation
Europol	European Union Agency for Law Enforcement Cooperation
EURTF	European Union Regional Task Force
FRA	European Union Agency for Fundamental Rights
Frontex	European Border and Coast Guard Agency
IOM	International Organization for Migration
KEELPNO	Hellenic Center for Disease Control and Prevention (Κέντρο Ελέγχου και Πρόληψης Νοσημάτων)
NGO	Non-governmental Organisation
OHCHR	Office of the High Commissioner for Human Rights
RIS	Reception and Identification Service
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees

THE EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS (FRA),

Bearing in mind the Treaty on European Union (TEU), in particular Article 6 thereof,

Recalling the obligations set out in the Charter of Fundamental Rights of the European Union (the Charter),

In accordance with Council Regulation (EC) No. 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights (FRA), in particular Article 2 with the objective of FRA "*to provide the relevant institutions, bodies, offices and agencies of the Community and its EU Member States when implementing Community law with assistance and expertise relating to fundamental rights in order to support them when they take measures or formulate courses of action within their respective spheres of competence to fully respect fundamental rights*",

Having regard to Article 4 (1) (d) of Council Regulation (EC) No. 168/2007, with the task of FRA to "*formulate and publish conclusions and opinions on specific thematic topics, for the Union institutions and the EU Member States when implementing Community law, either on its own initiative or at the request of the European Parliament, the Council or the Commission*",

Considering FRA Opinion 5/2016 on the fundamental rights in the 'hotspots' set up in Greece and Italy[1] which outline the fundamental rights challenges linked to the hotspots approach as of November 2016,

Having regard previous opinions of FRA on related issues, in particular to the FRA Opinion concerning an EU common list of safe countries of origin,[2] the FRA Opinion on the revised European Border and Coast Guard Regulation and its fundamental rights implications[3] and the FRA Opinion on the recast Return Directive and its fundamental rights implications,[4]

Noting FRA's Regular overviews of migration-related fundamental rights concerns,[5]

Having regard to the request of the European Parliament of 22 February 2019 to FRA for an update of FRA's 2016 Opinion on the fundamental rights situation in the hotspots,

SUBMITS THE FOLLOWING OPINION:

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1 FRA (2016), *Opinion of the European Union Agency for Fundamental Rights on the fundamental rights in the 'hotspots' set up in Greece and Italy*, FRA Opinion 5/2016 [Hotspots], Vienna, 29 November 2016. All hyperlinks were accessed on 27 February 2019.

2 FRA (2016), *Opinion of the European Union Agency for Fundamental Rights concerning an EU common list of safe countries of origin*, FRA Opinion – 1/2016 [SCO], Vienna, 23 March 2016.

3 FRA (2018), *Opinion of the European Union Agency for Fundamental Rights on the revised European Border and Coast Guard Regulation and its fundamental rights implications*, FRA Opinion – 5/2018 [EBCG], Vienna, 27 November 2018.

4 FRA (2019), *Opinion of the European Union Agency for Fundamental Rights on the recast Return Directive and its fundamental rights implications*, FRA Opinion – 1/2019 [Return], Vienna, 10 January 2019.

5 FRA, https://fra.europa.eu/en/theme/asylum-migration-borders/overviews. The overviews start from September 2015.

Key points

In November 2016, FRA formulated 21 individual opinions to address the fundamental rights shortcomings identified in the implementation of the hotspot approach in Greece and Italy.[6] Despite genuine efforts to improve the situation since November 2016, many of the suggestions contained in the 21 opinions FRA formulated at the time remain valid. Taking the situation in both EU Member States together, Table 1 shows that only three issues were properly addressed. On eight opinions, there have been developments without resulting in significant improvements on the ground. In 10 out of 21 opinions, there was no significant progress.

More specifically, the main changes and/or persisting challenges in the five areas FRA highlighted in 2016 are:

- **International protection:** Most gaps to access international protection have been addressed. But asylum applicants stay on average over five months on the Greek islands, where conditions are sub-standard, as they await the end of the asylum procedure or the confirmation that they are allowed to move onward to the mainland. Despite genuine efforts to inform asylum applicants better on the asylum procedure, applicants still note that they are not sufficiently aware. At the same time, state-funded legal aid remains inadequate. There were no new reports about excessive use of force when taking fingerprints.
- **Child protection:** In spite of important developments – such as new guardianship laws in Greece and Italy, shorter stay of unaccompanied children in Italian hotspots and the creation of dedicated areas for unaccompanied children in most hotspots in Greece – serious child protection issues still persist. Adequate shelters for unaccompanied children remain insufficient and the conditions in the dedicated areas inside the hotspots are inadequate.
- **Identification of vulnerable people:** The system to identify vulnerable people in Greece and Italy improved. In Greece, shortages of doctors, psychologists, social workers and interpreters create constant delays leading to prolonged stay of vulnerable people in inadequate conditions in the hotspots. In addition, the sub-standard reception conditions make people prone to become vulnerable. In Italy, there is no structured approach for adequate onward referral to facilities, which can address the specific needs of vulnerable persons.
- **Security:** Violent incidents continue to happen in the hotspots in Greece and Italy. Overcrowding in some Greek hotspots increased the risk of sexual and gender based violence significantly as in most hotspots single women are often not accommodated separately. Most police officers patrolling the hotspots are men, although efforts resulted in the presence of more female officers. Community engagement remains limited and information gaps persist in the hotspots of both countries.
- **Return and readmissions:** Frontex escorts in return and readmission operations are better trained and national human rights monitoring bodies regularly visit the hotspots, adjacent pre-removal facilities and monitor return and readmission operations. At the same time, deprivation of liberty without assessing necessity

[6] FRA (2016), *Opinion of the European Union Agency for Fundamental Rights on the fundamental rights in the 'hotspots' set up in Greece and Italy*, FRA Opinion 5/2016 [Hotspots], Vienna, 29 November 2016.

and proportionality in the individual case continues. In Greece, this practice also concerns some of the asylum applicants.

Fewer arrivals in Italy since July 2017 resulted in improvements in the hotspots. As an illustration, on 25 February 2019, two of the three hotspots used for new arrivals (Lampedusa and Pozzallo) were empty and the third one in Messina hosted 23 people. As the hotspots are underused, it is difficult to assess whether the system is equipped to handle future fundamental rights emergencies adequately, should arrivals increase again. In Italy, fundamental rights challenges have shifted to the cooperation with Libya, refusals to let rescue ships dock, as well as the penalisation of civil society organisations deploying rescue vessels in the central Mediterranean.

Serious fundamental rights gaps persist in the Greek hotspots, where reception conditions remain sub-standard. Part I of this FRA Opinion focuses on Greece, acknowledging the particular challenges faced by Greece, which after Spain remains the EU Member State receiving most of the new arrivals by sea. It describes three underlying reasons why a fundamental rights crisis persists in the hotspots on the Greek islands.

1. Keeping asylum applicants in remote locations to process their asylum claims

The processing of asylum claims in facilities at borders, particularly when these facilities are in relatively remote locations, although *per se* not unlawful, brings along built-in deficiencies. As almost three years of experience in Greece shows, this approach creates fundamental rights challenges that appear almost unsurmountable. Examining asylum applications fairly and carefully takes time. On average, asylum applicants stay on the Greek islands over five months. During that time, they need not only housing, but also social workers, lawyers, doctors and other professionals so that they can enjoy the minimum standards set out in the Reception Conditions Directive (2013/33/EU). Asylum and other authorities need office space, caseworkers and interpreters. It has been difficult to deploy the needed experts to such locations, sometimes also because such professionals are not even available for the resident population, as for example in Kos, where there is no paediatrician in the public health system on the whole island.

2. Systemic delays in procurement and contracting

The use of prolonged and complex procurement and contracting procedures limits significantly the potential impact of national and European funds allocated to improving reception conditions in Greece. It goes beyond the scope of this FRA Opinion to analyse the reasons for the prolonged duration of procurement procedures. As FRA noted in past reports, it is mainly caused by a combination of insufficient planning, limited administrative capacity, coordination difficulties and procurement weaknesses. These problems are neither new nor unique to the asylum and migration area and are structural in nature. However, they result in delays, which significantly affect the daily life of asylum applicants accommodated in the hotspots causing fundamental rights violations on a daily basis; children, for example, might be left without shoes, clothes, or blankets.

3. Inadequate consultation and engagement with the resident population on the islands

There has been little effort to find a win-win solution. Local residents perceive the camps as a burden imposed on them by "Athens and the EU". According to them, the presence of asylum applicants on the islands creates problems for the tourism industry, which is an important source of income for many residents. Moreover, the prolonged stay of a significant number of people with particular needs puts a substantial strain on

the local infrastructure and public services. Residents are less willing to contribute in finding solutions to address gaps, as the example of local residents blocking the road to prevent carrying new containers to the camps illustrates. This situation fuels animosity and tensions and constitutes an important obstacle for the effective implementation of the hotspots approach. The dynamics between the local communities and asylum applicants can only change by involving the affected resident populations more proactively. If there is no overcrowding and conditions are decent, the hotspots can bring direct and indirect economic benefits for the residents, but they need to be proactively engaged to ensure their support.

In conclusion, given that new arrivals on the Greek islands will continue, the past three years have shown that the manner in which the hotspots approach is applied in Greece is not sustainable from a fundamental rights point of view. FRA continues to see the added value of having facilities at the border, where newly arrived persons are informed, screened, registered, provided with immediate assistance and referred to the relevant procedures, but considers that the number of people must remain at all times within the capacity of existing first reception facilities. To achieve this, Greece needs the support of the European Union and other Member States not only on the ground, but also through other solidarity measures. In this context, one important measure is to enhance legal entry channels for persons in need of international protection to reach Europe.

The European Ombudsman on her inquiry on the human rights impact assessment of the EU-Turkey Statement of 18 March 2016 indicated that the European Commission should carry out regular fundamental rights assessments of its implementation. The implementation of the EU-Turkey Statement is linked to the hotspots approach. It has brought about serious fundamental rights challenges, which remain unresolved. The hotspots approach warrants, therefore, regular assessments, to which this FRA Opinion intends to contribute.

Table 1: Assessing progress against individual opinions issued in FRA Opinion 05/2016

FRA Opinion 05/2016 included 21 individual opinions. For each of them, this table describes the relevant legal standards, the situation in November 2016 and in February 2019. Using a 'traffic light' approach, the last column shows in green ● significant improvements; in orange ● developments that have not yet resulted in significant improvements on the ground; and in red ● no significant improvements.

	Legal standards	Situation in November 2016	Situation in February 2019	Trend
	Access to international protection			
1.	*The Asylum Procedures Directive (2013/32/EU) requires Member States to ensure that an **asylum application can be lodged as soon as possible** after an intention to apply for asylum is expressed. Likewise, asylum procedures must **be concluded as soon as possible**, without prejudice to an adequate and complete examination.*	Systemic delays in registering asylum applications of certain nationalities in the Greek hotspots.	Registration of the asylum claims is faster on the Greek islands, but delays in conducting first interviews are still significant.	●
2.	*To give primary consideration to the best interests of the child as required by Article 24 of the Charter (the rights of the child), the examination of **applications for international protection of unaccompanied children** must be ensured as early as possible.*	Delays in registering asylum applications of unaccompanied children.	There were significant improvements in speeding up the registration of the asylum claim of unaccompanied children in Greece and Italy, but the asylum procedure itself remains protracted.	●
3.	***Adequate information on the right to apply** for international protection and **the procedure to follow** is a prerequisite for accessing the right to asylum, as stipulated in the 1951 Geneva Convention relating to the Status of Refugees, Article 18 of the Charter (right to asylum), and the Asylum Procedures Directive.*	The capacity to provide adequate information was still not sufficient to cover all new arrivals.	The Greek and Italian authorities are making genuine efforts to enhance the provision of information through various initiatives, although migrants remain partly uninformed.	●

4.	***Excessive use of force to take fingerprints*** *for Eurodac may amount to violations of the following Charter rights: the right to dignity (Article 1) and integrity of a person (Article 3), prohibition of torture and inhuman or degrading treatment or punishment (Article 4) and the right to liberty and security (Article 6).*	Excessive use of force to take fingerprints for Eurodac documented in particular in Italy.	FRA did not hear of any new cases of excessive use of force when taking fingerprints in neither Italian nor Greek hotspots.	
5.	*Availability of* ***legal support*** *is a prerequisite for full access to the right to asylum. As required by Article 20 of the Asylum Procedures Directive and stemming from Article 47 of the Charter (the right to an effective remedy and to fair trial), free legal assistance and representation must be available for appeal proceedings.*	FRA documented a gap in legal support for asylum applicants in the Greek hotspots.	The state is responsible for ensuring that free legal aid is available to appeal a negative asylum decision. Legal support capacity on the Greek islands has not improved significantly. In 2016, NGOs provided legal support, now there are state lawyers, but only one in Lesvos and one in Chios. UNHCR and civil society fill the gap. In Italy, asylum procedures are not carried out at hotspots.	
Rights of the child				
6.	*An effective* ***guardianship system for unaccompanied children*** *is a pre-condition to ensure the child's best interests and general well-being, as required by the UN Convention on the Rights of the Child and Article 24 of the Charter (rights of the child) and the Reception Conditions Directive (2013/33/EU).*	Local authorities without child protection expertise exercised temporary guardianship for unaccompanied children.	Greece and Italy adopted new guardianship laws. In Greece, the European Commission is funding a transitional programme bringing together UNHCR, the Greek Ministry of Labour and the Greek NGO Metadrasi to fill the gap until the new law is fully implemented on the ground.	
7.	***Separated children*** *– meaning children who are not travelling together with their parents or legal guardians but are accompanied by other adults – may be exposed to heightened risk of abuse or neglect. They must be identified and registered to ensure that they are provided the protection and care necessary for a child's well-being, as required by the UN Convention on the Rights of the Child and Article 24 of the Charter (rights of the child).*	There were no adequate procedures to assess if a separated child (meaning a child accompanied by an adult other than the parents) was at risk of abuse or neglect.	A first assessment usually takes place upon arrival in Greece and Italy, but effective monitoring of the child's situation after the first assessment is limited.	
8.	*Under Article 6 (right to liberty and security) and Article 24 (rights of the child) of the Charter,* ***detention of*** *children, including* ***unaccompanied children****, is rarely justified. In its case law, the European Court of Human Rights (ECtHR) also made it clear that the detention of*	Most unaccompanied children in hotspots were deprived of liberty.	In Italy, unaccompanied children are not anymore staying in the hotspots for weeks and typically move on as soon as registration is completed, although in some cases they may stay longer. In Greece, areas for unaccompanied children are guarded	

	children is not allowed in facilities that are inappropriate – as is the case for the hotspots. *Article 24 (2) of the Reception Conditions Directive requires that unaccompanied children who have made an application for international protection must be placed either with adult relatives, a foster family, in accommodation centres with special provisions or other* ***suitable accommodation****.*		but children are not detained there. Exceptionally, children are briefly detained on public order grounds and could be detained pending age assessment procedures. In Greece, in spite of genuine efforts, the number of dedicated places for unaccompanied children in shelters managed by the National Centre for Social Solidarity are still far below the needs. Dedicated areas in the hotspots remain inadequate.	
9.	*Under Article 24 of the Charter, children are entitled to protection and care as is necessary for their well-being. Article 23 of the Reception Conditions Directive requires that* ***children are ensured a standard of living adequate*** *for their physical, mental, spiritual, moral and social development, as well as access to leisure activities, including age-appropriate play and recreational activities and to open-air activities. Articles 14 and 19 of the directive also guarantee the right to education and healthcare.*	FRA documented serious gaps in the provision of adequate housing, education, and healthcare in the hotspots. Child-specific activities were often unavailable in practice.	Greece appointed child protection focal points in each hotspot who in practice are mainly exercising administrative tasks. In spite of genuine efforts material reception conditions worsened in the overcrowded Greek hotspots. In Italy, the requirements for the new call for tender for services in the hotspots may result in lowering the level of services, affecting also children.	
10.	*Article 10 and Recital (40) of the Directive on combating the sexual abuse and sexual exploitation of children (2011/92/EU) provide for the* ***disqualification of persons who are convicted for certain offences*** *against children to exercise temporarily or permanently professional activities involving direct and regular contacts with children.*	There were no systematic vetting procedures to ensure that individuals with a child abuse past do not engage with children in the hotspots.	Civil servants are checked against criminal record registries upon recruitment. The Standard Operating Procedures for the Greek hotspots (but not for Italy) contain some screening duties and the Hellenic Ministry of Migration Policy has a registry of NGOs but does not include vetting requirements.	
Identification of vulnerabilities				
11.	*The Charter guarantees the rights of the child (Article 24), the elderly (Article 25) and of persons with disabilities (Article 26). Under Article 22 (1) of the Reception Conditions Directive, Member States have an obligation to assess whether an applicant for international protection has* ***special protection needs****.*	Weak procedures to identify vulnerable persons swiftly.	Greece adopted a standardised vulnerability template and operational manual, but serious shortages of medical staff and interpreters delayed identification and lead to prolonged stay of vulnerable people in inadequate conditions in the hotspots. In Italy, the identification improved but there is no structured approach for adequate onward referral to facilities, which can address their specific needs.	

12.	*Recital (25) and Article 11 of the EU Anti-Trafficking Directive (2011/36/EU) emphasise Member States' responsibility for ensuring assistance and support to* ***victims of trafficking in human beings****, and providing training for staff likely to encounter victims.*	Limited awareness and availability of specialised expertise on trafficking in human beings, particularly in Greece.	In spite of a number of measures, such as awareness-raising sessions for deployed officers, the appointment of focal points within the Hellenic Police and the Greek National Referral Mechanism becoming operational, the number of victims identified in the Greek hotspots remains extremely limited. In Italy, particular attention continues to be given to trafficking in human beings.	
13.	*Sufficient presence of female police staff and interpreters contributes to safeguarding the dignity of women and girls in the hotspots, in line with Article 1 of the Charter (right to human dignity), and helps ensure respect for their right to private life enshrined in Article 7 of the Charter. It also plays an important role in facilitating the reporting of* ***sexual and gender-based violence****.*	Female staff are uncommon among police officers deployed to the hotspots.	Despite genuine efforts to increase the proportion of female police officers, the overwhelming majority of police officer are male. The proportion of women among interpreters and staff of other authorities involved in identification procedures is more balanced.	
		Safety of all persons in the hotspots		
14.	*The right to good administration, which is a general principle of EU law also mirrored in Article 41 of the Charter, requires that persons* ***be informed*** *of procedures applicable to them. Article 5 of the Reception Conditions Directive and Article 12 of the Asylum Procedures Directive contain a duty to inform applicants for international protection.*	The inconsistent provision of information on procedures and rights contributed to tensions among migrants and asylum seekers in the hotspots.	In spite of genuine efforts, the lack of information emerged as one of the main concerns from UNHCR's inter-agency participatory assessment in Greece. Information gaps exist also in Italian hotspots.	
15.	*The way a camp is designed and managed impacts significantly on the safety of people staying there, contributing also to preventing sexual and gender-based violence, as required by Article 18 (4) of the Reception Conditions Directive.*	Women and girls face specific risks in the hotspots, which are not always sufficiently taken into account in camp design and management.	Overcrowding in some Greek hotspots increased the risk of sexual and gender-based violence significantly. In practice, in most hotspots, single women are not accommodated in separate areas. Lack of gender-segregated sanitary facilities in Chios and Samos heighten the risk of gender-based violence. In Italy, awareness about sexual and gender-based violence increased.	

16.	*Under Article 19 of the UN Convention on the Rights of the Child, states have the responsibility to ensure the **children's safety** from violence, sexual exploitation and abuse, as well as trafficking in human beings.*	In the hotspots, children face aggravated risk of abuse and violence.	In Italy, shorter stay in the hotspots has reduced the risk of experiencing violence, but in Greece, in spite of the establishment of dedicated areas for unaccompanied children and other measures, children continue to be exposed to abuse and violence, as victims as well as witnesses.	
17.	*Under Article 18 (8) of the Reception Conditions Directive, Member States may involve applicants in **managing the material resources and non-material aspects of life** in the reception facilities.*	Community engagement and outreach through regular meetings with asylum seekers and migrants hosted in the hotspots is limited.	The situation has not significantly changed. In some Greek hotspots, during the inter-agency participatory assessments, asylum applicants complained about limited community engagement.	
		Readmissions and returns		
18.	*According to Guideline 18 (2) of the Council of Europe Twenty Guidelines on Forced Return and the Annex to Decision 2004/573/EC, **escorts** should be carefully selected and receive adequate training, including in the proper use of restraint techniques.*	Escorts deployed through Frontex for readmissions did not have sufficient experience.	Since mid-2017, the European Border and Coast Guard Agency undertakes monthly training for escorts; a guide on readmissions is under preparation.	
19.	***Effective monitoring of forced returns** by independent entities is an important safeguard against potential ill-treatment. It is also acknowledged by the Return Directive, which, in Article 8 (6), specifically requires Member States to establish effective forced return monitoring systems. Independent forced return monitoring safeguards the right to human dignity, the prohibition of inhuman or degrading treatment or punishment and the right to an effective remedy, all enshrined in the Charter.*	Insufficient independent monitoring of return and readmission operations.	The Office of the Greek Ombudsman and the Italian National Guarantor for the rights of persons detained and deprived of their liberty regularly visit the hotspots and monitor readmission and removal operations.	

20.	***Pre-removal detention*** *represents a limited exception to the right of liberty (Article 6 of the Charter) and as such needs to comply with the principles of necessity and proportionality (Article 52 (1) of the Charter). Article 15 of the Return Directive likewise states that detention should only be used where there are no other sufficient but less coercive measures available.*	Placement in pre-removal detention without assessing necessity and proportionality (e.g. to prevent absconding) in the individual case.	Deprivation of liberty without assessing necessity and proportionality in the individual case continues. In Greece, this practice also concerns those asylum applicants who are placed in pre-removal facilities on the islands. In the Lampedusa hotspot in Italy, people are detained without a detention order.	
21.	*Under Article 16 (5) of the Return Directive, which applies also when a Member State opted not to apply the directive in situations falling under its Article 2 (2) (a), returnees must be regularly* ***informed on their rights while in detention****.*	There were gaps in the provision of information and limitations concerning the availability of interpreters.	The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment documented major gaps during its visit to Greece in April 2018. Meanwhile, the Greek authorities contracted AEMY (Ανώνυμη Εταρεία Μονάδων Υγείας, Health Units Societe Anonyme) to provide interpreters, medical and psycho-social staff to work in Kos and Moria pre-removal centres. FRA did not assess the effectiveness of this measure.	

Introduction

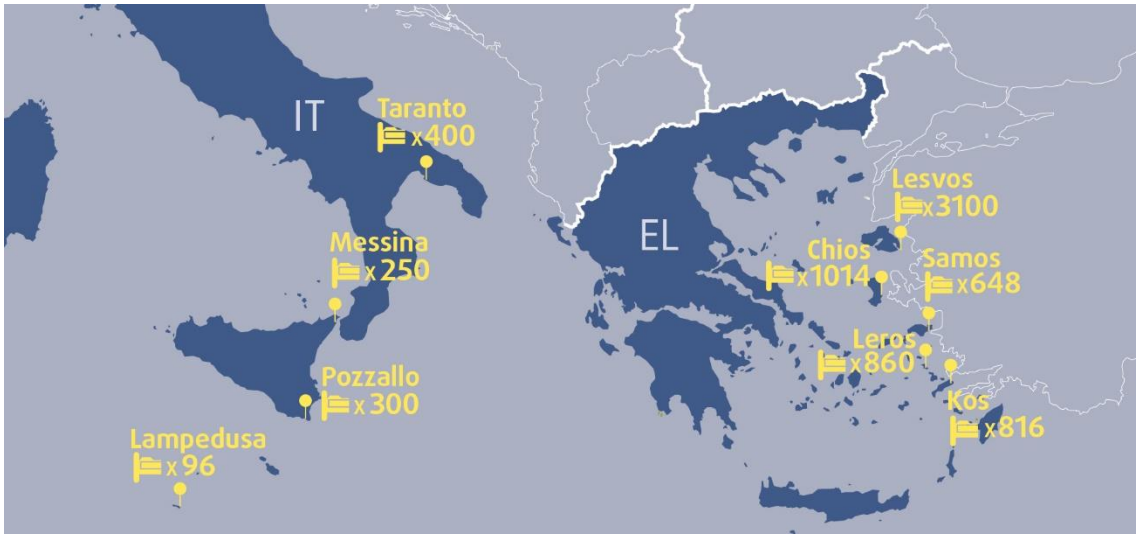
Managing arrivals at borders: the 'hotspot' approach

The European Union's (EU) 'hotspot' approach is a building block of the EU response to significant numbers of refugees and migrants arriving at external borders, often traumatised or in distress.

Under this approach, conceived as a temporary measure, the EU assists frontline Member States that are confronted with disproportionate numbers of arrivals in registering those who come, addressing initial reception needs, identifying vulnerabilities and undertaking security checks. Asylum and return procedures may also take place in the hotspots. Conceptualised in the European Agenda on Migration in April 2015,[7] the hotspot approach has since then been implemented in Greece and Italy. It applies to all disembarkations of migrants rescued at sea, as well as to unauthorised landings in the Eastern Aegean islands and in the most affected areas of Southern Italy.

Five reception facilities in Greece and four in Italy implement the hotspot approach. Figure 1 shows the location of these nine facilities. A tenth hotspot in Trapani converted into a pre-removal detention centre (a "Permanent Centre for Returns" under Italian law) in late 2018.[8] The hotspot in Taranto does not process new arrivals anymore, as it hosts asylum applicants and migrants apprehended in the North of Italy trying to move to another EU Member State. At the same time, relevant actors also apply the hotspot approach to arrivals in other ports of Southern Italy, through arrangements also referred to as "mobile hotspots".

Figure 1: Hotspots in Greece and Italy and their reception capacity (No. of persons)



Note: In 2019, the hotspot in Taranto did not host new arrivals.

Source: FRA, 2019

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7 European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A European Agenda on Migration*, COM(2015) 240 final, Brussels, 13 May 2015.

8 See the notice for the call for tender by the Italian Prefecture of Trapani, *Avviso publlico esplorativo per la manifestazione di interesse a partecipare a procedura negoziata per l'affidamento del servizio di gestone del Centro per il Rimpatrio di Milo*, Trapani, 30 November 2018.

The primary responsibilities for a fundamental rights-compliant management of the hotspots remain with the Member States operating these. When implementing the hotspot approach, Member States act within the scope of EU law and, therefore, have to comply with the rights and principles set forth in the Charter of Fundamental Rights of the EU (Charter), which is legally binding also for EU institutions and agencies on the ground.[9]

National legislation, in particular on border management, asylum, return and child protection, regulates the activities carried out there. Whereas such legislation needs to comply with the Schengen *acquis* and the EU *acquis* on asylum and returns, Member States have discretion as to how to organise the different activities implemented in the hotspots.[10] Standard Operating Procedures adopted in Greece and Italy set out the tasks and responsibilities of the different actors involved, which may also include international organisations, such as the United Nations High Commissioner for Refugees (UNHCR) or the International Organization for Migration (IOM) and non-governmental organisations (NGOs).

Keeping new arrivals in facilities at the border implies interferences with a number of fundamental rights, as listed at the end of this introduction. The explanatory note of the European Commission on the hotspot approach mentions that EU agencies can use FRA for assistance on how to address fundamental rights challenges in the hotspot approach.[11] Since April 2016, FRA has regularly visited the hotspots to provide fundamental rights advice. As an illustration of its activities, FRA prepared short videos on fundamental rights for EASO and Frontex deployed experts in the hotspots. FRA's temporary field presence focused, in particular, on issues related to child protection, the situation of other vulnerable groups and procedural safeguards both in the asylum and return procedures.

The legal settings in which the hotspots operate in Greece and Italy differ significantly. In Greece, after the EU – Turkey statement of 18 March 2016,[12] the examination of the asylum claim often takes place while people stay in the hotspots. This means that asylum applicants stay in the hotspots on average over five months. In Italy, where the hotspots serve only registration, security screening and immediate assistance purposes, people usually stay in the hotspots for up to a few days, although longer stays lasting weeks occurred in 2018.[13] The longer people stay in the hotspots, the bigger the challenge is to comply with fundamental rights, experience shows.

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9 See also European Commission, Commission Staff Working Document, Best practices on the implementation of the hotspot approach, Accompanying the document Report from the Commission to the European Parliament, the European Council and the Council, Progress report on the European Agenda on Migration, SWD(2017) 372 final, Brussels, 15 November 2017, which underlines the need to comply with fundamental rights when operating and performing tasks in the hotspots.

10 Italy, Ministry of the Interior, Standard Operating Procedures (SOPs) applicable to Italian Hotspots and Greece, Reception and Identification Service, General Secretariat for Reception, Ministry of Migration Policy, Manual of Standard Operating Procedures applicable to the Reception and Identification Centres (R.I.Cs), 1 December 2017.

11 Statewatch made the explanatory note public at: http://www.statewatch.org/news/2015/jul/eu-com-hotsposts.pdf.

12 EU-Turkey Statement, Council of the EU, Press Release No. 144/16, 18 March 2016.

13 Council of Europe, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Report to the Italian Government on the visit to Italy carried out by the CPT from 7 to 13 June 2017, Strasbourg, 10 April 2018, paras. 23-24.

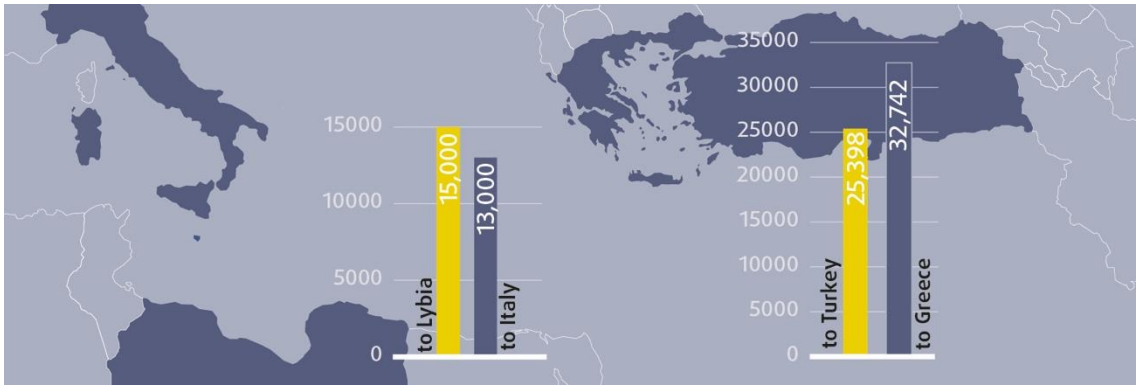
EU and Member States policies affecting the implementation of the hotspot approach

The hotspots approach is one among several measures the EU and its Member States took following the unprecedented arrival of over a million people seeking refuge in EU Member States in 2015.[14] Some of the other measures taken affect the fundamental rights situation in the hotspots and deserve, therefore, mentioning.

Cooperation with third countries impacts on rescue at sea

Libya and Turkey rescue many migrants and refugees and bring them back to their own ports. As illustrated in Figure 2, in 2018, the Libyan Coast Guard rescued or intercepted almost 15,000 refugees and migrants at sea,[15] which is more than the approximately 13,000 persons who left Libya and reached Italy.[16] The cooperation with Libya resulted in a significant decrease in persons reaching Italy after mid-2017,[17] with less people in the hotspots: Only some 227 people arrived in Italy between 1 January 2019 and 17 February 2019, compared to 9,448 people in the same period in 2017.[18] In 2018, Turkey intercepted or rescued 25,398 persons in the Aegean Sea, compared to 32,742 who reached the Eastern Aegean islands.[19] In December 2016, FRA provided guidance on the fundamental rights challenges resulting from the increased cooperation with third countries on migration management.[20]

Figure 2: Disembarkation of persons rescued at sea: EU and third countries, 2018



Source: FRA, 2019; based on data by UNHCR (Libya and arrivals in Greece), the Italian Ministry of Interior (Italy) and IOM (Turkey)

Relocation as an important safety valve ends

As first countries of entry into the EU, Greece and Italy remain responsible to examine the asylum applications of the majority of persons who arrive.[21] Therefore, they are also

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14 Eurostat reports a total of some 1,322,000 first time applications in 2015. See Eurostat migration statistics (migr_asyappctza), data extracted on 28 February 2019.

15 UNHCR, Overview 2018, Libya, p. 1.

16 The number of arrivals in Italy has been provided by Ministry of the Interior, personal communication, 21 January 2019.

17 FRA (2018), Fundamental Rights Report 2018, Luxembourg, Publications Office, sub-section 6.1.

18 Italy, Ministry of the Interior, *Cruscotto Statistico*.

19 For data on Turkey see International Organization for Migration, Migrant Presence Monitoring Turkey, Overview of the Situation with Migrants, Annual Report 2018, p. 5; for Greece see UNHCR Greece, Sea arrivals dashboard, December 2018.

20 FRA (2016), *Guidance on how to reduce the risk of refoulement in external border management when working in or together with third countries*, Luxembourg, Publications Office, December 2016.

21 See Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining

responsible to host and protect them. To better share responsibility, on 20 July 2015, the EU agreed on the temporary emergency relocation of certain categories of asylum applicants from Greece and Italy to other parts of the EU[22] – a programme that meanwhile ended. At the same time, new arrivals in Greece increased: In 2018, over 32,000 persons arrived in Greece by sea, which is approximately 10 % more than in 2017 when some 29,000 arrived.[23] In 2018, the total number of arrivals to Greece by land and sea corresponds to some 35 % (50,215 arrivals) of total arrivals in Europe (144,166 arrivals).[24] In Italy, as of June 2018, the government disallowed several NGO rescue vessels to dock in Italian ports until other EU Member States agreed to accept the migrants rescued at sea.[25] This policy aimed at obtaining pledges by other EU Member States, but it further exacerbated the hardship of those rescued as they remained at sea for days and sometimes weeks until EU Member States negotiated an *ad hoc* solution.

Asylum processing at borders increases

FRA observes an emerging trend towards processing applications for international protection while applicants remain confined at the external land or sea border.[26]

According to the European Commission the hotspot approach in Greece has shown "the added value of initiating the asylum and return procedures and, when appropriate, finalising them, in the hotspots."[27] Other Member States adopted similar practises. Already in September 2015, Hungary introduced a border procedure to process applications for international protection in transit zones along its southern land border, confining applicants there;[28] an approach that Hungary extended to all applications in March 2017.[29] The Court of Justice of the EU will review this situation.[30] In June 2018, the European Council suggested the creation of "controlled centres" for persons

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an application for international protection lodged in one of the Member States by a third-country national or a stateless person, OJ L 180, 29.6.2013, pp. 31-59.

22 See Justice and Home Affairs Council Conclusions, 20 July 2015 and Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece, OJ L 248, 24 September 2015; subsequently amended by Council Decision (EU) 2016/1754 of 29 September 2016 amending Decision 2015/1601 establishing provisional measures in the area of international protection for the benefit of Italy and Greece, OJ L 268, 1 October 2016. For the places pledged, see European Commission, Relocation – Sharing responsibility within the EU, EU solidarity between Member States, November 2017.

23 UNHCR Greece, Sea arrivals dashboard, December 2018.

24 International Organization for Migration, (IOM), Flow Monitoring Europe.

25 For an overview of vessels, which were disallowed disembarkation, see FRA (2019), *Fundamental Rights Report 2019*, Luxembourg, Publications Office, sub-section 6.1 [forthcoming].

26 See also Hungarian Helsinki Committee (2019), *Crossing a Red Line: How EU Countries Undermine the Right to Liberty by Expanding the Use of Detention of Asylum Seekers upon Entry: Case Studies on Bulgaria, Greece, Hungary, and Italy*, Budapest, February 2019.

27 European Commission, Commission Staff Working Document, Best practices on the implementation of the hotspot approach, Accompanying the document Report from the Commission to the European Parliament, the European Council and the Council, Progress report on the European Agenda on Migration, SWD(2017) 372 final, Brussels, 15 November 2017.

28 Hungary, *2007. évi LXXX. törvény a menedékjogról* (Act No. 80 of 2007 on asylum), Article 71/A. The legal basis for establishing the transit zones is set forth in Act No. 89 of 2007 on State borders (*2007. évi LXXXIX. törvény az államhatárról*), Article 15/A.

29 Hungary, *2017. évi XX. törvény a határőrizeti területen lefolytatott eljárás szigorításával kapcsolatos egyes törvények módosításáról* (Act No. 20 of 2017 on amending laws on further tightening the rules of the asylum procedures conducted at the border).

30 CJEU, C-808/18, *Commission v. Hungary*, case referred to the Court on 21 December 2018. See also European Commission, *Press release – Migration and Asylum: Commission takes further steps in infringement procedures against Hungary*, Brussels, 19 July 2018.

intercepted or rescued at sea and disembarked in the EU.[31] The centres should enable identification and security checks of new arrivals, as well as rapid procedures for asylum and return; the centres would benefit from full EU support.[32] The term suggests some forms of deprivation or restriction of liberty that remain undefined.[33] As this FRA Opinion describes later, the processing of asylum claims in facilities at the land or sea borders, although not *per se* unlawful, raises many fundamental rights challenges, which in practice appear difficult to resolve.

EU action in the hotspots and related fundamental rights challenges

The European Commission, the European Border and Coast Guard Agency (Frontex), the European Asylum Support Office (EASO, which has large operations only in the Greek hotspots), and Europol have a regular presence in most of the hotspots. FRA has been regularly visiting the hotpots since April 2016. Eurojust assists the host Member States with investigations to dismantle smuggling and trafficking networks.[34]

In Greece and Italy, the EU agencies concerned continue to deploy hundreds of staff.[35] EU agencies are significantly involved in the day-to-day operation of the hotspots, particularly in Greece. An EU Regional Task Force (EURTF) ensures the operational coordination and exchange of information between the national authorities and EU agencies. The Court of Auditors of the EU recommended that the Commission, together with the EU agencies and the national authorities, set out more clearly the role, structure and responsibilities of the EU Regional Task Forces.[36] Relevant actors agreed on the terms of cooperation[37] as well as on the rules of procedure for the EU Regional Task Force meetings in Greece and Italy.[38] EURTF meetings in Greece to which FRA also participates regularly discuss some targeted fundamental rights issues. The European Commission has deployed an expert to Athens focusing on vulnerable people who also prepares updates on child protection for the EURTF meetings.

EU law frames EU agencies deployment to support front-line Member States within "migration management support teams".[39] According to the proposal on the revised

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31 European Council, European Council conclusions, 28 June 2018.

32 European Commission, Proposal for a Regulation of the European Parliament and of the Council on the European Border and Coast Guard, COM(2018) 631 final, Brussels, 12 September 2018, Recitals (44), (46) and (48).

33 European Commission, Non-paper on "controlled centres" in the EU – interim framework, Brussels, 24 July 2018, which does not cover the regime of such centres.

34 Eurojust Annual Report 2017, 9 April 2018, p. 37.

35 See, for Greece, European Commission, Operational implementation of the EU-Turkey Statement, Brussels, 5 December 2018; European Asylum Support Office, EASO's Operating Plan for Greece for 2019.

36 European Court of Auditors, EU response to the refugee crisis: the 'hotspot' approach, Special Report No. 6, 2017, Recommendation 4.

37 Terms of cooperation for European Union Regional Task Forces (EURTF), Ref. Ares(2018)1622597 – 23/03/2018.

38 See, for example, Rules of procedure of the European Union Regional Task Force for migration management support to Greece (EURTF-GR) as endorsed on 4 October 2018.

39 Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No. 2007/2004 and Council Decision 2005/267/EC, Article 2 (10); Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA ([2018] OJ L 135/53), Article 4; Amended proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for

European Border and Coast Guard Regulation,[40] "migration management support teams" will be composed of staff deployed by Frontex, EASO, Europol and other relevant EU agencies as well as by Member States (Article 41 of the proposal). Recital (47) of the proposal reminds that relevant EU actors should ensure that activities in hotspots comply with applicable EU law. This can only be operationalised by deploying staff with the necessary fundamental rights knowledge. This could be achieved, for instance, by involving FRA.[41]

In the hotspots, EU agencies operate in an environment, which is delicate from a fundamental rights point of view. They are in daily contact with migrants and refugees supporting national authorities in taking decisions that significantly affect their lives and may interfere with their fundamental rights. In doing this, they also encounter fundamental rights challenges that relate to the national situation in the given Member State. For example, a screening process which ends in deprivation of liberty by the national authorities without fully respecting the safeguards of the Charter (as described in Part II, Section 5) indirectly affects the operational support by the European Border and Coast Guard Agency to screening. Furthermore, when people are not safe at night or basic human needs such as clothing, shoes remain unmet, asylum applicants may have difficulties focusing during the interview EASO carries out in support of the Greek Asylum Service. If not adequately addressed, such gaps affect the work of all actors in the hotspots, including EU institutions and agencies, with negative implications for the legitimacy and credibility of the EU operational support as a whole.

Scope of this update

In November 2016, FRA analysed the fundamental rights challenges connected to the implementation of the 'hotspot' approach in Greece and Italy. At that time, FRA flagged a number of serious fundamental rights gaps, affecting the work of all actors in the hotspots, including the EU. FRA underlined also the need for a more systematic and regular collection of data and evidence on the fundamental rights situation in Greek and Italian hotspots. Meanwhile, FRA has been reporting on developments in Greece and Italy in the context of its regular overviews of migration-related fundamental rights concerns.[42]

In her inquiry on the human rights impact assessment of the EU-Turkey Statement, the European Ombudsman invited the Commission to include the impact of the implementation of the EU-Turkey Statement on fundamental rights in its regular updates.[43] By measuring progress against the fundamental rights gaps identified in 2016, this FRA Opinion contributes to assess the impact of the hotspots approach and the EU-Turkey Statement more specifically on the rights of migrants and refugees.

Asylum and repealing Regulation (EU) No 439/2010, COM(2018) 633 final, 2016/0131(COD), Brussels, 12 September 2018; Article 16 (2) (o)-(q) and Article 21.

40 European Commission (2018), Proposal for a Regulation of the European Parliament and of the Council on the European Border and Coast Guard and repealing Council Joint Action n°98/700/JHA, Regulation (EU) No. 1052/2013 of the European Parliament and of the Council and Regulation (EU) n° 2016/1624 of the European Parliament and of the Council, 2018/0330(COD); COM(2018)631 final, Brussels, 12 September 2018.

41 See also European Commission, Fact Sheet, State of the Union 2018: A reinforced European Union Agency for Asylum – Questions and Answers, Strasbourg, 12 September 2018.

42 Such overviews are available on FRA's webpage at https://fra.europa.eu/en/theme/asylum-migration-borders/overviews.

43 European Ombudsman, Decision of the European Ombudsman in the joint inquiry into complaints 506-509-674-784-927-1381/2016/MHZ against the European Commission concerning a human rights impact assessment in the context of the EU-Turkey Agreement, 18 January 2017.

The 2019 FRA Opinion has two parts. The first part focuses on the reception conditions in Greece. Given persistent challenges to address serious gaps, it tries to explain some of the underlying reasons why existing fundamental rights gaps, in particular those related to sub-standard reception conditions on the Eastern Aegean islands, are difficult to address in spite of all genuine efforts by national, European and international actors. The second part follows the same five thematic headings of the 2016 FRA Opinion, adjusting some section and opinion headings to facilitate reading. For each of the five thematic sections, FRA compares the situation in November 2016 with that in February 2019, looking at each of the 21 individual FRA opinions. This part covers Greece and Italy. Illustrative boxes in light red provide examples of fundamental rights gaps and boxes in green promising practices.

The 2019 FRA Opinion is based on observations and discussions in Greece and Italy complemented by desk research. It touches upon the following Charter rights without comprehensively looking at all fundamental rights risks arising from the operation of the hotspots:

- the right to human dignity (Article 1);
- the prohibition of torture and inhuman or degrading treatment or punishment (Article 4);
- the prohibition of trafficking in human beings (Article 5 (3));
- the right to liberty and security (Article 6);
- the right to respect for private and family life (Article 7);
- the right to asylum and the protection in the event of removal, expulsion and extradition (Articles 18 and 19);
- equality before the law and non-discrimination (Articles 20 and 21);
- the rights of the child (Article 24);
- the rights of the elderly and persons with disabilities (Articles 25 and 26);
- the right to good administration (Article 41);
- the right to an effective remedy and to a fair trial (Article 47).

FRA would like to thank all those who at short notice contributed to the collection and verification of data and information for this update.

Part I: Reception conditions in Greece: a persistent challenge

Reports about refugees trapped in undignified conditions on the Greek islands regularly hit the press.[44] They pictured the ever-growing tent camps under the olive grove or in the forest around the hotspots in Moria (Lesvos), Vial (Chios) and Vathy (Samos) showing children walking in the mud and angry residents complaining about the unbearable situation in the camps.

Picture 1: Extended area of Vial hotspot (Chios), November 2017, FRA

The first part of this FRA Opinion covers Greece. It is there where most fundamental rights challenges in the hotspots persist. This part of the opinion tries to illustrate some of the underlying reasons why fundamental rights gaps, in particular those relating to reception conditions, remain unaddressed in spite of the genuine efforts by many national, European and international actors. In doing this, FRA focuses on three factors, although these are not exhaustive.

1. Asylum processing resulting in longer stay

Greece and Italy apply the hotspots approach differently. This influences the fundamental rights challenges that arise. It also determines the nature of EU's involvement, in particular EASO's role, which is prominent in the Greek hotspots, as there EASO provides support for processing applications for international protection.

In Greece and Italy, registration and identification procedures record whether a newly arrived person intends to request international protection. In Italy, those who express the intention to apply for international protection are transferred soon to other facilities (a practice, which allows for better living conditions in the hotspots). This is not the case in Greece after the EU-Turkey Statement of 18 March 2016.

The Greek Asylum Service formally registers all applications for international protection while people stay in the hotspots. All applicants, except for vulnerable persons and family reunification cases under the Dublin Regulation (EU) No. 604/2013, are obliged to stay in the hotspot until the end of the asylum procedure, including during the review by the appeal committee. Their freedom of movement is limited to the island where they are staying. For vulnerable cases, the practice has not always been the same. Since late 2018, the Greek Asylum Service has been lifting such geographical restriction when asylum applicants are found to be vulnerable. Prior to that, however, many vulnerable

[44] See, for example, The Telegraph, 9 January 2019, Migrant women with newborn babies sent back to live in tents in notorious Greek refugee camp; The New York Times, 2 October 2018, 'Better to Drown': A Greek Refugee Camp's Epidemic of Misery; Independent, January 2017, Refugees in Greece 'could freeze to death' in snow due to inadequate winter preparations, warn aid groups; Ekathimerini, 12 October 2018, Migrant camp squalor not limited to Moria.

applicants had to stay in the hotspots not just until they were found vulnerable but until their first asylum interview. On two islands, Lesvos and Kos, there are closed pre-removal facilities nearby or at the hotspots where migrants and asylum applicants can be detained. Figure 3 visualises in a simplified manner the different ways in which the hotspots approach is applied in Greece and Italy.

Figure 3: Simplified overview of procedures in the hotspots in Greece and Italy

Note: In Greece, pre-removal facilities exist only on two islands, Lesvos and Kos; practices regarding who is placed there change regularly.

Source: FRA, 2019

In Italy, there are indications of moves towards the Greek model. Legislative reforms adopted in 2018 will make it also possible to confine migrants for 30 days in special facilities (*appositi locali*) within the hotspots as the authorities carry out accelerated asylum procedures.[45] By February 2019, no such facilities existed in any of the three operational hotspots. If not adequately governed and organised, the implementation of this new provision could create important new fundamental rights challenges in Italy.

The first main consequence of this difference in approach is the time people spend in the hotspots. Usually, people stay in the Italian hotspots for one-two days before their transfer – although longer stays of weeks occur in some instances – whereas they spend on average over five months on the Eastern Aegean islands (see Table 2). According to estimates based on UNHCR records, over 200 persons have been on the islands since 2016, although this may also include persons who stay there due to lack of alternative options in the mainland. The infrastructure and the services offered in the hotspots are not designed for long-term stay. If people remain in the hotspots for months, it results in interference in a wide array of individuals' rights including right to human dignity, rights of the child and others, as shown in the second part of this FRA Opinion.

[45] Italy, Law Decree No. 113 of 4 October 2018, converted into Law No. 132 of 1 December 2018 [*decreto-legge 4 ottobre 2018, n. 113, coordinato con la legge di conversione 1º dicembre 2018, No. 132*], Official Gazette [Gazzetta Ufficiale] No. 281, 3 December 2018, Article 3 (1) (a) on the 30 days deadline and Article 9 (1-ter) and (1-quarter) on border procedure as well as on the five territorial commissions.

Table 2: Number of persons staying on the five Greek islands by year of arrival and total average length of stay, 25 February 2019

Year of arrival	2016	2017	2018	2019	Total	Average stay on the islands		
Number of persons staying on the five islands	224	628	11460	1306	13618	Syrians	Nationalities with recognition rate above 25%	Nationalities with recognition rate below 25%
						6,7 months	5,46 months	4,43 months

Note: The five islands are Lesvos, Chios, Samos, Leros and Kos. The analysis is an estimation based on available UNHCR records of all asylum applicants and refugees living on the five islands. The 25 % recognition rate is calculated according to Eurostat, Table 7: First instance decisions by outcome and recognition rates, 30 main citizenships of asylum applicants granted decisions in the EU-28, 2nd quarter 2018 (accessed on 18 February 2019). Syrian nationals are not included to the 'above 25% category'.

Source: UNHCR, February 2019

The second related consequence is the risk of overcrowding. As procedures take time to complete and people continue to arrive, keeping applicants for international protection in the hotspots until the interview or the whole procedure is over, means that accommodation capacity is quickly overstretched. Table 3 shows the number of people staying in each of the Greek hotspots on five different dates, namely 27 February 2019, 4 February 2019, 18 September 2018, 18 April 2018 and 16 November 2017 compared to their official capacity. It shows that the hotspots in Greece were most of the time overcrowded, even if the total reception capacity of the hotspots has increased since 2017 and despite the fact that there are also other facilities for vulnerable people on the islands, such as apartments. In February 2018, the Greek Council of State issued an interim order according to which the occupancy of the hotspot in Chios should not exceed 100 prefabricated houses and 1,274 residents.[46]

Table3: Greek hotspots: Occupancy compared to capacity, selected dates

Date	Lesvos		Chios		Samos		Leros		Kos	
	OCC.	CAP.	OCC.	CAP.	OCC.	CAP.	OCC.	CAP.	OCC.	CAP.
27.02.2019	5125	3100	1422	1014	3969	648	950	860	719	816
04.02.2019	4930	3100	1369	1014	3669	648	1017	860	767	816
18.09.2018	8804	3100	2274	1014	4017	648	659	860	1318	816
18.04.2018	6539	3000	1432	1014	2879	648	646	860	880	816
16.11.2017	6489	2330	2274	894	2162	700	837	880	792	772

Notes: Occ. = number of people staying in the hotspot at a given date; Cap. = reception capacity of the hotspot at that time. Numbers in red show overcrowding and in green occupancy within capacity. The numbers refer only to the hotspots and not to other accommodation facilities on the islands.

Source: Hellenic Republic, Ministry of Citizen Protection, National Coordination Centre for Border Control, Immigration and Asylum, National situation regarding the islands at Eastern Aegean Sea on 27.02.2019, 04.02.2019, 18.09.2018, 18.04.2018 and 16.11.2017.

[46] See, Council of State Interim Order, 28.02.2018, at: http://www.era-aegean.gr/wp-content/uploads/2018/03/StE_proswrini_entoli_VIAL_chios__18Feb18.jpg.

Picture 2: Samos, tents outside Vathy hotspot, December 2018, FRA

In 2018 and early 2019, the level of overcrowding has been particularly high on the islands of Samos and Lesvos. When FRA visited Samos in December 2018, the hotspot hosted over 4,000 people, which is more than six times its intended capacity. Thousands of asylum applicants including families with small children and other vulnerable people had to live in sub-standard conditions in extended areas of the hotspot. The Greek government implemented since September 2018 a decongestion strategy aimed at transferring those whose geographical restriction was lifted: for example, in December 2018, it accelerated the transfers to the mainland, particularly from Samos and Lesvos.[47] Despite all the transfers to decongest the islands, overcrowding remains critical.

Many of the asylum applicants in the Greek hotspots are obliged to stay there. Their freedom of movement is limited to the island where they are living. Such restriction of liberty serves to allow a possible future readmission to Turkey under the EU-Turkey Statement of 18 March 2016.[48] As Turkey does not readmit migrants who moved from the islands to the Greek mainland,[49] those who could potentially be sent back to Turkey are forced to stay on the island by means of a geographical restriction of liberty, the Greek Asylum Service issues. The geographical restriction lasts until the applicant receives international protection or until it is established that he or she is exempted from the border procedure as found vulnerable or for family reunification reasons.[50] Such vulnerability assessment, however, can take weeks or sometimes months (see Part II, Section 4). At the same time, in practice, vulnerable applicants might stay in the hotspots even after their geographical restriction is lifted due to lack of sufficient facilities in the mainland. For example, when FRA visited Samos in July 2018, there were some 1,000 persons staying there with lifted geographical restriction.

For non-vulnerable persons, the length of stay on the islands depends on the length of the asylum procedure. The length of the asylum procedure depends not only on the number of arrivals and the circumstances of each case but also on the capacity of the caseworkers and interpreters, as well as on the availability of space to conduct

47 UNHCR, *Thousands of asylum-seekers moved off Greek islands*, 27 December 2018.

48 European Council, EU-Turkey Statement, 18 March 2016. See also European Commission, Next operational steps in EU-Turkey cooperation in the field of migration, COM(2016) 166 final, Brussels, 16 March 2016.

49 See European Commission, Turkey 2018 Report, 2018 Communication on EU Enlargement Policy, SWD(2018) 153 final, Strasbourg, 17 April 2018: "Turkey is not yet implementing the provisions relating to third-country nationals in the EU-Turkey readmission agreement, despite these entering into force on 1 October 2017."

50 Following a Council of State ruling annulling a 2016 decision of the Director of the Greek Asylum Service imposing a restriction of movement on asylum seekers arriving on the islands, the Greek Asylum Service issued a new decision justifying the geographical restrictions to facilitate the implementation of the EU Turkey statement and the processing of asylum requests. See Decision of the Greek Asylum Service Director No. 8269, Gov. Gazette B' 1366/20.04.2018. In October 2018, the Director of Greek Asylum Service issued a new decision confirming the geographical restriction but expressly exempting vulnerable applicants and family reunification cases under the Dublin Regulation (EU) No. 604/2013. See Decision of the Greek Asylum Service Director No. 18984, Gov. Gazette B' 4427/05.10.2018.

interviews on each island. The availability of medical staff is another critical element as interviews are postponed if a vulnerability assessment has not been carried out. In Kos, which is one of the hotspots less affected in terms of overcrowding, in 2018, the average time from the lodging of the application until the first interview with EASO was 41 days while from the date of the interview until the issuance of the recommendation by EASO was 45 days.

Greece has become one of the top 10 EU Member States processing the largest numbers of asylum claims with a total of 46,254 decisions in 2018.[51] Comparing this with other EU Member States, as shown in Table 4, in the first nine months of 2018, all over Greece, the Greek Asylum Service examined asylum applications of 23,520 people, which is more that the United Kingdom and twice as many as the total decisions the Greek Asylum Service took in 2016 (11,455 decisions).[52] This represents a major increase.

Table 4: First instance decisions on asylum applications, January-September 2018, 10 EU Member States with the largest number of decisions

EU Member State	No. of decisions
1. Germany	136,810
2. France	85,470
3. Italy	72,015
4. Austria	28,445
5. Sweden	23,640
6. Greece	**23,520**
7. United Kingdom	22,290
8. Belgium	15,025
9. Spain	9,045
10. Netherlands	7,535
TOTAL NO. OF DECISION IN THE 28 EU MEMBER STATES	441,665

Source: Eurostat, migr_asydcfstq (data extracted on 18 February 2019)

Even with the important assistance the European Asylum Support Office provides, it is difficult to imagine how the processing time of implementing the temporary border procedure under Article 60 (4) of Law 4375/2016 or the regular asylum procedure on the islands can be further accelerated without undermining the quality of decisions. Putting further pressure on the Greek Asylum Service may undermine the quality of first instance asylum decisions, which in turn would prolong the overall length of procedure, as more work would be shifted to the appeals stage.

It is foreseeable that asylum applicants will continue to stay on the islands for a significant amount of time. This means that reception arrangements on the islands must cater not only for the immediate needs of people upon arrival, as is the case in Italy, but provide safe and dignified reception conditions over time. This is a much more challenging task.

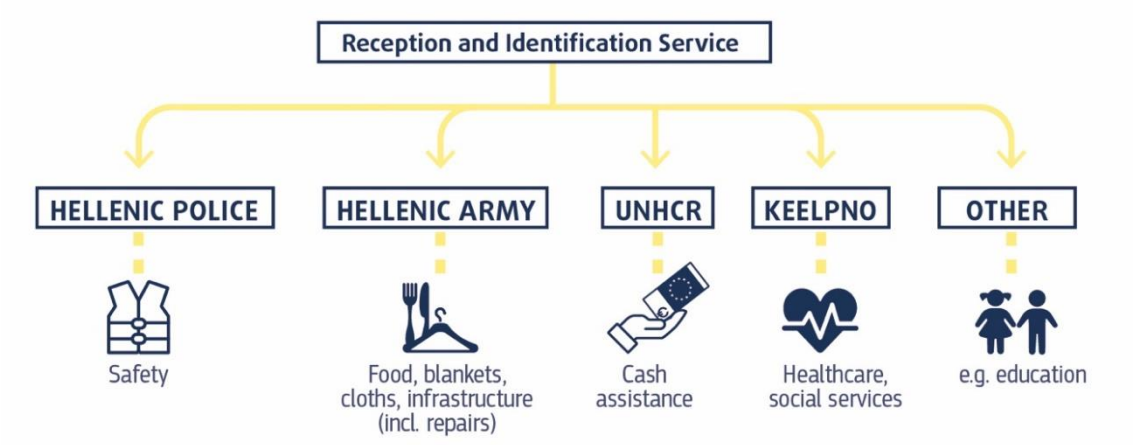
51 Statistical Data of the Greek Asylum Service (from 7.6.2013 to 31.01.2019).
52 Eurostat, migr_asydcfsta, data extracted on 18 February 2019.

2. Procurement, staffing and coordination challenges delay actions to enhance reception conditions

The Reception and Identification Service (RIS) is the Greek authority responsible for the management of the hotspots.[53] RIS appointed a permanent coordinator in each hotspot who bears overall responsibility for the running of the centres. Administrative and technical staff, employed under different contractual arrangements, support the coordinator. Only few RIS staff have permanent contracts. In Leros, none of them has. The majority are either contract agents co-financed through the EU Asylum, Migration and Integration Fund (AMIF) with renewable fix-term contracts or staff provided through a scheme for unemployed people who rotate regularly. In February 2019, the staff provided through the scheme for unemployed people constituted approximately 62% of RIS staff in the hotspots.[54] Contract agent staff faced regular delays in the payment of their salaries. In 2018-2019, this happened three times. Contract staff funded by AMIF and working for the Greek Asylum Service went on strike several times in 2017 and 2018, as they had not been paid for some months.[55]

Whereas RIS bears overall responsibility for the hotspots and for ensuring due respect of the right to human dignity there, it does not provide directly most of the services for people hosted there. As illustrated in Figure 4, the Hellenic Army is responsible for maintaining the hotspot infrastructure, for food distribution and for the purchase of non-food items (e.g. tents or clothing). Social, psychosocial and medical services are provided by the Hellenic Centre for Disease Control and Prevention (KEELPNO). UNHCR provides cash assistance. Security is the responsibility of the Hellenic Police. The permanent coordinator must thus rely on the effectiveness and good cooperation of several actors on the ground. This requires significant coordination skills and efforts.

Figure 4: Responsibilities for material reception conditions and services in the Greek hotspots



Source: FRA, 2019

[53] Greece, Law 4375/2016, Article 8 (2), Government Gazette 51/A/03.04.2016. The facilities on the islands are referred to as Reception and Identification Centres.

[54] Information provided by the Reception and Identification Service, February 2019.

[55] See, iefimerida, 8 March 2018, Σε επίσχεση εργασίας οι συμβασιούχοι της υπηρεσίας Ασύλου -Οι υποσχέσεις Μπαλάφα; Greek Asylum Service, 4 April 2017, Announcement concerning the Asylum Service staff strike on April 5th and 6th and CNN Greece, 6 September 2017. Σε 48ωρη απεργία προχωρούν οι συμβασιούχοι των δομών της Υπηρεσίας Ασύλου.

Coordination is particularly challenging with regard to procurement. Eight years ago, FRA published a report on the situation in the Evros region.[56] The report found the lengthy bureaucratic procedures to be one of the factors contributing to the fundamental rights crisis at the Greek-Turkish border in 2011. Some of the underlying factors resulting in procurement delays remain also today. The approach to procurement has been reactive with limited advance planning. New calls for tender are issued whenever needs arise without making full use of mechanisms, which could simplify procurement, such as framework contracts. Moreover, the risk of being held accountable for not having taken all the precautionary measures to ensure correct use of funds takes precedence over the urgency to ensure, for example, that children in the hotspots do not walk around without shoes. As the following examples illustrate, it takes excessive time to get budget approval for small-scale purchases, repairing a broken window or contract a service.

- **RIS interpreters under AMIF**

For some years, the NGO Metadrasi provided interpreters to RIS under AMIF. The contract with Metadrasi ended in December 2017. Following several unsuccessful procurement procedures, eventually RIS signed a contract with a private company in December 2018 and started to deploy interpreters to the hotspots. The gap lasted almost a year. During this time, EASO and other actors supported RIS sharing their own interpreters who, however, could not cover all the needs.

- **Tents in Samos**

The hotspot in Samos has been regularly overcrowded.[57] In each of the hotspots, RIS should have a sufficient number of tents as a contingency in case of large number of arrivals. When FRA visited the Samos hotspot in July 2018, newly arriving migrants and asylum seekers had to buy their tents from the local shops for approximately € 10. FRA was informed that RIS in Samos ran out of tents already in May 2018. RIS requested the Ministry of Defence, who is responsible to procure the tents who reacted to it by issuing a call for tender. Tents were delivered in December 2018 but were of wrong type. Ten months later, RIS Samos still does not have the proper type of tents and most of the newly arrived migrants and asylum seekers continue to buy them for € 10 from the local shops.

- **Beds for unaccompanied children in Kos**

Picture 3: Kos, container for unaccompanied children, December 2017, FRA

In December 2017, FRA visited the Kos hotspot. FRA noted that in the area for unaccompanied children, some of the children had no beds. Children slept on matrasses put on the floor. RIS informed FRA that it had requested the Ministry of Defence to procure new beds. In February 2019, when FRA visited the hotspot, the situation had not changed.

[56] FRA (2011), *Coping with a fundamental rights emergency – The situation of persons crossing the Greek land border in an irregular manner*, Luxembourg, Publications Office, 8 March 2011.

[57] See Table 3. For example, according to the data provided by the Hellenic Republic, Ministry of Citizen Protection, National Coordination Centre for Border Control, Immigration and Asylum, National situation regarding the islands at Eastern Aegean Sea, on 4 February 2019 Samos hotspot hosted 3.669 people and its capacity is 648.

- **RIS petty cash**

  In 2018, using a national budget line, RIS allocated the amount of € 1,000 to each hotspot for small repair works and small non-food items. However, in the absence of clear guidelines on how to disburse this money and for what type of expenditure, only the permanent coordinator in Lesvos could partly use it. The money had to be disbursed through the Bank of Greece, which has no office on Leros. In Samos, there was no civil servant entitled to use the funds.

When visiting the islands, FRA generally noted a commitment by all actors involved to resolve the issue. When asked why there are delays in procurement, FRA was typically asked to inquire with the various authorities in Athens. It goes beyond the scope of this publication to analyse the reasons for long procurement procedures caused by insufficient planning, coordination difficulties and procurement weaknesses in some national institutions. However, time delays significantly affect the daily life of asylum applicants accommodated in the hotspots leading to fundamental rights violations on a daily basis.

3. Specific challenges relating to the islands

The five Greek hotspots are all located on an island. As a starting point, it is important to realise that the share of asylum applicants and refugees among the islands' populations is significant. As shown in Table 5, this is more than 15 % of the resident population in Leros (almost 13 % counting only those in the hotspots) and almost 12 % in Samos (11 % calculated with those in the hotspots). Except for Lesvos, the presence of a large number of asylum seekers is a new phenomenon for residents.

Table 5: Asylum applicants and resident population, five Greek islands, February 2019

Island	People in hotspots	Asylum applicants* on the island (total)	Resident population	Ratio in %	
				Hotspots/residents	All asylum applicants/residents
Lesvos	4930	6917	86,436	5.7	8
Chios	1369	1633	52,674	2.6	3.1
Samos	3669	3927	32,977	11.1	11.9
Leros	1017	1239	7,917	12.8	15.6
Kos	767	990	34,396	2.2	2.9

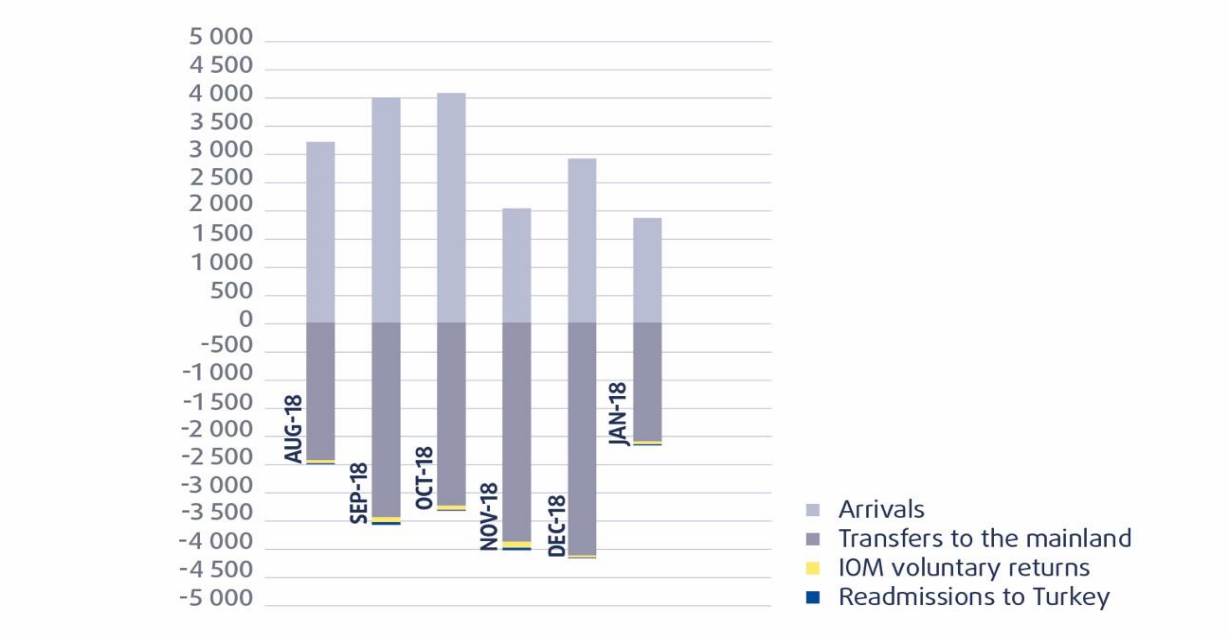
*Note: * = includes also persons granted international protection and rejected asylum applicants staying on the island, including in pre-removal detention.*

Source: FRA, 2019; based on data on asylum applicants in hotspots and on the islands from the Hellenic Police: 04.02.2019; data on resident population from the Hellenic Statistical Authority: Demographic characteristics (2011 census)

The Greek authorities regularly transfer asylum applicants to the mainland. Most people transferred are vulnerable people, although there are also some recognised refugees and family reunification cases. In 2018, the Greek authorities transferred 29.000 vulnerable people to the mainland, the majority of whom were women and children. One of the reasons that contributes to the increasing vulnerabilities are the sub-standard reception conditions in the overcrowded facilities that make people prone to become vulnerable, as defined by Article 14 (8) of Law 4375/2016. However, as new people continue to arrive, these transfers do not bring down the overall number of asylum seekers in the hotspots. As shown in Figure 5, roughly the same number of

people come and leave the hotspots each months. People come, have to endure the conditions of the hotspots for some months, and, if vulnerable, the authorities transfer them.

Figure 5: Arrivals to Eastern Aegean islands and movements from the islands



Source: Hellenic Police, February 2019

Some public services for the resident population on the islands are traditionally limited. The arrival of migrants and refugees further affected them. The following case study on paediatricians and gynaecologists illustrates that regardless of the genuine efforts taken to improve relevant medical capacity on the five islands, the situation is deemed to remain difficult.

Case study: Paediatricians and gynaecologists working in public healthcare facilities on the five islands

Some 30 % of the asylum seekers and refugee population living in the five islands are children and some 20 % women. To cater for their medical needs, there must be sufficient paediatricians and gynaecologists. Most asylum applicants lack financial resources, which means that such medical services need to be provided by public healthcare providers. As Tables 6 and 7 show, there are only 10 paediatricians and some 15 gynaecologists working in the public healthcare institutions on all five islands taken together. In Samos, there is only one paediatrician and in Kos none.[58] Next to healthcare services, the expertise of paediatricians is also needed for the age assessment procedure. In June 2018, the Commissioner for Human Rights of the Council of Europe also noted the serious lack of medical staff working in the hotspots.[59]

Having acknowledged this gap, the Greek authorities attempted to address it by deploying more medical staff to the islands. Through the AMIF-funded project Philos, the Hellenic Centre for Disease Control and Prevention (KEELPNO) tried to recruit doctors, nurses, psychologists and other professionals to support public healthcare

[58] FRA, personal communication with healthcare providers on the islands, February 2019.

[59] Council of Europe, Report of the Commissioner for Human Rights of the Council of Europe, Dunja Mijatovic following her visit to Greece from 25-29 June 2018, Strasbourg, 6 November 2018, p.8.

institutions on the islands. This, in addition to medical staff, social workers and other experts recruited to work within the hotspots.[60]

However, the results of such calls are disappointing. In February 2019, KEELPNO published the results of a call for tender for medical staff to work in the hotspots: the call included 17 positions for general practitioners and only three successful applicants figure in the provisional results.[61] Furthermore, for the seven paediatricians required for the local public hospitals, there are only two successful applicants in Lesvos. Similarly, the call included four gynaecologists and there were only two successful applications.[62]

Table 6: Availability of paediatricians on the Greek islands

Island	No. of asylum seeking children on the island	Number of local children	Paediatricians			
			In public institutions	Private	KEELPNO	
					Call	Successful applications
Lesvos	2244	16,969	4	12	2	2
Chios	357	10,053	3	11	1	0
Samos	1000	6,070	1	5	2	0
Leros	231	1,697	2	0	1	0
Kos	246	7,668	0	8	1	0

Notes: Asylum seeking children includes also refugee children and children of rejected asylum applicants still staying on the islands. Local children mean persons aged 0-19 years. The table does not include the six paediatricians KEELPNO recruited to work inside the hotspots (distribution per hotspot not yet available). Results of the KEELPNO call are not final. Doctors who work in public institutions and have also their private office are listed in the column "in public institutions" only.

Source: FRA, 2019; calculation based on UNHCR data for asylum-seeking children (week 4-10 February 2019); 2011 census for data on resident children; healthcare providers on the islands; and KEELPNO Philos II call for number of paediatricians

Table 7: Availability of gynaecologists on the Greek islands

Island	No. of female asylum seekers on the island aged >18	Female local residents >19 years	Gynaecologists			
			In public institutions	Private	KEELPNO	
					Call	Successful applications
Lesvos	1518	35,543	5	5	1	1
Chios	374	21,444	3	8	1	1
Samos	880	13,171	3	5	-	-
Leros	131	3,865	1	0	-	-
Kos	164	12,825	3	3	2	0

Notes: The term asylum seeker includes also refugees and rejected asylum applicants still staying on the islands; For Leros, female local residents >19 includes all female resident

[60] See Philos I call at https://philosgreece.eu/images/MyMedia/call-for-tenders/PROKIRIXI_PHILOS_NISIA_10-7-2017.pdf and Philos II call at https://keelpno.gr/wp-content/uploads/2019/01/%CE%A9%CE%9B%CE%A4%CE%9E469%CE%97%CE%9C%CE%9B-70%CE%91.pdf.

[61] See, KEELPNO, 11 February 2019, results of the Philos II call for the hotspots at https://keelpno.gr/anartisi-prosorinon-apotelesmaton-philos/.

[62] See, KEELPNO, 11 February 2019, results of the Philos II call for public healthcare institutions on the islands at https://keelpno.gr/anartisi-prosorinon-apotelesmaton-philos-ypoergo-4/.

population as of 0 years of age. In Leros, there is one gynaecologist travelling from Kalymnos once or twice per week. - = not included in call; results of the KEELPNO call are not final.

Source: FRA (2019) calculation based on UNHCR data for women > 18 years (week 4-10 February 2019); 2011 census for local residents; healthcare providers on the islands; and KEELPNO Philos II call for number of gynaecologists

According to estimates based on available UNHCR records, asylum seeking women and girls aged 15-49 years stay on the islands on average over six months in Kos, over five months in Lesvos, over four months in Chios, almost four months in Samos and almost three in Leros. This case study illustrates that it is difficult for the Greek authorities to recruit specialists to work on the Eastern Aegean islands. The fact that the KEELPNO Philos II call offered increased compensation and lowered the necessary requirements candidates needed to fulfil,[63] did not significantly change the outcome. The situation is similar to the call the Greek Asylum Service issued for lawyers (see Part II of this FRA Opinion).

On the islands, tourism is an important source of income for many residents. As Table 5 and 8 indicates, in Kos there are more hotel beds than residents, and in Samos, there is one hotel bed for every three inhabitants. This, without counting private accommodation for tourists. The infrastructure and services on the islands, such as healthcare, also need to cater for them.

Table 8: Number of hotel beds five Greek islands, 2018

Island	Beds in hotels	Ratio in %
Lesvos	6,896	8
Chios	2,882	5,4
Samos	9,835	30
Leros	1,228	15,5
Kos	52,490	152

Source: Hellenic Chamber of Hotels (private accommodation for tourists not included)

Infrastructure, economic situation and population vary between the five islands. The significant number of asylum applicants on the island puts a strain on the local infrastructure and services. Resident populations on all islands struggle to cope with the impact of the hotspots.

Local communities organised several rallies with the support from municipal authorities, the most recent ones in early February 2019 in Samos and Lesvos. The local communities have been protesting against the containment policy and desolate reception conditions. They were demanding faster decongestion of the overcrowded hotspots. Residents also express concerns about safety, hygiene and provision of health care services and on the impact on tourism, which is a major industry on some islands. The long stay of asylum seekers on the islands in undignified conditions has also contributed to the rise of xenophobic rhetoric and hate crime incidents, even on Lesvos whose residents have been traditionally providing support to refugees. On 22 April 2018, in Mytiline, a group of approximately 200 far-right activists violently attacked asylum seekers who were camping on the main square protesting against the living

[63] See Ministry of Health, 26 September 2018, Press release on further incentives for doctors and dentists working in facilities for refugees.

conditions in the Moria hotspot.[64] The incident in Lesvos is not unique. In 2017, the Greek Racist Violence Recording Network documented 13 instances of assaults against asylum seekers and people supporting them on the islands.[65]

[64] See, ERT International, 23 April 2018, Violent incidents in Mytilene – Far-right members attacked refugees.

[65] Greek Racist Violence Recording Network, Annual Report 2017. See also, Refugee Support Aegean, 31 October 2018, "Rise of xenophobic and racist incidents in the past 6 months": A timeline - R.S.A.

Part II: Assessing progress on the 2016 FRA Opinion on the hotspots

The second part of this FRA Opinion describes progress against the 21 individual opinions formulated in November 2016. Several of these opinions coincided with the findings of Ambassador Tomáš Boček, Special Representative of the Secretary General on migration and refugees, who visited Italy on 16-21 October 2016 and Greece in March 2016.[66] This part provides a brief overview of the gaps identified at the time and of the situation in February 2019, assessing whether, in broad terms, the situation improved considerably, did not improve considerably, or developments have not yet resulted in significant changes for people on the ground. This second part follows the same five headings used in 2016.

1. Addressing fundamental rights issues resulting from international protection procedures carried out at hotspots

Identifying whether newly arrived people wish to apply for international protection and directing them to the asylum procedure is a core function of the hotspot approach. It serves to uphold the right to asylum protected in Article 18 of the Charter. It also forms the basis for the protection from *refoulement* and collective expulsion, reflected in Article 19 of the Charter as well as Article 78 of the Treaty on the Functioning of the European Union and Article 4 of Protocol No. 4 to the European Convention on Human Rights (ECHR).

The first chapter of the 2016 FRA Opinion covered access to international protection. Whereas, as illustrated in Part I of this FRA Opinion, new fundamental rights challenges emerged because more people are kept in the Greek hotspots during the asylum procedures, in general terms, most gaps to access international protection have meanwhile been addressed.

In its 2016 Opinion, FRA listed five issues for improvement. By February 2019, significant improvements occurred in relation to the excessive use of force while taking fingerprints (Opinion 4). On the other issues, either no significant changes occurred, or (as is the case for Opinion 3 on information) the developments did not significantly affect the life of those staying in the hotspots.

The main changes compared to the situation in 2016 on these five issues are as follows:

FRA Opinion 1: Addressing delays in processing applications for international protection

According to Article 6 (1) of the Asylum Procedures Directive (2013/32/EU),[67] applications for international protection must be registered within three working days, or 10 working days in case of large numbers of simultaneous applications (Article 6 (5)). Member States also have the obligation under Article 6 (2) of the directive to ensure that individuals who have expressed their wish to apply for asylum ('made' an

[66] For Italy, see Council of Europe, Report of the fact-finding mission to Italy by Ambassador Tomáš Boček, Special Representative of the Secretary General on migration and refugees, 16-21 October 2016, SG/Inf (2017)8, 2 March 2017 and for Greece, see Report of the fact-finding mission by Ambassador Tomáš Boček, Special Representative of the Secretary General on migration and refugees to Greece and "the former Yugoslav Republic of Macedonia", 7-11 March 2016, SG/Inf(2016)18, 26 April 2016.

[67] Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection, OJ L 180, 29.6.2013, pp. 60-95.

application for international protection) have an effective opportunity to lodge their application as soon as possible.

The 2016 FRA Opinion noted several months delay in the registration of asylum applications of certain nationalities on the Greek islands. In February 2019, registration of asylum claims in the Greek hotspots is faster, but delays in scheduling interviews remain significant also in case of vulnerable applicants. This is partially due to the lack of sufficient working space on the islands that would ensure that interviews are carried out in confidential setting. As shown in Part I, asylum applicants stay on average over five months on the Eastern Aegean islands.

In Italy, the swift implementation of return procedures may *de facto* deprive some new arrivals of a reasonable possibility to access international protection, in particular those coming from countries that have readmission agreements with Italy. NGOs underlined that migrants of Tunisian origin could not always express their intention to apply for asylum at the hotspot.[68] Furthermore, new arrivals do not receive any document, which certifies that they have expressed the intention to apply for asylum during their registration in an Italian hotspot, contrary to what the Italian Standard Operating Procedures for hotspots envisage.[69] This exposes them to a possible risk of *refoulement* if they are arrested before they can officially lodge their asylum application after their transfer to other reception facilities.

FRA Opinion 2: Ensuring access to asylum for unaccompanied children

Delays in registering and processing asylum applications have particularly serious effects on unaccompanied children. In 2016, Greek and Italian authorities registered asylum applications of unaccompanied children after they were transferred from the hotspots. The absence of appropriate accommodation, however, delayed their transfer considerably.

Asylum applications of unaccompanied children are registered in the Greek hotspots; they are immediately referred to the National Centre for Social Solidarity (EKKA), with the request to find appropriate accommodation. In Italy, Law 47/2017 on unaccompanied children allows an unaccompanied child to lodge an asylum request in presence of a temporary guardian.[70] This has reduced the time until the registration of the asylum application of unaccompanied children, but has not yet significantly reduced the length of their asylum procedures as a whole, which remain long in both Member States.

FRA Opinion 3: Enhancing the provision of information on asylum

Adequate information on the right to apply for international protection and the procedure to follow is a prerequisite for accessing the right to asylum, as stipulated in Article 18 of the Charter. The Asylum Procedures Directive stipulates in Article 8 (1) the obligation of Member States to provide information on the possibility to apply for international protection at the border, and to provide the necessary interpretation arrangements, if needed. In 2016, FRA concluded that in spite of significant efforts to

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68 See also ActionAid, ASGI, Cild, IndieWatch, In Limine, *Scenari di frontiera: il caso Lampedusa. L'approccio hotspot e le sue possibili evoluzioni alla luce del Decreto legge n. 113/2018*, October 2018, pp. 14 and 16. The UN Special Rapporteur on the Human Rights of Migrants already highlighted this issues in 2014, see: Report on the Follow-up mission to Italy (2-6 December 2014), A/HRC/29/36/Add.2, 1 May 201.

69 Italy, Standard Operating Procedures applicable to the Italian hotspots, at B.3.

70 Italy, Law No. 47 of April 7, 2017, Provisions on Protective Measures for Unaccompanied Foreign Minors, Official Gazzette, 21 April 2017, No. 93, Article 18.

inform new arrivals, the capacity to provide adequate information was still not sufficient, particularly in light of people's language diversity.

In Greece as well as Italy, different actors through a collaborative approach provide information on asylum in the hotspots – with important roles played by the managing authority, RIS, UNHCR, IOM, EASO, the asylum and police authorities, legal practitioners as well as NGOs contracted or invited to carry out specific activities in the hotspots. Since 2016, the channels used to provide information have improved.

The Greek Asylum Service developed an app in different languages,[71] a_brochure targeting children[72] and updated the information about the asylum procedure on its website in 18 languages.[73] The UNHCR HELP website[74] provides answers to asylum seekers' questions regarding the application process, their rights and obligations, and on how to access services when living in Greece. Nevertheless, the Inter-Agency Participatory Assessments carried out annually by UNHCR on all the Eastern Aegean islands show that asylum applicants still have only limited understanding of the asylum procedure and lack information on their individual asylum cases. FRA observed that communities in the hotspots were uninformed, in particular, about the scope and rationale of transfers to the mainland.

In Italy, in spite of genuine efforts by the specialised organisations providing information, such as UNHCR and IOM as well as the national authorities, not everyone seemed to understand the implications of requesting or not requesting asylum, as FRA witnessed when visiting Lampedusa in January 2019. The physical and psychological state of the people rescued at sea, the timing of delivering information, the complexity of the procedures and the fact that not all relevant languages are covered, continue to be important obstacles to effective information provision.[75] In November 2018, the Italian Ministry of the Interior announced new standard terms of references (*capitolato*) for the provision of services at first reception centres, including the hotspots, which continue to provide 12 hours for the provision of information.[76]

FRA Opinion 4: Complying with the Charter when taking fingerprints

Excessive use of force when taking fingerprints for the Eurodac database[77] may amount to violations of the rights to dignity (Article 1 of the Charter) and integrity of a person

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71 Greek Asylum Service Application, at: https://play.google.com/store/apps/details?id=com.ionicframework.asylumapp646672&hl=el.

72 See, Greek Asylum Service, I am under 18 and I seek asylum in Greece.

73 Greek Asylum Service, *Information in 18 languages,* available at: http://asylo.gov.gr/en/?page_id=99.

74 UNHCR HELP available at: https://help.unhcr.org/greece/.

75 See also CPT, *Report to the Italian Government on the visit to Italy carried out from 7 to 13 June 2017, CPT/Inf (2018) 13,* paras. 33-34.

76 Italy (2018), Ministry of the Interior, *Circolare sul nuovo schema di capitolato di appalto per i centri di prima accoglienza*, 21 November 2018, Article 15 (5) and Annex A, p. 3 (table applicable to hotspots). To compare with the previous applicable framework, see, for example, Italy (2019), Ministry of the Interior, Prefecture Ragusa, *Gara per la gestione dell'Hotspot di Pozzallo, Dotazione minima del personale*, 29 October 2018.

77 Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice, OJ L 180, 29.6.2013, pp. 1-30.

(Article 3 of the Charter), the prohibition of torture and inhuman or degrading treatment or punishment (Article 4 of the Charter) and the right to liberty and security (Article 6 of the Charter). Instances of alleged excessive use of force when taking fingerprints for Eurodac were brought to FRA's attention from Italy in the course of 2015.

FRA suggests refraining to use physical or psychological force to obtain fingerprints for Eurodac, because it entails a high risk of violating fundamental rights. As FRA pointed out in its 2015 focus paper,[78] compliance with this obligation should primarily be secured through effective information and counselling. This can either be provided individually and/or through outreach actions targeting migrant communities, such as focus group discussions, information sessions and similar initiatives. The Standard Operating Procedures for Italy also envisage counselling, in case of refusal of fingerprinting.[79]

Since 2018, FRA did not hear of any new cases of excessive use of force when taking fingerprints for Eurodac, neither in Greece nor in Italy.

FRA Opinion 5: Increasing availability of legal support and legal aid

Given the complexity of the asylum procedures as well as language barriers, availability of legal support is a prerequisite for full access to the right to asylum. As required by Article 20 of the Asylum Procedures Directive and stemming from Article 47 of the Charter (the right to an effective remedy and to fair trial), free legal assistance and representation must be available for appeal proceedings. In cases involving international protection, availability of legal support becomes a key safeguard against *refoulement*, as highlighted by the European Court of Human Rights (ECtHR).[80]

In 2016, in Greece, legal support occurred through a temporary EU funded project, which UNHCR and its local partners implemented.[81] In Italy, asylum procedures do not take place in the hotspots, where the authorities only register the person's intention to apply for asylum. If this approach is changed, arrangements for legal aid to appeal asylum decisions will become relevant also there.[82]

Legal support capacity on the Greek islands has not improved significantly since then in spite of genuine efforts. In September 2017, the Greek Asylum Service created its own registry of lawyers for the provision of legal assistance in appeal procedures. The initial call provided for six lawyers on Lesvos, five on Chios, four on Samos, one on Leros and four on Kos.[83] By the end of 2017, only three lawyers were contracted in Lesvos, Chios and Kos, respectively.[84] After a second call in February 2018,[85] at the end of 2018 the situation remained similar: there was one state-funded lawyer on Chios and one who was seconded from Athens to Lesvos.[86] As past calls for tender were unsuccessful in filling the needs, an Inter-Ministerial Decision signed in February 2019 reduced the

78 FRA (2015), *Fundamental rights implications of the obligation to provide fingerprints for Eurodac*, Luxembourg, Publications Office, October 2015.
79 Italy, Standard Operating Procedures applicable to the Italian hotspots, at B.7.2.c.
80 ECtHR, *Hirsi Jamaa and Others v. Italy* [GC], No. 27765/09, 23 February 2012, paras. 185-186.
81 UNHCR, *Refugees/Migrants Emergency Response – Mediterranean*, Greece Web Data Portal, Europe's Refugee Emergency Response Update #29, 19 July–8 August, p. 1.
82 See Italy, Law Decree No. 113 of 4 October 2018, converted into Law No. 132 of 1 December 2018, Article 3.
83 Greek Asylum Service, Document No. 5713/29.03.2017.
84 See Greek Asylum Service Legal aid from 21.09.2017 until 31.12.2017.
85 Greek Asylum Service, Document No. 3217/02.02.2018.
86 See Greek Council for Refugees, Press Release, , *Refugees on the islands without second instance legal assistance*, 28 November 2018.

requirements for lawyers to apply and raised lawyers' compensation.[87] The next call will show if lawyers find it more attractive. Meanwhile, UNHCR funds lawyers on the five islands and NGOs continue to provide legal aid (see Table 9).

Table 9: State-funded legal aid, number of lawyers on the Greek hotspot islands

Island	November 2017			February 2019			
	Call for tender 2017	No. of lawyers	Camp population	Call for tender 2018	No. of lawyers	Camp population	UNHCR funded lawyers*
Lesvos	6	1	6489	4	1	4975	5
Chios	5	1	2274	1	1	1370	3
Samos	4	0	2162	2	0	3715	3
Leros	1	0	837	1	0	1011	1
Kos	4	1	792	1	0	751	1

*Notes: * = data for December 2018. In addition, non-governmental organisations deploy lawyers to support in particular unaccompanied children, victims of sexual and gender based violence and other vulnerable persons.*

Source: FRA, 2019; based on: Greek Asylum Service calls for tender; Hellenic Republic, Ministry of Citizen Protection, National Coordination Centre for Border Control, Immigration and Asylum (for camp population); UNHCR for number of UNHCR lawyers.

[87] Greece, Ministerial decision signed in February 2019. Not yet published.

2. Protecting children must remain a high priority

Children represent the largest vulnerable group on the Greek islands. In February 2019, 31% of the asylum seekers population on the islands were children. A significant proportion of them, approximately 18% are unaccompanied.[88] In Italy, 3,536 unaccompanied and separated children arrived by sea, representing 15 % of all sea arrivals in 2018.[89] Some 38 % of the 10,787 unaccompanied children present in Italy at the end of 2018 were in Sicily, where most of Italian hotspots are located.[90]

The ECtHR repeatedly stated that the special protection granted to asylum seekers is particularly important in case of children, in view of their specific needs and their extreme vulnerability, whether unaccompanied or accompanied by parents.[91] Article 24 of the Charter emphasises the best interests of the child as a key principle of all actions taken in relation to children by public authorities and private actors. In this regard, Member States must provide to the child such protection and care as is necessary for his or her well-being and development. According to Article 3 of the United Nations (UN) Convention on the Rights of the Child, States should also ensure that institutions, services and facilities responsible for the care or protection of children promote and safeguard the child's best interests and wellbeing and are subject to effective supervision and monitoring. The principle of the best interests as a primary consideration is reiterated in EU secondary law (in particular Articles 7 and 25 of the Asylum Procedures Directive, Articles 23 and 24 of the Reception Conditions Directive (2013/33/EU)[92] and Articles 10 and 17 of the Return Directive (2008/115)[93]) which provides specific safeguards for children in asylum and return procedures.

FRA's 2016 Opinion put significant emphasis on child protection, formulating several suggestions for improvement. Greece and Italy consider that the hotspots are not appropriate facilities to keep unaccompanied children but in practice children do spend some time there. Due to overcrowding, lack of specialised staff, but also due to severe shortage of non-food items as well as meaningful activities, including enrolment in public schools, conditions in the Greek hotspots remain far below the minimum standards set out in the Reception Conditions Directive. Changes occurred in relation to three of the five opinions formulated in 2016: Opinions 6, 7 and 8 but developments did not yet result in significant improvements on the ground.

The main changes compared to the situation in 2016 on these five issues are the following:

FRA Opinion 6: Ensuring a functioning system of guardianship for unaccompanied children

An effective guardianship system for unaccompanied children is a pre-condition to ensure the child's best interests and general well-being, as required by the UN

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88 UNHCR, Aegean Islands Weekly Snapshot, 4-10 February 2019.

89 UNHCR, Italy Unaccompanied and Separated Children Dashboard - December 2018, 11 January 2019.

90 Italy, Ministry of Employment and Social Policies *(Ministero del Lavoro e delle Politiche Sociali)* (2018), *Report Mensile Minori Stranieri Non Accompagnati (Msna) In Italia*, 31 December 2018.

91 See ECtHR, *Tarakhel v. Switzerland [GC]*, No. 29217/12, 4 November 2014, para. 99; ECtHR, *Popov v. France*, Nos. 39472/07 and 39474/07, 19 January 2012, para. 91; ECtHR, *Rahimi v. Greece*, No. 8687/08, 5 July 2011, para. 87.

92 Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast).

93 Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.

Convention on the Rights of the Child and Article 24 of the Charter (rights of the child). In the absence of their parents, unaccompanied children need a guardian who supports them during their stay, safeguarding the child's best interests and his/her general well-being and to this effect complementing the limited legal capacity of the child.[94] Without a guardian, an unaccompanied child will remain excluded from a number of rights. The manager of the hotspot in Italy (or the mayor) and the local public prosecutor of the Court of First Instance in Greece exercise temporary guardianship functions for unaccompanied children staying in the hotspots.[95] Typically, they lack specific child protection expertise.

Some improvements occurred. Italy adopted a law for the protection of unaccompanied children in 2017,[96] and Greece adopted a new law on guardianship[97] with implementing Ministerial Decisions expected soon. Meanwhile, the European Commission is funding a transitional programme bringing together UNHCR, the Greek Ministry of Labour and the Greek NGO Metadrasi to ensure the continuous deployment of staff to all hotspot islands to whom the responsible public prosecutor assigns part of the guardianship tasks. In Italy, unaccompanied children do not stay anymore for weeks in the hotspots. Although the temporary guardianship role of the manager of the facility is very limited in time, such tasks require adequate child protection expertise. Insufficient knowledge and skills may lead to unintentional mistakes, with serious consequences for the child's well-being.

Issues still remain with age assessment in Greece. Limited resources, for example, the absence of a paediatrician in Kos, may lead to protracted age assessment procedures. In addition, difficulties emerge when the age of a child needs to be rectified in a database. As these procedures might also determine the outcome of an asylum claim or a family reunification procedure, assistance by guardians or persons assigned with guardianship tasks should be provided to children upon arrival.

Promising practice: Presence of Metadrasi during identification and registration procedures in some of the Greek hotspots

As a temporary measure and following the authorisation of the responsible Public Prosecutor, on some islands, members of the Metadrasi guardianship network are allowed to be present during the initial screening and registration carried out by the Hellenic Police. This results in more accurate recording of the age of unaccompanied children, thus reducing the need for rectification at a later stage.

Source: FRA, 2019

FRA Opinion 7: Standardising procedures for separated children

Separated children – meaning children who are not travelling together with their parents or legal guardians but are accompanied by other adults[98] – may be exposed to heightened risk of abuse or neglect. They must be identified and staff with child

[94] FRA (2015), *Guardianship systems for children deprived of parental care in the European Union – With a particular focus on their role in responding to child trafficking*, Luxembourg, Publications Office, October 2015, p. 14.

[95] *Ibid*., at sub-section 4.3.

[96] Italy, Law No. 47 of April 7, 2017, Provisions on Protective Measures for Unaccompanied Foreign Minors, *Gazzetta Ufficiale* 21 April 2017.

[97] Greece, Law No. 4554 of 18 July 2018, published in State Gazette No. 130 on the regulatory framework for the guardianship of unaccompanied minors.

[98] UN Committee on the Rights of the Child, General Comment No. 6 (2005), para. 8.

protection expertise must assess whether there is a risk of abuse or neglect by the accompanying person. They must advise if the child should stay with the accompanying adult or not and what steps are required to monitor the child's well-being. In its November 2016 Opinion, FRA highlighted the absence of a standardised child protection approach. In 2016, in Greece, there was no systematic assessment to see whether the child was at risk of abuse or neglect by the accompanying adult.

Meanwhile, as FRA observed in Greek hotspots, psychologists and/or social workers carry out a risk assessment based on which the public prosecutor issues decisions on the assignment of care of the separated child. Sometimes the absence of psychologists or interpreters prevents this to occur or delays the process. However, the capacity to monitor the situation of the child after the initial assessment is limited thus preventing adequate follow up in case of changes affecting the child.

In Italy, during its visit to Lampedusa in January 2019, FRA noted that international organisations had spoken to a separated child to gather information on possible protection risks in view of emergency measures to be taken by the competent authorities in favour of the child. FRA could not observe how follow-up measures, including a risk assessment carried out by specialised staff, are coordinated with the reception facility to which the child is moved.

FRA Opinion 8: Ensuring protection of unaccompanied children without resorting to detention

Under Article 6 (right to liberty and security) and Article 24 (right of the child) of the Charter, detention of children is rarely justified. In its case law, the ECtHR made it clear that the detention of children is unlawful in facilities that are inappropriate.[99] Article 24 (2) of the Reception Conditions Directive requires that unaccompanied children who have made an application for international protection must be placed either with adult relatives, a foster family, in accommodation centres with special provisions or other suitable accommodation.

In Greece as well as in Italy, new arrivals, including children, stay in the hotspots until a place for them in another reception facility becomes available. In Greece, the Reception and Identification Service has the authority to deprive a person of liberty for a three-day period, extendable up to 25 days, a practice which FRA has recently not observed.[100] Unaccompanied children involved in disturbances sometimes end up for a few days in police detention facilities for public order reasons. Italian law does not allow the detention of unaccompanied children.[101]

In its 2016 FRA Opinion, the Agency described the deprivation of liberty in the hotspots, including the placement of unaccompanied children in closed dedicated sections in some hotspots. In at least one hotspot in Italy, unaccompanied children were not allowed to leave the hotspot premises.

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[99] ECtHR, *Popov v. France*, Nos. 39472/07 and No. 39474/07, 19 January 2012, para. 119; ECtHR, *S.F. and Others v. Bulgaria*, No. 8138/16, 7 December 2017, paras. 87-89, 90 and 92.

[100] Greece, Law No. 4375 of 2016 on the organisation and operation of the Asylum Service, the Appeals Authority, the Reception and Identification Service, the establishment of the General Secretariat for Reception, the transposition into Greek legislation of the provisions of Directive 2013/32/EU, Article 14 (2) and Article 46 (10) (b). Exceptionally, the deprivation of liberty may be extended further 20 days in case to ensure safe referral of unaccompanied children to appropriate accommodation.

[101] Italy, Law No. 47 of April 7, 2017, Provisions on Protective Measures for Unaccompanied Foreign Minors, Official Gazzette, 21 April 2017, Article 4.

Picture 4: Dedicated area for unaccompanied children, Vial (Chios) April 2017, FRA

The legislative framework regulating detention of unaccompanied children in Greece and Italy remains essentially unchanged. In practice, deprivation of liberty in hotspot areas is less common. In Greece, dedicated areas for unaccompanied children, which were closed in 2016 are now guarded but not closed anymore. However, the excessive use of barbed wire and the lack of structured activities in most of the dedicated areas is not conducive to a dignified stay and a child-friendly environment. Cases of unaccompanied children held for a few days for public order reasons in police custody continue.

Adequate housing for unaccompanied children in Greece remains insufficient

The overall number of unaccompanied children in Greece has increased sharply since 2017. Whereas in January 2017, there were 2,200 unaccompanied children in Greece, on 15 February 2019, the National Centre for Social Solidarity (EKKA) reported an estimate of 3,708 unaccompanied children. Despite this fact, the number of places available in the long-term accommodation has decreased from 1,282 in January 2017 to 1,045 in February 2019. Children waiting for placement increased from 1,350 in 2017 to 1,980 in 2019. In order to cover the gap in accommodation for unaccompanied children, safe zones were established in the camps on the mainland and an emergency hotel scheme was introduced. These arrangements do not offer, however, the quality standards necessary for the long-term reception of unaccompanied children. Besides, based on EKKA data, on 15 February 2019, 607 unaccompanied children were homeless in Greece, a situation resulting in the violation of many of their fundamental rights.[102] This shows that in spite of the efforts made, a gap in adequate shelter remains in Greece.

Source: FRA, 2019; based on data by the National Centre for Social Solidarity (EKKA), Situation Updates: Unaccompanied Children in Greece

In Italy, where most newly arrived children are unaccompanied, their swift onward movement to open facilities and child protection measures by the agency managing the hotspots significantly reduced the number of those deprived of liberty in the hotspots. Nevertheless, FRA observed that in the hotspot of Lampedusa, a closed facility, unaccompanied children risk to remain deprived of their liberty for prolonged time until an appropriate place where to accommodate them is found or due to the adverse weather conditions on the sea, which delay the ferry crossing. In January 2019, FRA met one separated Tunisian child. He stayed in the hotspot for a total of 11 days.

FRA Opinion 9: Providing adequate conditions and access to services for children

Under Article 24 of the Charter, children are entitled to protection and care as is necessary for their well-being. Article 23 of the Reception Conditions Directive requires that children are ensured a standard of living adequate for their physical, mental, spiritual, moral and social development, as well as access to leisure activities, including age-appropriate play and recreational activities and to open-air activities.

[102] Greece, EKKA, Situation Update, Unaccompanied children in Greece, 15 February 2019.

Articles 14 and 19 of the directive also guarantee the right to education and healthcare.

Adequate response to the needs of children in the hotspots requires not only adequate infrastructure, but also the presence of qualified staff, both women and men, with child protection and social work expertise.

In Greece, material reception conditions as well as services in the hotspots dropped because of overcrowding in most hotspots, affecting also children's well-being.

Unaccompanied children continue to live in inappropriate and unsafe conditions

Samos: In December 2018, FRA visited Vathy hotspot, which was hosting approximately 267 unaccompanied children. Only 120 of them lived in the dedicated area, which has an official capacity to host 56 children. The other children lived either elsewhere in the hotspot or in the area surrounding the camp. The containers in the dedicated area had broken doors following an incident that took place in September 2017, water leaking inside and no proper beds or matrasses. Makeshift tents were placed inside the dedicated area. FRA observed 16 unaccompanied girls hosted in one container inside the police registration area of the hotspot where they had very little space. FRA understood that they had to take shifts in sleeping, as they did not fit inside.

Source: FRA, 2019

According to the Greek law, children have access to education regardless of their migration or residence status.[103] Even if they lack sufficient documentation, they can be enrolled in public schools as long as they are vaccinated. According to estimation based on available UNHCR records, compulsory school age children stay on the islands on average over six months in Kos, over five months in Lesvos, some three months and a half in Chios and Samos and some two months and a half in Leros. To facilitate access of asylum seeking children who live in camps and hotspots to formal education, the Greek Ministry of Education established in 2016, "Reception/ Preparatory Classes for the Education of Refugees" (*Δομές Υποδοχής και Εκπαίδευσης Προσφύγων*, DYEP) in certain public schools.[104] This programme serves to prepare the children up to the age of 15 to attend regular school classes. However, its implementation on the Eastern Aegean islands has been slow. On most islands, the operation of DYEP in neighbouring schools has started in 2018 (e.g. October 2018 on Chios[105]) or in the beginning of 2019 (e.g. in Samos and Kos).[106] For pre-school education, DYEP kindergartens have started operating inside hotspots, however as FRA observed during its visit to Samos in December 2018, only 10 children were enrolled. With the exemption of some cases in the hotspot of Leros, children above the age of compulsory schooling (16-17) face serious difficulties in accessing public schools. The Commissioner for Human Rights of the Council of Europe during her visit to Greece in June 2018 also expressed concern regarding access to education.[107] To fill these gaps, non-governmental organisations

[103] Greece, Presidential Decree No. 220/2007, Article 9 (1).
[104] Greece, Ministerial Decision No 152360/ΓΔ4/2016, Gov. Gazette 3049/B/23.09.2016 (replaced by Ministerial Decision No 180647ΓΔ4, Gov. Gazette 3502/B/31.10.2016).
[105] UNHCR Greece, National Education Sector Working Group, "Meeting Minutes," 29 October 2018.
[106] Greece, Ministry of Education, Research and Religious Affairs, *Refugee children from the RICs of Samos and Kos go to school*, 7 February 2019.
[107] Council of Europe, Report of the Commissioner for Human Rights of the Council of Europe, Dunja Mijatovic following her visit to Greece from 25-29 June 2018, Strasbourg, 6 November 2018, p.13.

continue to provide informal schooling and some recreational activities on all the hotspot islands.

The capacity of doctors and psychologists remain stretched and the lack of paediatricians persists (see Part I of this Opinion). In Lesvos, Chios and Samos, the NGO Praksis mitigates these gaps through its child protection work offering legal and psychosocial support as well as recreational activities, as FRA observed. The Reception and Identification Service appointed child protection officers on each of the islands who according to the hotspot Standard Operating Procedures in Greece should also be a "visible and available contact" for the children, to whom these can voice any concerns.[108] Although trained on child protection with FRA's and EASO's support, their tasks remain primarily administrative. More generally, only few Reception and Identification Service staff on the island have a social worker profile.

Picture 5: Hotspot in Lampedusa, January 2019, FRA

In Italy, 45 unaccompanied children arrived between 1 January and 12 February 2019, but only some of them passed through the hotspots.[109] It is, therefore, difficult to assess whether the services the hotspots offer would be adequate if more unaccompanied children were to arrive. Medical services in Lampedusa were well managed under the leadership of the primary health care centre on the island (Polyclinic). However, as of 1 February 2019, the Regional Health Authority of Palermo suspended the emergency healthcare services for migrants rescued at sea (*servizio emergenza sbarchi*). Health authorities had scaled up capacity to cover the emergency healthcare needs on Lampedusa. It remains to be seen if the Polyclinic in Lampedusa will continue to be able to provide proper and timely healthcare services to new arrivals. Moreover, the new terms of reference (*capitolato*) for first reception facilities envisage that, in hotspots, services should be reduced at a minimum in case of low number of arrivals. The manager of the hotspot is obliged to reinstate the services at the latest within eight hours from the moment information on new arrivals is received. It remains to be seen how this will work in practice and whether this arrangement may negatively affect the services for children in the hotspots.[110]

FRA Opinion 10: Vetting of staff who have direct and regular contacts with children

All children and in particular those who are unaccompanied or separated are highly vulnerable to abuse and exploitation. The Reception Conditions Directive requires in Article 23 (d) and Article 18 that Member States must take measures to promote and ensure safety and security of persons residing in all premises and accommodation centres and put in place child protection safeguards to prevent violence, abuse and exploitation of children. Article 10 and Recital (40) of the Directive on combating the

[108] Hellenic Republic, Reception and Identification Service, Manual of Standard Operating Procedures applicable to the Reception and Identification Centres (R.I.Cs), Section A.2.3. Duties of the Unaccompanied Minor Protection Officers, p. 15, 1 December 2017.

[109] The number of unaccompanied children are regularly updated on the Ministry of the Interior's webpage, *Cruscotto Statistico*, http://www.interno.gov.it/it/sala-stampa/dati-e-statistiche/sbarchi-e-accoglienza-dei-migranti-tutti-i-dati.

[110] Italy, Ministry of the Interior, Schema di capitolato di gara di appalto per la fornitura di beni e servizi relativo alla gestione e al funzionamento dei centri di prima accoglienza, 18 December 2018.

sexual abuse and sexual exploitation of children (2011/92/EU)[111] specifically provide for the disqualification of persons who are convicted for certain offences against children to exercise temporarily or permanently professional activities involving direct and regular contacts with children. The directive calls on Member States to take the necessary measures to ensure that employers (including voluntary organisations) conduct proper screening of all staff and volunteers when recruiting a person for professional or organised voluntary activities involving direct and regular contacts with children.

Staff and volunteers of different organisations provide services in the hotspots in Greece and Italy. Many of them do come into direct contact with children. In both Greece and Italy, convicted persons are disqualified from becoming civil servants and checks take place upon recruitment or formal appointment. However, this may not be the case for all entities present in the hotspots.

According to the information available to FRA, since November 2016, the main development in strengthening vetting and screening obligations is the adoption of the Standard Operating Procedures for the Greek hotspots. According to it, those actors who operate in the hotspots must submit to the permanent coordinator a solemn declaration in writing stating that their staff has not been convicted for crimes and major offences during the exercise of their duties under Article 67 (1) of the Penal Code, as supplemented by Article 4 of Law 4267/14. The Ministry of Migration Policy holds a registry of NGOs, but there are no vetting requirements listed in the relevant decision.[112] FRA could not find all organisations providing services in the hotspots in the registry.[113] FRA could not verify if and how vetting occurs in practice for non-civil servants, nor did any development in Italy come to the Agency's attention.

[111] Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA, OJ L 335, 17.12.2011, pp. 1-14.

[112] Greece, Decision of the Minister of Migration Policy No. 7586/18 – Gov. Gazette 4794/B/26-10-2018 on the Operation of a National Registry of Greek and Foreign Non-Governmental Organizations (NGOs) active in the field of international protection, migration and social integration issues.

[113] Greece, Ministry of Migration Policy, National Register of Greek and Foreign Non-Governmental Organizations (NGOs) dealing with international protection, migration and social integration issues.

3. Ensuring adequate expertise to identify vulnerabilities

Migrants and refugees reach Greece or Italy in distress. Some endured persecution, abuse or exploitation before coming to the EU. Others survived shipwrecks or lost family members who cared for them.

The Charter guarantees the rights of the child (Article 24), the elderly (Article 25) and of persons with disabilities (Article 26). In addition, Article 1 of the Charter stipulates the inviolability of human dignity of any person. Any measures taken by the EU or by its Member States when implementing EU law must take into account the special situation of vulnerable persons. Authorities must identify whether asylum applicants have special protection needs and take steps to address them. Article 21 of the Reception Conditions Directive contains a non-exhaustive list of vulnerable categories, and so do national laws in Greece and Italy.[114]

In Greece, vulnerable persons are not subject to the fast-track asylum procedure established on the Greek islands.[115] Therefore, the decision on whether a person falls under one or more of the categories of vulnerable persons listed in Article 14 (8) of Law 4375/2016, essentially also entails a decision on whether to lift the geographical restriction or not.

In its 2016 Opinion, FRA formulated three suggestions. By February 2019, developments occurred in all three, but these have not yet resulted in significant improvements for people on the ground.

The main changes compared to the situation in 2016 on these three issues are as follows:

FRA Opinion 11: Ensuring identification of vulnerable people upon arrival and later

Under Article 22 (1) of the Reception Conditions Directive, Member States have an obligation to assess whether an applicant for international protection has special reception needs. When not identified early, such special reception needs will then not be taken into account in designing a protection-sensitive response (e.g. when allocating a place to sleep or referring the person to special support services). Identification and referral of vulnerable people is a shared responsibility of all actors operating in the hotspots. The first opportunity to identify vulnerable people is the screening procedure carried out by the national police with the support of Frontex. However, the new screening forms used in Greece in 2019 and the "*foglio notizie*" (information sheet)[116] in Italy only collect identity data and do not have a tick box or a question allowing the flagging of vulnerabilities. Other actors focus on identification of vulnerable people.

At the same time, significant improvements occurred since November 2016 in identifying vulnerable people. Greece adopted Standard Operating Procedures for the

[114] For the definition of vulnerable groups under Greek law, see Greece, Law No. 4375 of 2016 on the organisation and operation of the Asylum Service, the Appeals Authority, the Reception and Identification Service, the establishment of the General Secretariat for Reception, the transposition into Greek legislation of the provisions of Directive 2013/32/EU, Article 14 (8). For the definition under Italian law, see Italy, Legislative Decree No. 140/2005, Article 17.

[115] Greece, Law 4375/2016, Article 60 (4) (στ), Gov. Gazette 51/A/03.04.2016.

[116] The information sheet includes a section where each person arriving at the hotspot has to tick a box indicating the reasons for leaving his/her country. Among the possible options, there are: work, family reasons, fleeing poverty, asylum and others.

hotspots,[117] which define the role and responsibilities of each actor. Relevant actors working in the Greek hotspots agreed on a vulnerability template, which, together with an accompanying operational manual, help ensuring a coordinated response to the protection needs of people identified as vulnerable.[118] The time it takes to assess if a person is or is not vulnerable under Greek law varies considerably depending on the number of new arrivals, but also on the availability of professionals and interpreters. Insufficient number of doctors, psychologists (but also lack of space for them to have confidential interviews and examinations) as well as significant delays in recruiting interpreters (see Part I of this FRA Opinion) limit the impact of these measures, leading to months of delays in some hotspots.

In Italy, in response to the decreased number of arrivals, the authorities suspended the "Support Action for Vulnerability Emergence (SAVE)" project that would have scaled up the capacity for early identification of vulnerabilities at the hotspots. At the same time, coordination among different actors tasked with responding to the needs of vulnerable people improved, after a dedicated workshop in Taranto FRA organised together with the European Commission and the Italian authorities in partnership with IOM and UNHCR.[119] However, there is not yet a system for proper mapping of vulnerabilities aiming at ensuring that vulnerable persons or persons at risk are transferred to appropriate reception facilities that can offer the follow-up services needed. In some Italian hotspots, informal arrangements continue whereby the migrant takes along his/her medical file when transferred to other facilities by bus or s/he is given an information paper with the contact number of relevant psychological or medical services at the place of destination. UNHCR has been supporting the relevant authorities in mapping existing referral mechanisms and best practices at regional level. Amendments to the hotspots Standard Operating Procedures could improve identification and referral of vulnerable persons but these remain pending.

FRA Opinion 12: Providing an adequate response to trafficking in human beings

Trafficking in human beings is a persistent issue that often accompanies large-scale migration flows.[120] Recital (25) and Article 11 of the EU Anti-Trafficking Directive (2011/36/EU)[121] emphasises the Member States' responsibility for ensuring assistance and support to victims, and providing training for staff likely to encounter victims. Victims of trafficking in human beings represent one of the groups at risk who are particularly difficult to identify. In November 2016, FRA reported little awareness and limited specialised expertise on trafficking in human beings, although also noting a promising practice in Italy, where the authorities had contracted the IOM to provide

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[117] Greece, Reception and Identification Service, Secretary General for Reception, Ministry of Migration Policy, Manual of SoPs applicable to the Reception and Identification Centres (R.I.Cs), 1 December 2017.

[118] Minimum standards for a harmonized operationalization of the vulnerability template in the RICs, Athens 30 July 2018.

[119] A workshop in Taranto discussed ways to streamline the implementation of the hotspot SOPs, see the FRA news item, Fundamental rights support to Italian authorities in migration hotspots, 18 May 2017.

[120] International Organization for Migration (IOM), *Abuse, Exploitation and Trafficking: IOM reveals data on the scale of the danger and risks that migrants face on the Mediterranean routes to Europe*, 18 October 2016; FRA (2013), *Fundamental rights at Europe's southern sea borders*, Luxembourg, Publications Office, March 2013, p. 24.

[121] Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, OJ L 101, 15.4.2011, pp. 1-11.

information upon disembarkation and to support actors in identifying presumed victims of trafficking.[122]

Over the last two years, there were numerous efforts to address gaps, as the following examples illustrate. The European Commission organised workshops in the framework of the EU Regional Task Force in Greece and Italy[123] and discussed with the main national partners and EU agencies how to strengthen identification of victims of trafficking in the hotspots. Since early 2018, EASO's induction training for deployed experts in Greece has a dedicated session on trafficking in human beings. Frontex provided regular awareness sessions for officers deployed to the hotspots (see Table 10).

Table 10: Awareness raising sessions for Frontex deployed officers in Greece and Italy

Location	Dates of sessions	Location	Dates of sessions
Lesvos	22 May 2017 28 August 2017 16 November 2017	Rome	6 September 2017 4 October 2017 6 February 2018 6 March 2018 4 April 2018 4-5 September 2018 2 October 2018 6 November 2018 5 December 2018 4 January 2019
Chios	23 May 2017 23 August 2017 17 November 2017		
Samos	25 May 2017 24 August 2017 20 November 2017		
Leros	29 May 2017 25 August 2017 21 November 2017		
Kos	27 May 2017 27 August 2017 23 November 2017		

Source: European Border and Coast Guards Agency, 2019

In Greece, the NGO A21 carried out awareness raising sessions on the islands and provided support in individual cases. A number of asylum caseworkers received training on detecting, in the course of the asylum interview, indications that the applicant is a possible victim of trafficking in human beings. On 1 January 2019, the national referral mechanism for victims of trafficking started to become operational. Greece adopted Standard Operating Procedures on trafficking in human beings for hotspots, whereas the Hellenic Police appointed focal points for trafficking in human beings on each island. However, in spite of these efforts, the number of victims, including presumed victims identified in Greece remains extremely low. Separation of presumed victims from perpetrators and the provision of safe accommodation on the islands until the transfer to safe houses in the mainland remains challenging.

At the Italian hotspots, through the Aditus project, IOM has deployed mobile teams to facilitate the early identification and referral of victims of trafficking among new arrivals.[124] IOM provides leaflets with contact number to new arrivals and offers counselling sessions on trafficking following disembarkation. Although due to the short duration of the stay the identification of victims at hotspots is difficult, these measures help victims to understand their situation and their rights so that they can contact protection services after their transfer, if they wish so. Nevertheless, information on

[122] Italy, Ministry of the Interior, Procedure Operative Standard (SOP) – Hotspot.
[123] The workshop in Greece took place on 7 May 2018 in Piraeus and the workshop in Italy on 13 December 2018 in Catania.
[124] A description of the project is available on the webpage of the International Organization for Migration at https://italy.iom.int/en/activities/assistance-vulnerable-groups-and-minors-/ADITUS.

trafficking often emerges only during the asylum interview, which still points to early identification failures. GRETA, the Council of Europe monitoring body on trafficking in human beings, noted the lack of dedicated procedures to identify and protect victims of trafficking in human beings upon arrival.[125] Moreover, if identified, the referral of victims to appropriate services, in particular safe housing remains also challenging.[126]

FRA Opinion 13: Deploying sufficient female police staff

Sufficient presence of female police staff and interpreters contributes to safeguarding the dignity of women during entry checks including body search, first registration and other procedures in the hotspots and helps to ensure respect for their right to private life enshrined in Article 7 of the Charter. It also plays an important role in facilitating the reporting of sexual and gender-based violence.

Female staff were uncommon among national police authorities carrying out first identification interviews in November 2016. This has not changed significantly, neither in Italy nor in Greece, although FRA noted that more female police officers guard the hotspots. As an illustration, during the visit to Leros and Kos on 13-14 February 2019, in every shift there was at least one female officer among the Hellenic Police staff in charge of security at the hotspot. At the same time, during the Participatory Assessment UNHCR carried out in Greece in 2018, asylum seekers and refugees reported that there is lack of female staff to whom potential sexual and gender based violence incidents can be reported. Furthermore, asylum seekers reported that police officers are hesitant to intervene in the hotspots, which leads to a perceived culture of impunity and contributes to foster a feeling of insecurity.[127] This is not conducive to victims of sexual and gender based violence coming forward.

[125] See GRETA (2019), *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Italy*, GRETA (2018) 28, published on 25 January 2019, para. 148.
[126] *Ibid*., para. 173.
[127] UNHCR Greece, Inter-Agency participatory assessments, Country Report Greece 2018.

4. Ensuring safety for all persons in the hotspots

Safety remains an issue of concern for staff working on the ground as well as for the persons accommodated in the hotspots. According to Article 18 (4) of the Reception Conditions Directive, Member States must take appropriate measures to prevent assault and gender-based violence, including sexual assault and harassment. In the Greek and Italian hotspots, serious incidents occurred, including rape and other violent crimes, as well as suicide attempts and riots.

Violence, deaths and self-harm incidents in the hotspots: selected incidents

- November 2016: A woman and her 6-year-old grandchild were killed when a gas canister used for cooking exploded inside a tent in Moria.
- January 2017: Two men who shared the same tent died in the hotspot of Moria. Media reports suggest they inhaled toxic fumes from heaters. Few days later, another young man is found dead in his tent in Moria.
- March 2017: A young man died after self-immolation in the hotspot of Chios. A police officer was injured while trying to prevent the incident.
- September 2017: An alleged rape attempt provoked clashes in the hotspot of Samos. Five people were stabbed.
- December 2017: Fire spreads in the Moria hotspot, reportedly started by persons accommodated in the camp. Fifteen people had to be hospitalised.
- January 2018: a young person living in the hotspot of Lampedusa for approximately two months committed suicide.
- January 2018, residents in Lampedusa protested against the reception conditions by sewing their mouths shut, demanding their transfer to the mainland.
- February 2018, some 60 persons tried to escape from the Trapani hotspot and set fire to the facility.
- March 2018: A group of residents set fire to one of the dormitories in the hotspot in Lampedusa. They protested against prolonged stays and dire living conditions in the centre.
- March 2018: A young man set himself on fire outside the asylum office in the Moria camp.
- May 2018: Approximately 900 asylum seekers refuse to return to the Moria camp following clashes.
- July 2018: A local farmer shot a 16-year old boy in a land plot north of the Moria camp.

Source: See list of references at the end of this FRA Opinion

Most of the hotspots are not designed in a protection-sensitive manner. Despite the fact that the Greek hotspots are, in practice, open facilities, the use of barbed wire is prevalent even in areas hosting children. At the same time, the entry-exit controls that could reduce security concerns are not systematically carried out in all hotspots.

Security gaps in the hotspots affect children disproportionately. Women are at heightened risk of gender-based violence. According to UNHCR, some 14,700 refugees and migrants reside on the Eastern Aegean islands. Women account for 20 % and children for 31 % of whom more than 60 % are younger than 12 years old. Approximately 18% of the children are unaccompanied.[128] This section, therefore, also looks specifically at the risks these women and children face and at possible measures to reduce these.

[128] UNHCR, Aegean Islands Weekly Snapshot, 4-10 February 2019.

In its 2016 Opinion, FRA formulated four suggestions to address identified gaps. By February 2019, there was no significant improvement. Due to the overcrowding in some Greek hotspots, the situation relating to Opinion 15 (sexual and gender-based violence) deteriorated further.

The main changes compared to the situation in 2016 are the following:

FRA Opinion 14: Providing information to mitigate tensions

The right to good administration, which is a general principle of EU law also mirrored in Article 41 of the Charter, requires that persons in the hotspots be informed of procedures applicable to them. Article 5 of the Reception Conditions Directive contains a duty to inform applicants. No or inaccurate information can lead to anxiety and frustration and be a contributing factor to eruptions of violence. Provision of information to new arrivals is challenging, as FRA has already documented in its 2013 report on the situation at Europe's southern sea borders.[129] In 2016, FRA concluded that in spite of significant efforts to inform new arrivals, the capacity to provide adequate information was still not sufficient, particularly in light of people's language diversity.

Since then, in Greece, the NGO Praksis has provided child-specific information in Chios, Lesvos and Samos. Information points exist on all islands, although they function differently.

Promising practice: Info points in Leros and Kos

In the Leros and Kos hotspots, the Reception and Identification Service (RIS) manages info points, which are open during the day from Monday to Friday. RIS staff and interpreters receive people and speak to them in a dignified setting. When necessary, they refer them to other actors in the camp, accompanying them. The info points are easily accessible. Asylum applicants make regular use of them.

Source: FRA, 2019

In spite of these efforts, during the Inter-Agency Participatory Assessment carried out by UNHCR in Greece in 2018, asylum applicants continued to have unclear understanding of the asylum procedures and were not sufficiently kept informed.[130] One issue on which there are regular information gaps concerns transfers. The emergency mode for managing onward movements to the mainland to decongest the islands results in people not understanding why certain groups are transferred and others not. Some nationalities feel discriminated against.

FRA Opinion 15: Adapting the infrastructure and operation of the hotspots to reflect gender diversity and to prevent sexual and gender-based violence

The way a camp is designed and managed impacts significantly on the safety of people staying there, contributing also to prevention of sexual and gender-based violence, as required by Article 18 (4) of the Reception Conditions Directive. In its 2016 Opinion, FRA reported limited action to prevent sexual and gender-based violence and, more generally, limited awareness.

More than two years later, there is more awareness about the issue. For example, Standard Operating Procedures for Sexual and Gender-Based Violence were adopted

[129] FRA (2013), *Fundamental rights at Europe's southern sea borders*, Luxembourg, Publications Office, March 2013, pp. 95-96.

[130] UNHCR, Inter-Agency Participatory Assessment Report – Greece 2018, October 2018.

for all reception facilities in Greece.[131] Also, each hotspot has a referral pathway for cases of sexual and gender-based violence. The Reception and Identification Service has developed tools to monitor the situation in the hotspots and appointed focal points on sexual and gender-based violence in each of the islands.

However, in spite of genuine efforts, the impact remains limited. For example, when FRA visited Pili hotspot in Kos in October 2018, the Agency noted that approximately 100 people, including families with small children, were sleeping rough inside the hotspot. Some of the people to whom FRA spoke mentioned that they had been staying in the open area for over two months.

Most Greek hotspots are constantly overcrowded and, as observed by FRA, in some cases this resulted in placement of unrelated men and women in the same containers. In such a setting, preventing sexual and gender-based violence is challenging. Access to sanitary facilities for women and girls at night remains dangerous for those who do not stay in containers that have toilets and showers, as highlighted in Inter-Agency Participatory Assessments for Chios and Samos. Victims were hesitant to report violence due to lack of female reporting officers.[132] FRA noted during its visits that single women or single mothers were often not placed in separated areas in Greek hotspots. Thus, overall, for women and girls in the Greek hotspots the situation is even more dangerous than two years ago. During the Inter-Agency Participatory Assessment in 2018, asylum seekers in the Eastern Aegean islands noted the limited police presence and patrolling at night as well as absence of meaningful community-based protection mechanisms.

UNHCR expresses concerns on sexual and gender-based violence

In 2017, UNHCR received reports from 622 survivors of sexual and gender-based violence (SGBV) on the Eastern Aegean islands, out of which at least 28 % experienced such forms of violence after arriving in Greece. Women reported inappropriate behaviour, sexual harassment and attempted sexual attacks as the most common forms of sexual and gender-based violence.

Source: UNHCR, Refugee women and children face heightened risk of sexual violence amid tensions and overcrowding at reception facilities on Greek islands, 9 February 2018

Shelters for victims of gender-based violence are either non-existent or very limited. When FRA visited Lesvos in early 2018, there was one counselling centre of the General Secretariat for Gender Equality, which can accommodate adult women survivors or women at risk of violence under specific conditions as victims need to fulfil a number of requirements (for example, present medical examinations) to be accepted.

In Italy, during a mission to Pozzallo and Messina in June 2018, FRA observed increased awareness about sexual and gender-based violence and adequate separation by sex of sanitary facilities. However, FRA also noted that the multi-agency approach adopted to identify and refer victims of trafficking in human beings could be extended to all other victims of sexual and gender-based violence. FRA also noted the need for a safer transfer of the relevant information on the victim to the follow-up structure to be

[131] Greece, Ministry of the Interior, General Secretariat For Gender Equality, Ministry of Migration Policy, Reception and Identification Service in collaboration with civil society and international organisations, Standard Operating Procedures for Prevention and Response to Sexual and Gender Based Violence, Greece, 2017.

[132] UNHCR, Inter-Agency Participatory Assessment Report – Greece 2018, October 2018.

carried out in full respect of the victim's privacy, suggesting modifications to the Standard Operating Procedures.

Promising practice: Adequate facilities for confidential counselling in Italy

Dedicated space for psychosocial counselling were set up in the hotspots in Pozzallo and Messina to improve the effectiveness of the intervention by psychologists and social workers. Thanks to the confidential setting, more women opened up and reported instances of sexual and gender-based violence, including domestic violence.

Source: FRA, 2019

FRA Opinion 16: Mitigating the risk of violence, abuse and exploitation of children

Under the UN Convention on the Rights of the Child, States have the responsibility to ensure the children's safety from violence, sexual exploitation and abuse, as well as trafficking in human beings. Children are more vulnerable to some types of violence (such as sexual abuse) and the effect of violence on children, is potentially very damaging, both when they are direct victims and in cases where they witness it. In November 2016, FRA reported several child protection issues – such as a lack of child protection experts in the hotspots and unaccompanied children in some hotspots accommodated together with adults, as summarised in Section 2 above.

The measures taken since then by the Greek authorities, though significant, have not resulted in improving the situation for children staying in the Greek hotspots. In Greece, RIS child protection officers were appointed and trained, but only few had a social work background or specific experience of working with children. At night, protection staff remain absent, except for the safe area IOM runs in Lesvos. Children informed FRA of instances, where adults were sleeping in areas dedicated to unaccompanied children.

The limited number of children present in the Italian hotspots make it difficult to assess the risks in case of larger arrivals.

Picture 6: hotspot in Pozzallo, June 2018, FRA

FRA Opinion 17: Enhancing outreach to the communities in the hotspots

Under Article 18 (8) of the Reception Conditions Directive Member States may involve applicants in managing the material resources and non-material aspects of life in the centre.

In 2016, FRA had mentioned that reaching out in an appropriate manner to the communities accommodated in the hotspots might help the authorities in preventing tensions and addressing already existing issues. This was deemed particularly important in those hotspots where persons stay longer. Such outreach could include regular meetings between the camp management and the communities, participatory assessments or community policing.

More than two years later, community outreach activities remain weak and non-systematic, although authorities organise meetings with community representatives. UNHCR undertakes yearly participatory assessments[133] on each of the Greek islands and

[133] UNHCR, Inter-Agency Participatory Assessment Report – Greece 2018, October 2018.

organises meetings with women's groups. During the participatory assessment exercise, participants of different age, gender and nationality requested to be consulted, called for strengthening community representation structures, suggested more community meetings as well as feedback on their requests and a complaint mechanism. Asylum applicants also reported that complaint mechanisms are not enforced or their use is not encouraged.

5. Implementing safeguards to readmissions and returns

The last chapter of the 2016 FRA Opinion dealt with readmission to Turkey and returns to the country of origin.

In Greece, after the EU-Turkey Statement in March 2016, rejected asylum applicants and those who withdraw their asylum application may be removed to Turkey with the support of the European Border and Coast Guard Agency. Syrian nationals are brought to Adana (Turkey) by air, whereas other nationalities are removed from Mytilene in Lesvos to Dikili (Turkey) by ferryboat. Until 1 February 2019, a total of 1,825 migrants were returned to Turkey under the EU-Turkey Statement, including 341 Syrians and 1,484 non-Syrians (mainly Pakistani nationals). In addition, with IOM, 3,175 third-country nationals (mostly Iraqis, Algerians and Pakistanis) returned voluntarily from the hotspots to their home country.[134] These numbers are small, compared to the overall number of arrivals.

Figure 6: Readmissions to Turkey from the Greek islands

Source: FRA, 2019

In Italy, there are normally no removals from the hotspots directly. The authorities complete the return procedure in other locations. However, in some instances, Tunisian nationals subject to a deferred refusal of entry decision, who usually depart from Palermo to Tunisia, were directly removed by air from Lampedusa. Returns to Lampedusa are facilitated by bilateral arrangements between Italy and Tunisia allowing for swift identification and removal.[135]

Readmission agreements and other arrangements concluded by Member States or the EU with third countries facilitate the implementation of returns of third-country nationals.[136] As far as EU law is concerned, however, removal operations in the

[134] Data provided by the Hellenic Police, February 2019.

[135] For an analysis of accelerated returns under readmission agreements, see FRA (2013), *Fundamental rights at Europe's southern sea borders*, Luxembourg, Publications Office, March 2013, sub-section 8.2 and table 13. For the bilateral readmission arrangements between Italy and Tunisia, see the Inventory of the bilateral agreements linked to readmission, created and managed by Jean-Pierre Cassarino.

[136] For a comprehensive analysis of these instruments, see Coleman, N. (2009), *European Readmission Policy. Third Party Interests and Refugee Rights*, Leiden/Boston, Martinus Nijhoff Publishers, 2009; and more recently Panizzon, M. (2012), 'Readmission Agreements of EU Member States: A Case for EU Subsidiarity or Dualism?', *Refugee Survey Quarterly* 31 (2012), pp. 101-133; Cassarino, J.-P. (2014), 'A Reappraisal of the EU's Expanding Readmission System', *The International Spectator* 49

framework of readmission fall under the EU return and border management *acquis* and need to comply with the safeguards stipulated particularly in the Return Directive and the Schengen Borders Code (Regulation (EU) No. 2016/399).[137]

Both Greece and Italy make use of the option under Article 2 (2) (a) not to apply the Return Directive to persons who have been refused entry at the border or have been apprehended or intercepted in connection with irregular entry, and have not subsequently obtained the authorisation to stay. Fast-tracked returns of Tunisian from Italy are carried out using the refusal of entry provisions of the Schengen Borders Code and not the Return Directive. However, even where Member States make use of the option under Article 2 (2) (a) of the Return Directive, basic principles and safeguards set out in Article 4 (4) of the directive still apply.

In its 2016 Opinion, FRA listed four issues for improvement. By February 2019, significant improvements occurred in two of them (Opinions 18 and 19). Gaps on the issuance of detention orders remain unaddressed (Opinion 22) and genuine efforts to enhance communication have not yet led to significant changes for detainees (Opinion 21).

The main changes compared to the situation in 2016 on these five issues are as follows:

FRA Opinion 18: Enhancing training and skills of return escorts

According to Guideline 18 (2) of the Council of Europe Twenty Guidelines on Forced Return, escorts "should be carefully selected and receive adequate training, including in the proper use of restraint techniques."[138] Similar requirements are laid down in the Common Guidelines on security provisions annexed to Decision 2004/573/EC,[139] which are applicable to all removals by air. To ensure a smooth completion of the removal procedure and safeguard the rights and human dignity of the returnees, escort staff must be adequately trained and possess the necessary skills in handling potentially difficult situations.

In November 2016, FRA noted that not all staff deployed by Frontex had prior escort experience or had undertaken return escort leader training or other similar courses. Meanwhile, Frontex carries out monthly training of escort staff deployed to support readmission operation from Greece. The European Border and Coast Guard Agency is also currently working on a guide for readmissions, which should be swiftly finalised, as it will be an important tool to further a fundamental rights compatible implementation of readmission operations. In Italy, police officers are chosen to work as return escorts

(2014), pp. 130-145; Cassarino, J.-P. (2018), 'Informalizing EU readmission policy' in Ripoll Servent, A. and Trauner, F. (eds.), *The Routledge Handbook of Justice and Home Affairs Research*, Abingdon, Routledge, 2018, pp. 83-98.

[137] Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code), OJ L 77, 23.3.2016, pp. 1-52.

[138] Council of Europe, Twenty Guidelines on Forced Return, Guideline 18 (2).

[139] Council Decision 2004/573/EC of 29 April 2004 on the organisation of joint flights for removals from the territory of two or more Member States, of third-country nationals who are subjects of individual removal orders, OJ L 261, 6.8.2004, pp. 28-35.

only after a strict selection. They receive detailed training, including on the proper use of restraint techniques.

FRA Opinion 19: Ensuring systematic monitoring of forced returns

Effective monitoring of forced returns by independent entities is an important safeguard against potential ill-treatment. It is also acknowledged by the Return Directive, which, in Article 8 (6), specifically requires Member States to establish forced return monitoring systems. Such provision in the Return Directive does not directly apply to the hotspots, as Greece and Italy make use of the optional clause in Article 2 (2) (a) of the directive. Nevertheless, independent return monitoring safeguards the right to human dignity, the prohibition of inhuman or degrading treatment or punishment and the right to an effective remedy. These rights apply regardless of the type of operation. National bodies designated for forced return monitoring under the Return Directive in Greece and Italy hold the comprehensive mandate of National Preventive Mechanisms under the 2011 Optional Protocol to the UN Convention Against Torture.[140] Both institutions regularly visited the hotspots and monitored several return or readmission operations (for example, six visits to Italian hotspots and 60 readmission monitoring visits in Greece between 2016-2018).[141]

Table 11: Recurrent findings of forced return monitoring bodies in Greece and Italy

Issue	Greece – readmissions	Italy – forced returns to Tunisia
Notification of departure day	Late provision of information that third-country nationals are listed for readmission to Turkey.	The decision obliging persons to leave Italy (differed refusal of entry decision) is notified only shortly before departure. In practice, this limits access to an effective remedy and does not allow the returnee to prepare for his or her return.
Coercive measures	No individualised risk assessment before using velcro handcuffs.	Systematic use velcro handcuffs during pre-return phase based on objective criteria (e.g. setup of the pre-departure facility at the airport) and not on an individualised risk assessment.
Medical issues	No fit to travel certification provided before readmissions.	Medical examination before return not systematic but only when authorities deem it necessary.
Communication	—	Lack of interpreters or cultural mediators during return operations do not allow for smooth communication.
Incomplete files	The migrant's file is sometimes incomplete resulting in risk of removal of persons who still have pending procedures.	—

Note: The table is not comprehensive, as it does not include all findings.

Source: FRA, 2019 based on reports by national return monitoring bodies

[140] OHCHR publishes an updated list of National Preventive Mechanisms at https://www.ohchr.org/en/hrBodies/opcat/pages/nationalpreventivemechanisms.aspx.

[141] See for an overview of their activities, Greek Ombudsman, Special report on return of third country nationals, Athens, September 2018; and Garante Nazionale dei diritte delle persone detenute o private della libertà personale, *Due anni di monitoraggi dei rimpatri forzati*, 12 November 2018.

The main findings of such monitoring activities are similar in Greece and in Italy. As shown in Table 11, people are notified late of the day when they will be removed, coercive measures do not follow an individual risk assessment and some medical issues remain unresolved. In addition, in Italy, insufficient language skills make communication during the return operation difficult and in Greece, the file of persons to be readmitted is not always complete, entailing the risk of including in the readmission operations persons with pending asylum applications.

FRA Opinion 20: Conducting an individual assessment before depriving persons subject to readmission of their liberty

Deprivation of the right to liberty stipulated by Article 6 of the Charter and Article 5 of the ECHR is permissible, including as a measure to prevent unauthorised entry or prepare removal. However, pre-removal detention represents a limited exception to the right of liberty and as such needs to comply with the principles of necessity and proportionality expressed in Article 52 (1) of the Charter. Article 15 of the Return Directive likewise states that detention should only be used where there are no other sufficient but less coercive measures available.

In its 2016 Opinion, FRA noted, that upon arrival all migrants on the Greek islands received a return decision accompanied by a detention order. Such detention orders (whose implementation was suspended during the asylum procedure) did not assess if the deprivation of liberty was necessary and proportionate in the individual case.

Over two years later, detention decisions issued upon arrival to the Greek islands still do not contain an individual necessity and proportionality assessment. In addition, since 2017, in Lesvos and Kos, the Greek authorities started to place in pre-removal detention facilities also asylum applicants from countries of origin with a low recognition rate.[142] Practices keep changing. At some point in time, in Moria (Lesvos) non-vulnerable single men from 28 countries were placed in the pre-removal centre. FRA was not able to find evidence of any individual assessment – as required under Article 52 (1) of the Charter for any limitation to rights enshrined in the Charter – to determine if deprivation of liberty is necessary and proportionate, for example to prevent absconding.

Carceral design of pre-removal facilities on the Greek islands

As noted by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in its recent report covering Greece, the design of the pre-removal centres on the Aegean islands is carceral. At the Moria pre-removal centre in Lesvos, as well as in Pili in Kos, razor blade wire is pervasive along with high wire-mesh fences. The CPT recommended the Greek authorities to take steps to review the prison-like design of the facility and the cells.

Source: European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Report to the Greek government on the visit to Greece carried out from 10 to 19 April 2018, p. 35.

A persistent issue is the deprivation of liberty in the hotspots of all those persons who withdraw their asylum applications as they wish to return home voluntarily with the support of IOM. They remain in detention, typically for one or two weeks until they are moved to Athens for the pre-departure formalities (during which they are further

[142] See also Council of Europe, Report to the Greek Government on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 19 April 2018, published on 19 February 2019, at p. 35.

detained).[143] No open temporary accommodation facility for persons subject to return procedures as provided by the Article 10 (5) of Law 4375/2016 has been established yet. In its recent report, the CPT also reiterated to the Greek authorities the need to consider alternatives to detention for those who declare their intention to return voluntarily.[144]

In Italy, only the hotspot in Lampedusa is a closed facility, although the authorities tolerate when migrants leave the facility through a hole in the fence. In spite of the ECtHR judgement in *Khlaifia* that found the detention in the hotspot in Lampedusa to be arbitrary, migrants staying there for more 48 hours still do not receive a detention order.[145]

FRA Opinion 21: Communicating effectively and providing information during the readmission procedure

Provision of sufficient information and communication with persons in a return or readmission procedure allows safeguarding the rights of the returnee and facilitates the conduct of the operation. Under Article 16 (5) of the Return Directive, which applies also when Member State opted not to apply the directive in situations falling under Article 2 (2) (a), migrants must be regularly informed on their rights while in detention.

In November 2016, FRA noted serious gaps in the provision of information to people waiting to be readmitted from the Greek hotspots.

The information gap was particularly serious in the first part of 2018 in the pre-removal facilities as noted also by the Committee for Prevention of Torture (CPT).[146] Meanwhile, there are interpreters, social workers, and psychologists in the pre-removal facilities in Moria and in Kos.[147]

Information gap in pre-removal facilities

In April 2018, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) visited the pre-removal centre in Moria (Lesvos). People held there were not informed in a timely and sufficient manner in a language they understand, of their rights and the procedure applicable to them. Several foreign nationals in pre-removal centres complained that the information concerning their legal situation and length of detention was insufficient.

The CPT "calls upon the Greek authorities to ensure that detained foreign nationals are systematically and fully informed of their rights, their legal situation (including the grounds for their detention) and the procedure applicable to them as from the very outset of their deprivation of liberty (that is, from the moment when they are obliged to remain with the police), if necessary, with the assistance of a qualified interpreter.

[143] See also *Ibid*. at p. 37.
[144] *Ibid*., at p. 37.
[145] ECtHR, *Khlaifia and Others v. Italy [GC]*, No.16483/12, 15 December 2016, paras. 72, 106 and 107.
[146] Council of Europe, Report to the Greek Government on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 19 April 2018, published on 19 February 2019, p. 35.
[147] See Greece, ΑΕΜΥ, Ανάπτυξη των παρεχόμενων υπηρεσιών στα Προ-Αναχωρησιακά Κέντρα Κράτησης Αλλοδαπών – (Ιατροφαρμακευτική Περίθαλψη, Ψυχολογική Υποστήριξη, Κοινωνική Υποστήριξη και Υπηρεσίες Διερμηνείας) με κωδικό ΟΠΣ (MIS) 5010510" του Ταμείου Ασύλου Μετανάστευσης και Ένταξης 2014-2020 at: http://www.aemy.gr/el/prokeka/.

Further, all detained persons should be systematically provided with a copy of the leaflet setting out this information in a language they can understand."

Source: Council of Europe, Report to the Greek government on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 19 April 2018

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