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Right to an Effective Remedy in the European Convention on Human Rights

The article is dedicated to the right to an effective remedy in the European Convention on Human Rights (the Convention) which guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they may happen to be secured in the domestic legal order. Article 13 of the Convention obliges the States to protect human rights within their legal system. The States' primary obligation deriving from Article 13 is to guarantee the availability of an effective remedy at the domestic level which must be "effective" in practice as well as in law. Moreover, the States have an obligation to demonstrate convincingly the existence of an effective remedy in the practice. At the same time, that provision obliges individuals to exhaust all effective remedies before they lodge their applications with the European Court of Human Rights (the Court). However, they are only obliged to exhaust the remedies that are effective and capable of redressing the alleged violation, accessible and offering reasonable prospects of success. Additionally, this provision creates a basis for the Court to examine the existence and effectiveness of the domestic remedies.

The article analyses the Court's case-law concerning the interplay of the parties' obligations corresponding to the right an effective remedy from the perspective the subsidiarity of the Convention system: the primary responsibility for implementing and enforcing the rights and freedoms guaranteed by the Convention is placed on the national authorities.

Keywords: *The European Convention on Human Rights. Right to an effective remedy in. The European Court of Human Rights. The procedural safeguards of the Convention. Exhaustion of all effective remedies. An arguable claim. Lex generalis and lex specialis.*

1. Introduction

Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they may happen to be secured in the domestic legal order.¹ The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant

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¹ Concerning the history of drafting of Article 13 and comparative analyses in respect of other international documents see *Schabas W.S.*, *The European Convention on Human Rights. A Commentary*. Oxford University Press, 2017, 546-550.

appropriate relief.² Together with Article 5 (2) to (4) and Article 6, that provision is considered part of **the procedural safeguards of the Convention**.³

In the case of *Kudla v. Poland*, which marks the renaissance of the autonomous importance and the ‘upgrading’ of Article 13,⁴ the Court recognized the need “to examine the applicant’s complaint under Article 13 taken separately, notwithstanding its earlier finding of a violation of Article 6 (1) for failure to try him within a reasonable time”.⁵ As rightly mentioned, that decision to reverse the jurisprudence of the Court’s predecessor and recognise this new duty upon the states, is a fascinating example of a positive obligation being developed, in part, because of the practical needs of the Strasbourg Court.⁶

Article 13 occupies a particular place in the Convention system. On the one hand, it gives “**direct expression to the States’ obligation** to protect human rights first and foremost within their legal system”⁷ in conjunction with Article 1 of the Convention, and on the other hand, it **obliges individuals to exhaust all effective remedies** before they lodge their applications with the Court, in conjunction with Article 35 (1). Additionally, this provision creates a basis for the Court to examine the existence and effectiveness of the domestic remedies.

The interplay of those obligations corresponding to the right to an effective remedy under Article 13 reflects the subsidiary character of the Convention system: the primary responsibility for implementing and enforcing the rights and freedoms guaranteed by the Convention is placed on the national authorities.⁸

2. System and Content of Rights and Obligations Enshrined in Article 13

2.1. States’ Obligations

A. Obligation to put in place an effective remedy

The States’ primary obligation deriving from Article 13 is to guarantee the availability of **an effective remedy** at the domestic level. Where an applicant submits an arguable claim of a violation of a Convention right, the domestic legal order must afford an effective remedy.⁹ The remedy must enable the applicants to raise their Convention rights in a timely manner, and to have them considered

² ECtHR, *Kudla v. Poland* (GC), no. 30210/96, 26 October 2000, §157.

³ *Grabenwarter Ch.*, European Convention on Human Rights. Commentary. C.H.Beck, Hart, Nomos, Helbing Lichtenhahn Verlag, 2014, 328.

⁴ *Kuijer M.*, The Right to a Fair Trial and the Council of Europe’s Efforts to Ensure Effective Remedies on a Domestic Level for Excessively Lengthy Proceedings, *Human Rights Law Review*, Vol. 13, 2013, 786.

⁵ *Kudla v. Poland*, §149.

⁶ *Mowbray A.R.*, Article 13: Right to an effective remedy, *The Development of Positive Obligations under the European Convention on Human Rights by the European Court of Human Rights*, London: Hart Publishing, 2004, 211, <www.bloomsburycollections.com> [26.05.2023].

⁷ *Kudla v. Poland*, §152.

⁸ ECtHR, *Cocchiarella v. Italy* (GC), no. 664886/01, ECtHR 2006-V, §38.

⁹ ECtHR, *Hatton and Others v. the United Kingdom* [GC], no. 36022/97, ECtHR 2003-VIII, §138.

in the national proceedings.¹⁰ An effective remedy required by Article 13 is one where the domestic authority or court dealing with the case has to consider **the substance of the Convention complaint**. For instance, in cases where complaints are under Articles 8, 9 and 10 of the Convention, this means that the domestic authority has to examine, inter alia, whether the interference with the applicant's rights was necessary in a democratic society for the attainment of a legitimate aim.¹¹

Although the Contracting States are afforded some margin of appreciation as to the manner in which they provide the requisite remedy and conform to their Convention obligation under Article 13,¹² the **remedy must be "effective" in practice as well as in law**.¹³ For instance, an applicant's complaint alleging that his or her removal to a third State would expose him or her to treatment prohibited under Article 3 of the Convention "must imperatively be subject to close scrutiny by a 'national authority'".¹⁴ The notion of "effective remedy" within the meaning of Article 13 taken in conjunction with Article 3 requires, firstly, "independent and rigorous scrutiny" of any complaint made by a person in such a situation, where "there exist substantial grounds for fearing a real risk of treatment contrary to Article 3" and, secondly, "the possibility of suspending the implementation of the measure impugned".¹⁵ In the case of *Hirsi Jamaa and Others v. Italy* (GC), the Court considered that the applicants were deprived of any remedy which would have enabled them to lodge their complaints under Article 3 of the Convention and Article 4 of Protocol No. 4 with a competent authority and to obtain a thorough and rigorous assessment of their requests before the removal measure was enforced.¹⁶

The scope of this obligation depends on the nature of the complaint under the Convention. With respect to Article 3 complaints concerning conditions of detention, two types of relief are possible: preventive – improvement in such conditions, and compensatory – compensation for damage caused by those conditions. For a person held in such conditions, a remedy capable of rapidly bringing the ongoing violation to an end is of the greatest value. Once such a person has been released or placed in conditions meeting the requirements of Article 3, he or she should have an enforceable right to compensation for any breach that has already occurred.¹⁷ At the same time, the protection afforded by Article 13 does not go so far as to require any particular form of remedy, Contracting States being afforded a margin of discretion in conforming to their obligations under this provision.¹⁸ Where

¹⁰ *Jacobs, White, and Ovey*, *The European Convention on Human Rights, Sixth Edition*, Oxford University Press, 2014, p. 135.

¹¹ ECtHR, *Smith and Grady v. the United Kingdom*, nos. 33985/96 and 33986/96, ECtHR 1999-VI, §138; *Peck v. the United Kingdom*, no. 44647/98, ECHR 2003-I, §106; and *Hatton and Others v. the United Kingdom*, ECtHR 2003-VIII, §141; *Hasan and Chaush v. Bulgaria* [GC], no. 30985/96, ECtHR 2000-XI, §100; *Glas Nadezhda EOOD and Anatoliy Elenkov v. Bulgaria*, no. 14134/02, 11 October 2007, §§68-70; *Neshkov and Others v. Bulgaria*, nos. 36925/10 and 5 others, 27 January 2015, §185.

¹² ECtHR, *Budayeva and Others v. Russia*, nos. 15339/02 and 4 others, 20 March 2008, §190.

¹³ ECtHR, *Hirsi Jamaa and Others v. Italy* (GC), no. 27765/09, 23 February 2012, §197.

¹⁴ ECtHR, *Shamayev and Others v. Georgia and Russia*, no. 36378/02, ECtHR 2005-III, §448.

¹⁵ *Hirsi Jamaa and Others v. Italy* (GC), §198; ECtHR, *Jabari v. Turkey*, no. 40035/98, ECtHR 2000-VIII, §50; and *Shamayev and Others v. Georgia and Russia*, §460.

¹⁶ *Hirsi Jamaa and Others v. Italy* (GC), §205.

¹⁷ ECtHR, *Sukachov v. Ukraine*, no. 14057/17, 30 January 2020, §113.

¹⁸ *Budayeva and Others v. Russia*, §190.

violations of the rights enshrined in Article 2 are alleged, compensation for pecuniary and non-pecuniary damage should in principle be possible as part of the range of redress available.¹⁹

In relation to **fatal accidents** arising out of dangerous activities which fall within the responsibility of the State, the authorities are obliged under Article 2 to carry out of their own motion an investigation, satisfying certain minimum conditions, into the cause of the loss of life. Without such an investigation, the individual concerned may not be in a position to use any remedy available to him for obtaining relief, given that the knowledge necessary to elucidate facts of such fatal accidents is often in the sole hands of State officials or authorities.²⁰ The same obligation to carry out thorough and effective investigations capable of leading to the identification and punishment of those responsible arises for the State in cases of alleged torture or ill-treatment of detainees.²¹

In order to meet the requirements of Article 13, the remedy must be **accessible** to the person concerned. In the case of *Mozer v. Moldova and Russia*, the Court found that the applicant was entitled to an effective domestic remedy within the meaning of Article 13 in respect of his complaints under Articles 3, 8 and 9 of the Convention. The Court examined **whether such a remedy was available to the applicant**.²² As far as the applicant's complaint against Moldova was concerned, the Court considered that the Republic of Moldova had made procedures available to the applicant commensurate with its limited ability to protect the applicant's rights. It has thus fulfilled its positive obligations. Accordingly, the Court found no violation of Article 13 of the Convention by that State.²³ As to the applicant's complaint against Russia, the Court reiterated that in certain circumstances applicants may be required to exhaust effective remedies available in an unrecognised territorial entity. However, there was no indication in the file, and the Russian Government have not claimed, that any effective remedies were available to the applicant in the self-proclaimed "Moldavian Republic of Transdnistria" (the "MRT") in respect of the above-mentioned complaints. The Court therefore concluded that the applicant did not have an effective remedy in respect of his complaints under Articles 3, 8 and 9 of the Convention and that this violation of Article 13 could be attributed to the responsibility of the Russian Government as it continued to exercise effective control over the "MRT".²⁴

Accessibility is inevitably linked to the effectiveness of remedies. In the recent case of *D. v. Bulgaria*, concerning the arrest at the border between Bulgaria and Romania of a Turkish journalist claiming to be fleeing from a risk of political persecution in his own country, and his immediate removal to Turkey, the Court found a violation of Article 13.²⁵ It held that the hasty return to Turkey of a journalist twenty-four hours after his arrest at the border, **rendered the available remedies**

¹⁹ *Budayeva and Others v. Russia*, §191 with further references to the following cases: *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, ECtHR 2002-II, §97; *Z and Others v. the United Kingdom* [GC], no. 29392/95, ECtHR 2001-V, §109; and *T.P. and K.M. v. the United Kingdom* [GC], no. 28945/95, ECtHR 2001-V, §107.

²⁰ *Budayeva and Others v. Russia*, §192.

²¹ ECtHR, *Mehmet Emin Yuksel v. Turkey*, no. 40154/98, 29 July 2004, §36.

²² ECtHR, *Mozer v. the Republic of Moldova and Russia* [GC], no. 11138/10, 23 February 2016, §209.

²³ *Mozer v. the Republic of Moldova and Russia* [GC], §216.

²⁴ *Mozer v. the Republic of Moldova and Russia* [GC], §§211, 212, 217.

²⁵ ECtHR, *D v. Bulgaria*, no. 29447/17, 20 July 2021.

ineffective in practice and therefore inaccessible. The applicant had neither been provided with the assistance of an interpreter or translator, nor with information about his rights as an asylum seeker, including the relevant procedures. The Court was therefore unable to conclude that in the present case the Bulgarian authorities had fulfilled their requisite duty of cooperation in protection procedures. Likewise, the applicant had not been granted access to a lawyer or a representative of specialised organisations that would have helped him assess whether his circumstances entitled him to international protection. In relation to the possibility of challenging the removal order, the order had been implemented immediately without the applicant being given the chance to understand its contents, and that as a result, he had been deprived of the opportunity available under domestic law to apply to the courts for a stay of execution of the order.²⁶

In cases concerning a complaint of ill-treatment, the decisive question in assessing the effectiveness of a remedy is whether the applicant was able to raise this complaint before domestic courts in order to obtain direct and timely redress.²⁷ An exclusively compensatory remedy cannot be regarded as a sufficient response to allegations of detention or confinement conditions in breach of Article 3, since it would have no “preventive” effect in the sense that it would not be capable of preventing the continuation of the alleged violation or of enabling prisoners to obtain an improvement in their material conditions of detention.²⁸

A domestic remedy must present **minimum guarantees of promptness and diligence.**²⁹ For instance, when it comes to the prevention of violations resulting from inadequate conditions of detention, the States are obliged to ensure a **prompt and diligent handling of prisoners’ complaints**, secure the prisoners’ effective participation in the examination of their grievances, and provide a wide range of legal tools for the purpose of eradicating the identified breach of Convention requirements.³⁰ In the case of *Ananyev and Others v. Russia*, the Court considered that a complaint to a prosecutor did not satisfy the requirements of an effective remedy in so far as the process of its examination did not provide for the **participation of the prisoner in the proceedings**. The complainant must at least be provided with an opportunity to comment on factual submissions by the prison governor produced at the prosecutor’s request, to put questions and to make additional submissions to the prosecutor. The treatment of the complaint does not have to be public or call for the institution of any kind of oral proceedings, but there should be a legal obligation on the prosecutor to issue a decision on the complaint within a reasonably short time-limit.³¹

The absence of an automatic suspensive effect can render the remedy ineffective. In the case of *Allanazarova v. Russia*, the Court found a violation of Article 13 in conjunction with Article 3, as an appeal against the extradition under Russian law did not have an automatic suspensive effect or

²⁶ *D v. Bulgaria*, §§131-135.

²⁷ ECtHR, *Mandić and Jović v. Slovenia*, nos. 5774/10 and 5985/10, 20 October 2011, §107.

²⁸ ECtHR, *Norbert Sikorski v. Poland*, no. 17599/05, 22 October 2009, §116; *Mandić and Jović v. Slovenia*, §116.

²⁹ ECtHR, *Kadiķis v. Latvia* (no. 2), no. 62393/00, 4 May 2006, §62.

³⁰ ECtHR, *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, 10 January 2012, §214.

³¹ *Ananyev and Others v. Russia*, §216.

entail stringent scrutiny of the risk of ill-treatment in the State, Turkmenistan, which had requested the extradition of a woman.³²

The States have **an obligation to demonstrate convincingly the existence of an effective remedy** in the practice. The respondent State will be expected to identify the remedies available to the applicant and to show at least a prima facie case for their effectiveness.³³ It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one **available in theory and in practice at the relevant time**, that is to say, that it was accessible, capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success.³⁴ In the case of *Sürmeli v. Germany*, regarding an action for damages, the Court noted that a **single judicial decision**, such as the regional court decision relied on by the Government in support of their arguments – and given, moreover, at first instance – was not sufficient to satisfy it that there had been an effective remedy available in theory and in practice.³⁵

The effectiveness of a remedy does not depend on **the certainty of a favourable outcome** for the person concerned.³⁶ For instance, neither Article 13 nor any other provision of the Convention guarantees an applicant a right to secure the prosecution and conviction of a third party.³⁷

B. Obligation to determine a “national authority”

Article 13 obliges the States to determine at domestic level a **“national authority”**, in order to have the individuals’ **claim decided** and, if necessary, to **obtain redress**. The national authority before which a remedy will be effective may be a **judicial or non-judicial body**.³⁸ The authority referred to in Article 13 of the Convention does not always need to be a judicial one.³⁹ For instance, the remedies in respect of conditions of detention before an administrative authority can satisfy the requirement of Article 13.⁴⁰ However, **the powers and procedural guarantees** that a national authority possesses are relevant in determining whether the remedy before it is effective.⁴¹

In the case of *Ananyev and Others v. Russia* the Court stated that filing a complaint with an authority supervising detention facilities is normally a more reactive and speedy way of dealing with grievances than litigation before courts. However, the authority in question should have the mandate to monitor the violations of prisoners’ rights. The title of such authority or its place within the administrative structures is not crucial as long as it is **independent** from the penitentiary system’s

³² ECtHR, *Allanazarova v. Russia*, no. 46721/15, 14 February 2017, §§100-115.

³³ *Jacobs, White, and Ovey*, *The European Convention on Human Rights, Sixth Edition*, Oxford University Press, 2014, p. 133.

³⁴ *Sejdovic v. Italy*, no. 56581/00, 1 March 2006, §46 with reference to the case of *Akdivar and Others*, no. 21893/93, 16 September 1996, §68.

³⁵ ECtHR, *Sürmeli v. Germany* [GC], no. 75529/01, ECHR 2006-VII, §113.

³⁶ *Hirsi Jamaa and Others v. Italy* (GC), §197.

³⁷ *Budayeva and Others v. Russia*, §191.

³⁸ Collected edition of the “*Travaux préparatoires*” of the European Court of Human Rights, vol. II, pp. 485 and 490, and vol. III, p. 651.

³⁹ ECtHR, *Klass and Others v. Germany*, Series A no. 28, 6 September 1978, §67, and, more recently, *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, 17 July 2014, §149.

⁴⁰ *Sukachov v. Ukraine*, §114.

⁴¹ *Centre for Legal Resources on behalf of Valentin Câmpeanu*, §149.

bodies, such as for instance *Independent Monitoring Boards* in the United Kingdom (formerly Boards of Visitors) or the *Complaints Commission (beklagcommissie)* in the Netherlands. In the Russian legal system, this mandate is entrusted to prosecutors' offices that have independent standing and responsibility for overseeing compliance by the prison authorities with the Russian legislation.⁴²

In order for an administrative authority to satisfy the requirements of effectiveness under Article 13, the Court's case-law developed certain criteria. Such an authority must: (a) be **independent** of the penal authorities; (b) guarantee **the detainee's effective participation** in the examination of his or her complaint; (c) ensure that **the complaint is handled speedily and diligently**; (d) have at its disposal a **wide range of legal tools** for eradicating the problems leading to the complaint; and (e) be capable of rendering **binding and enforceable decisions** within reasonably short time limits.⁴³

In a number of cases, recently in the case of *Sukachov v. Ukraine*, the Court examined the effectiveness of lodging a complaint with a prosecutor in Ukraine and held that that cannot be considered an effective remedy, given that the prosecution's status under domestic law and its particular "accusatorial" role in the investigation of criminal cases did not offer adequate safeguards for an independent and impartial review of a complaint. Moreover, such a complaint could not lead to preventive or compensatory redress. The Court also held that the problems relating to conditions of detention did not concern an individual situation but were of a structural nature.⁴⁴ Such a complaint to a prosecutor was held falling short of the requirements of an effective remedy also because of the procedural shortcomings: it is not based on a detainee's personal right to obtain redress, and there is no requirement for such a complaint to be examined with his or her participation or for the prosecutor to ensure such participation.⁴⁵

For a non-judicial body to be recognised as a "competent national authority" within the meaning of Article 13, it must normally have the **power to hand down a legally binding decision**. In the case of *Segerstedt-Wiberg and Others v. Sweden* concerning the storage in the Security Police files of the information in violation of Article 8 of the Convention, the Court held that the Parliamentary Ombudsperson and the Chancellor of Justice, apart from their competence to institute criminal proceedings and disciplinary proceedings, lacked the power to render a legally binding decision, although they had competence to receive individual complaints and had a duty to investigate them in order to ensure that the relevant laws have been properly applied. In addition, they exercised general supervision and did not have specific responsibility for inquiries into secret surveillance or into the entry and storage of information on the Security Police register. The Court found neither remedy, on its own, to be effective within the meaning of Article 13 of the Convention.⁴⁶

⁴² *Ananyev and Others v. Russia*, §215.

⁴³ *Sukachov v. Ukraine*, §114; *Ananyev and Others v. Russia*, §§214-216, 219; *Neshkov and Others v. Bulgaria*, §§182-183.

⁴⁴ Recently in *Sukachov v. Ukraine* with references to the relevant cases, §§119, 122.

⁴⁵ *Sukachov v. Ukraine*, §120.

⁴⁶ ECtHR, *Segerstedt-Wiberg and Others v. Sweden*, no. 62332/00, ECHR 2006-VII, §118. The Court confirmed in this judgment its findings in earlier case law: *Silver and Others v. the United Kingdom*, no. 5947/72 and others, 25 March 1983, §§114-115; *Leander v. Sweden*, Series A no. 116, 26 March 1987, §82.

Whether a **Constitutional Court** could be seen as a “national authority” within the meaning of Article 13 will depend on the particular features of the respondent State’s legal system and the scope of its Constitutional Court’s jurisdiction. In the case *Liepajnieks v. Latvia* (dec), the Court addressing the competence of the Constitutional Court of Latvia, observed that the Constitutional Court’s jurisdiction was limited to examine individual complaints lodged to challenge the constitutionality of a legal provision or its compliance with a provision of superior force. An individual constitutional complaint could only be lodged against a legal provision where an individual considers that the provision in question infringes his or her fundamental rights as enshrined in the Constitution. The Court concluded that the procedure of an individual constitutional complaint could not serve as an effective remedy if the alleged violation resulted only from erroneous application or interpretation of a legal provision which, in its content, was not unconstitutional.⁴⁷

2.2. Applicants’ obligations

A. Obligation to use the effective remedies

The provision of Article 35 (1) of the Convention that “the Court may only deal with the matter after all domestic remedies have been exhausted” puts **an obligation on the applicant to use the remedies** which are provided for in the domestic law. Thus, with Article 35 Article 13 is central to the cooperative relationship between the Convention and national legal systems.⁴⁸ The applicant has to demonstrate that he or she used the appropriate and relevant domestic remedies. In the case of *Slimani v. France*, the applicant called into question the authorities’ responsibility in her partner’s death and complained about his detention conditions. However, the applicant could have lodged a criminal complaint, alleging murder, with an investigating judge, along with an application to join the proceedings as a civil party. The Court concluded that a domestic remedy was accessible, capable of providing redress in respect of the complaints and offered reasonable prospects of success. She was therefore obliged to use it before applying to the Court. As she did not do so, the Court refused to examine the merits of the complaints.⁴⁹

Applicants are only obliged to exhaust the remedies that are **effective and capable of redressing the alleged violation, accessible and offering reasonable prospects of success**.⁵⁰ For instance, in cases where the Constitutional Court is not considered an effective remedy, the applicants are obliged to avail themselves of a complaint to the Constitutional Court only if they are challenging a provision of a statute or regulation as being in itself contrary to the Convention.⁵¹

⁴⁷ ECtHR, *Liepajnieks v. Latvia* (dec), no. 37586/06, 2 November 2010, §73 with further references to the cases of *Sergey Smirnov v. Russia* (dec.), no. 14085/04, 6 July 2006, and *Szott-Medyńska v. Poland* (dec.), no. 47414/99, 9 October 2003.

⁴⁸ *Harris D., O’Boyle M., Bates E. and Buckley C.*, Law of the European Convention on Human Rights, 4th edition, Oxford University Press, 2018, Chapter 16, Article 13: The Right to an effective National Remedy.

⁴⁹ ECtHR, *Slimani v. France*, no. 57671/00, ECHR 2004-IX, §§39-42.

⁵⁰ ECtHR, *Paksas v. Lithuania* [GC], no. 34932/04, 6 January 2011, §75.

⁵¹ *Liepajnieks v. Latvia* (dec), §73.

In case of **plurality of remedies**, the applicant is only obliged to have used one of them and it is for the applicant to select the remedy that is most appropriate in his or her case.⁵²

B. An arguable claim

In order to enjoy the right to an effective remedy, an applicant must have **an arguable claim** under the Convention.⁵³ There is no abstract definition of the notion of arguable claim.⁵⁴ In the case of *Boyle and Rice v. the United Kingdom*, 1988, the Court held that it should not give an abstract definition of the notion of arguability. Rather it must be determined, in the light of the particular facts and the nature of the legal issue or issues raised, whether each individual claim of violation forming the basis of a complaint under Article 13 was arguable and, if so, whether the requirements of Article 13 were met in relation thereto.⁵⁵

Since Article 13 has no independent existence and it merely complements the other substantive clauses of the Convention and its Protocols,⁵⁶ it can only be applied in combination with, or in the light of, one or more Articles of the Convention of which a violation has been alleged. To rely on Article 13 **the applicant must also have an arguable claim or an “arguable complaint”** under another Convention provision.⁵⁷ In all cases where the Court finds that a complaint is admissible, the arguability threshold is met.⁵⁸

2.3. Methodology of the Court’s scrutiny

The starting point for the Court’s scrutiny under Article 13 is to examine **the applicability** of the provision in question. For instance, where the arguability of a complaint on the merits is not in dispute, the Court finds Article 13 applicable.⁵⁹ In cases where the Court has found a violation of one of the Articles of the Convention or the Protocols in response to the complaint for which the right to a domestic remedy is invoked under Article 13, the Article 13 complaint is arguable.⁶⁰ In other cases the Court may also consider prima facie that the complaint is arguable.⁶¹

⁵² ECtHR, *Karako v. Hungary*, no. 39311/05, 28 April 2009, §14.

⁵³ ECtHR, *De Souza Ribeiro v. France* [GC], no. 22689/07, 13 December 2012, §78, and *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], §148.

⁵⁴ See *Peter Duff, Mark Findlay and Carla Howarth*, The Concept of an “Arguable Claim” under Article 13 of the European Convention on Human Rights, *International and Comparative Law Quarterly*, Vol. 39, October 1990, pp. 891-899.

⁵⁵ ECtHR, *Boyle and Rice v. the United Kingdom*, Series A no. 131, 27 April 1988, §55.

⁵⁶ ECtHR, *Zavoloka v. Latvia*, no. 58447/00, 7 July 2009, §35 (a).

⁵⁷ *Paul and Audrey Edwards v. the United Kingdom*, §96 (the murder of a prisoner by his cellmate).

⁵⁸ *Rainey B., Elizabeth Wicks E., Ovey C., Jacobs, White and Ovey: The European Convention on Human Rights*, 6th ed., Oxford University Press, 2014, 132.

⁵⁹ ECtHR, *Vilvarajah and Others v. the United Kingdom*, Series A no. 215, 30 October 1991, §121; *Chahal v. the United Kingdom* [GC], no. 22414/93, 15 November 1996, §147.

⁶⁰ *Hiernaux v. Belgium*, no. 28022/15, 24 January 2017, §44, concerning the findings of both the pre-trial investigation courts and the trial court about the length of the pre-trial stage; *Barbotin v. France*, no. 25338/16, 19 November 2020, §32, concerning the recognition by the domestic court of the poor conditions of detention endured by an applicant in a prison cell.

⁶¹ *Valada Matos das Neves v. Portugal*, no. 73798/13, 29 October 2015, §74, concerning civil proceedings lasting more than nine years; *Olivieri and Others v. Italy*, nos. 17708/12 and 3 others, 25 February 2016,

The main challenge for the Court deriving from Article 13 is **to assess the effectiveness of the remedy in concreto, in relation to each complaint**. In the case of *Hasan and Chaush v. Bulgaria*, the Court observed that the applicant attempted to obtain a remedy against the interference with the internal organisation of the religious community by challenging Decree R-12 before the Supreme Court. The Supreme Court accepted the case for examination. A representative of the religious community was thus provided access to a judicial remedy. However, the Supreme Court refused to study the substantive issues, considering that the Council of Ministers enjoyed full discretion whether or not to register the statute and leadership of a religious denomination, and only ruled on the formal question whether Decree R-12 was issued by the competent body. The Court concluded that the appeal to the Supreme Court against Decree R-12 was not, therefore, an effective remedy.⁶²

In assessing the effectiveness of the remedy, **the Court must take realistic account** not only of the existence of formal remedies in the legal system of the Contracting Party concerned but also of the general legal and political context in which they operate as well as the particular circumstances of the applicant's case. In the case of *A.B. v. the Netherlands*, recalling the Court's finding concerning the lack of adequate implementation by the Netherlands Antilles authorities of judicial orders to repair the unacceptable shortcomings of penitentiary facilities, as well as noting their failure to implement the urgent recommendations of the European Committee for the Prevention of Torture and Inhuman Treatment (CPT), the Court found that the applicant did not have effective remedies for his Convention complaints.⁶³

The Court normally adopts **a stricter approach** to the notion of "effective remedy" in the situations where the right to life (Article 2 of the Convention) or the prohibition of torture and inhuman or degrading treatment (Article 3 of the Convention) or the right to a lawful arrest or detention (Article 5 of the Convention) is at stake, and request a thorough and effective investigation capable of leading to the identification and punishment of those responsible and including effective access for the complainant to the investigatory procedure.⁶⁴

The Court has to distinguish between **the degrees of effectiveness of the remedies** required in relation to the violations of substantive rights by the State or its agents (negative obligations) and violations due to a failure by the State to protect individuals against acts of third parties (positive obligations).⁶⁵

Doubts as to which courts – civil, criminal, administrative or others – have jurisdiction to examine a complaint can render a remedy ineffective. In the case of *Karpenko v. Ukraine*, the applicant, in relation to whom an individual sanction for breaching the ban on contacts with prisoners from other cells was imposed, tried, without success, to challenge that sanction before the domestic courts. However, two sets of courts – the administrative as well the civil courts – declined jurisdiction

§48, concerning administrative proceedings lasting more than eighteen years; *Brudan v. Romania*, no. 75717/14, 10 April 2018, §70, concerning criminal proceedings lasting more than fourteen years.

⁶² ECtHR, *Hasan and Chaush v. Bulgaria* [GC], no. 30985/96, ECHR 2000-XI, §100.

⁶³ ECtHR, *A.B. v. the Netherlands*, no. 37328/97, 29 January 2002, §98.

⁶⁴ ECtHR, *Kaya v. Turkey*, no. 158/1996/777/978, 19 February 1998, §107; *Yaşa v. Turkey*, no. 63/1997/847/1054, 2 September 1998, §114.

⁶⁵ ECtHR, *Z and Others v. the United Kingdom* [GC], no. 29392/95, 10 May 2001, §109; *Keenan v. the United Kingdom*, no. 27229/95, 3 April 2001, §129.

over the matter. Furthermore, the applicant provided to the Court extensive domestic case-law showing the administrative courts' regular refusals to examine similar matters. The Court considered that the applicant had no effective domestic remedy available for him at the material time and found a violation of Article 13 relying on its case law, according to which, remedies may not be effective where there is doubt as to which courts – civil, criminal, administrative or others – have jurisdiction to examine a complaint, and there is no effective mechanism for the purpose of resolving such uncertainty.⁶⁶

3. Scope of the application of Article 13

3.1. Acts covered by Article 13

Article 13 guarantees an effective remedy against a violation of rights and freedoms set forth in the Convention which has been produced by acts **emanating from the executive⁶⁷ and judiciary as well as from private parties.**

As regards the role of the **legislator**, Article 13 cannot be construed as allowing individuals to challenge domestic laws before a national authority on the ground of them being contrary to the Convention,⁶⁸ and it cannot be interpreted as requiring a remedy against the state of domestic law.⁶⁹ In the case of *Titarenko v. Ukraine*, the Court noted that the Ukrainian legal system entitled persons in pre-trial detention to family visits but did not offer any procedure that would make it possible to verify whether the discretionary powers of the investigator and the courts in this matter were exercised in good faith and whether the decisions to grant or refuse all family visits were well reasoned and justified. The Court held that this legislative gap was not enough to find a breach of Article 13.⁷⁰

3.2. Interplay of Article 13 with other Articles of the Convention

Article 13 applies together with alleged violations of all rights set forth in the Convention. However, the scope of Article 13 may overlap with that of other Convention provisions which guarantee a specific remedy. The Court has developed a methodology in order to secure a separate or simultaneous application of the Convention Articles.

A. Lex generalis and lex specialis

The interplay between Article 13 and some other Convention Articles is characterised as relationship between *lex generalis* and *lex specialis*.⁷¹ For example, in cases where the Article 13

⁶⁶ ECtHR, *Ivan Karpenko v. Ukraine*, no. 45397/13, 16 December 2021, §§72-74.

⁶⁷ ECtHR, *Al-Nashif v. Bulgaria*, no. 50963/99, 20 June 2002, §137.

⁶⁸ ECtHR, *De Tommaso v. Italy* [GC], no. 43395/09, 23 February 2017, §180; *Maurice v. France* [GC], no. 11810/03, 6 October 2005, §107; *Paksas v. Lithuania* [GC], §114.

⁶⁹ ECtHR, *Christine Goodwin v. the United Kingdom* [GC], no. 28957/95, 11 July 2002, §113; *Ostrovar v. Moldova*, no. 35207/03, 13 September 2005, §113.

⁷⁰ ECtHR, *Titarenko v. Ukraine*, no. 31720/02, 20 September 2012, §110.

⁷¹ *Grabenwarter Ch.*, European Convention on Human Rights. Commentary. C.H.Beck, Hart, Nomos, Helbing Lichtenhahn Verlag, 2014.

complaint is subsumed by a complaint alleging a violation of the positive procedural obligations under **Article 4** of the Convention, those obligations constitute *lex specialis* in relation to the general obligations under Article 13. In the case of *C.N. v. the United Kingdom*, the applicant complained that the absence of any specific criminal offence of domestic servitude or forced labour denied her an effective remedy in respect of her complaints under Article 4 of the Convention. Although the Court declared the applicant's complaints admissible, having regard to its findings under Article 4, it accordingly considered it unnecessary to examine separately the complaint concerning the alleged violation of Article 13.⁷²

When it comes to the review of **lawfulness of detention**, according to the Court's established case-law, **Article 5 (1), (4) and (5)** of the Convention also constitutes *lex specialis* in relation to the more general requirements of Article 13. The less stringent requirements of Article 13 will thus be absorbed thereby. For instance, in cases where the Court finds a violation of Article 5 (1) of the Convention in the light of that *lex specialis*, there is no legal interest in re-examining the same subject matter of complaint under the *lex generalis* of Article 13.⁷³ The same applies to the finding of a violation of Article 5 (4) and/or (5) if the facts underlying the applicant's complaint under Article 13 are identical to those examined under Article 5 (4) and/or (5). There will be no need to examine the allegation of a violation of Article 13, since it has already found a violation of Article 5 (4) and/or (5).⁷⁴

Article 6 (1) of the Convention also constitutes *lex specialis* in relation to Article 13. The safeguards of Article 6 (1) are stricter than those of Article 13. Therefore, in many cases where the Court has found a violation of Article 6 (1), it has not deemed it necessary to rule separately on an Article 13 complaint. In general, Article 13 is not applicable where the alleged violation of the Convention took place in the context of judicial proceedings.⁷⁵ Exceptionally, in the case of *Kudla v. Poland*, the Court examined an applicant's complaint of a failure to ensure a hearing within a reasonable time under Article 13 taken separately, notwithstanding an earlier finding of a violation of Article 6 (1) for failure to try the applicant within a reasonable time.⁷⁶

B. Application of Article 13 in conjunction with other Convention Articles

In a number of cases the Court applied Article 13 in conjunction with other Convention Articles (of substantive nature) notwithstanding the fact of whether or not a violation was found with respect to the latter.⁷⁷

⁷² ECtHR, *C.N. v. the United Kingdom*, no. 4239/08, 13 November 2012, §§85, 86; The Court came to the similar conclusion in the case of *C.N. and V. v. France*, no. 67724/09, 11 October 2012, §§113, 114.

⁷³ ECtHR, *Khadisov and Tsechoyev v. Russia*, no. 21519/02, 5 February 2009, §162.

⁷⁴ ECtHR, *De Jong, Baljet and Van Den Brink v. the Netherlands*, no. 8805/79 and two others, 22 May 1984, §60; *Chahal v. the United Kingdom [GC]*, §126; *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, no. 13178/03, 12 October 2006, §§110, 111; *A.B. and Others v. France*, no. 11593/12, 12 July 2016, §158.

⁷⁵ ECtHR, *Menesheva v. Russia*, no. 59261/00, 9 March 2006, §105; *Ferre Gisbert v. Spain*, no. 39590/05, 13 October 2009, §39.

⁷⁶ *Kudla v. Poland*, §149.

⁷⁷ *Neshkov and Others v. Bulgaria*, §§192-213; *G.B. and Others v. Turkey*, no. 4633/15, 17 October 2019, §§125-137.

In the case of *Polgar v. Romania*, the Court accepted that an action in tort had been effective, from 13 January 2021 onwards, for the purpose of obtaining compensation for poor conditions of detention or transport that had now ended. However, the Court found a violation of Article 13 in conjunction with Article 3 because the applicant, having taken that action, had not secured a full acknowledgment of the violation of the Convention and had not received sufficient compensation. The final domestic decision was given on 13 February 2019, well before the date taken by the Court as the starting point for the effectiveness of the remedy in question.⁷⁸

In the case of *Clasens v. Belgium*, which concerned the deterioration of the applicant's conditions of detention in a prison as a result of a strike by conducted prison wardens, the Court found a violation of Article 13 in conjunction with Article 3. The Court held that the Belgian system, as it functioned at the relevant time, had not provided an effective remedy in practice – a remedy capable of affording redress for the situation of which the applicant was a victim and preventing the continuation of the alleged violations. The Court noted that the applicant had – from the very beginning of the strike – applied to the urgent applications judge, who had instructed the State to ensure, subject to penalties, a minimum service in order to provide for the basic needs of the persons being detained inside the prison. However, it had proved impossible to improve the conditions of detention significantly and to restore lawfulness in the provision of basic services. The Court noted that the ineffectiveness of the urgent application during the prison wardens' strike complained of had in reality been largely the result of the structural nature of the problems resulting from such a strike. Although the urgent-applications judge had exercised his jurisdiction, this had not been effective.⁷⁹

In the case of *E.H. v. France*, concerning the return to Morocco of an applicant who claimed to be at risk of treatment contrary to Article 3 on account of his Sahrawi origins and his activism in support of the Sahrawi cause, the Court held that the evidence in the file did not provide substantial grounds for believing that the applicant's return to Morocco had placed him at real risk of treatment contrary to Article 3. Following the cases of *Gebremedhin [Gaberamadhien] v. France* and *I.M. v. France*, in which the Court had found a violation of Article 13 taken together with Article 3, the relevant legislative amendments had been introduced securing the existence of effective remedies, with suspensive effect, to challenge the return of an asylum seeker. The Court noted that the applicant had on four occasions exercised a remedy that suspended the enforcement of the order for his return to Morocco and concluded that the remedies exercised by the applicant, taken together, had been effective in the particular circumstances of this case.⁸⁰

In addition to the situations discussed above, there may be other instances when the Court would prefer not to examine the complaints separately under Article 13. For instance, when examining an alleged violation of Article 2 under its procedural limb for shortcomings in the effectiveness of an investigation, the Court may consider that it has already examined the legal question and that it does not need to examine the complaints separately under Article 13.⁸¹

⁷⁸ ECtHR, *Polgar v. Romania*, no. 39412/19, 20 July 2021, §§75-99.

⁷⁹ ECtHR, *Clasens v. Belgium*, no. 26564/16, 28 May 2019, §§44-47.

⁸⁰ ECtHR, *E.H. v. France*, no. 39126/18, 22 July 2021, §§180-207.

⁸¹ ECtHR, *Makaratzis v. Greece* [GC], no. 50385/99, 20 December 2004, §86; *Ramsahai and Others v. the Netherlands* [GC], no. 52391/99, 15 May 2007, §363; *Karandja v. Bulgaria*, no. 69180/01, 7 October 2010,

In the case of *Budayeva and Others v. Russia*, the Court considered that it was not necessary to examine the applicant's complaint also under Article 13 of the Convention as regards the complaint under Article 2, as the Court addressed not only the absence of a criminal investigation following accidental deaths, but also the lack of further means available to the applicants by which they could secure redress for the authorities' alleged failure to discharge their positive obligations.⁸² Subsequently, the State's failure to conduct a thorough and effective investigation in accordance with its procedural obligations under Article 2 will not necessarily violate Article 13, if the deceased's family has access to other available and effective remedies for establishing liability on the part of State agents or bodies in respect of acts or omissions entailing the breach of their rights under Article 2 and, as appropriate, obtaining compensation.⁸³

Bibliography:

1. Collected edition of the "*Travaux préparatoires*" of the European Court of Human Rights, Vol. II, 485 and 490, and Vol. III.
2. *Duff P., Findlay M., Howarth C.*, The Concept of an "Arguable Claim" under Article 13 of the European Convention on Human Rights, *International and Comparative Law Quarterly*, Vol. 39, October 1990, 891-899.
3. *Grabewarter Ch.*, European Convention on Human Rights. Commentary. C.H.Beck, Hart, Nomos, Helbing Lichtenhahn Verlag, 2014, 328.
4. *Harris D., O'Boyle M., Bates E., Buckley C.*, Law of the European Convention on Human Rights, Chapter 16, Article 13: The Right to an effective National Remedy, 4th ed., Oxford University Press, 2018,
5. *Rainey B., Elizabeth Wicks E., Ovey C.*, Jacobs, White and Ovey: The European Convention on Human Rights, 6th ed., Oxford University Press, 2014, 132-133, 135.
6. *Kuijer M.*, The Right to a Fair Trial and the Council of Europe's Efforts to Ensure Effective Remedies on a Domestic Level for Excessively Lengthy Proceedings, *Human Rights Law Review*, Vol. 13, 2013, 786.
7. *Mowbray A.R.*, Article 13: Right to an Effective Remedy, The Development of Positive Obligations under the European Convention on Human Rights by the European Court of Human Rights, London: Hart Publishing, 2004, 211, <www.bloomsburycollections.com> [26.05.2023].
8. *Schabas W.S.*, The European Convention on Human Rights. A Commentary. Oxford University Press, 2017, 546-550.
9. *A.B. and Others v. France*, no. 11593/12, 12 July 2016.
10. *A.B. v. the Netherlands*, no. 37328/97, 29 January 2002.
11. *Akdivar and Others*, no. 21893/93, 16 September 1996.
12. *Allanazarova v. Russia*, no. 46721/15, 14 February 2017.

§72; *Janowiec and Others v. Russia* (dec.), nos. 55508/07 and 29520/09, 5 July 2011, §124; *Maskhadova and Others v. Russia*, no. 18071/05, 6 June 2013, §193; *Tagayeva and Others v. Russia*, no. 26562/07 and 6 others, 13 April 2017, §622.

⁸² *Budayeva and Others v. Russia*, §195.

⁸³ ECtHR, *Öneryıldız v. Turkey* [GC], no. 48939/99, 30 November 2004, §148; *Budayeva and Others v. Russia*, §191; *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], §149.

13. *Al-Nashif v. Bulgaria*, no. 50963/99, 20 June 2002.
14. *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, 10 January 2012.
15. *Barbotin v. France*, no. 25338/16, 19 November 2020,
16. *Boyle and Rice v. the United Kingdom*, Series A no. 131, 27 April 1988.
17. *Brudan v. Romania*, no. 75717/14, 10 April 2018.
18. *Budayeva and Others v. Russia*, nos. 15339/02 and 4 others, 20 March 2008.
19. *C.N. and V. v. France*, no. 67724/09, 11 October 2012.
20. *C.N. v. the United Kingdom*, no. 4239/08, 13 November 2012.
21. *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, 17 July 2014.
22. *Chahal v. the United Kingdom* [GC], no. 22414/93, 15 November 1996.
23. *Christine Goodwin v. the United Kingdom* [GC], no. 28957/95, 11 July 2002.
24. *Clasens v. Belgium*, no. 26564/16, 28 May 2019.
25. *Cocchiarella v. Italy* (GC), no. 664886/01, ECtHR 2006-V.
26. *D v. Bulgaria*, no. 29447/17, 20 July 2021.
27. *De Jong, Baljet and Van Den Brink v. the Netherlands*, no. 8805/79 and two others, 22 May 1984.
28. *De Souza Ribeiro v. France* [GC], no. 22689/07, 13 December 2012.
29. *De Tommaso v. Italy* [GC], no. 43395/09, 23 February 2017.
30. *E.H. v. France*, no. 39126/18, 22 July 2021.
31. *Ferre Gisbert v. Spain*, no. 39590/05, 13 October 2009.
32. *G.B. and Others v. Turkey*, no. 4633/15, 17 October 2019.
33. *Glas Nadezhda EOOD and Anatoliy Elenkov v. Bulgaria*, no. 14134/02, 11 October 2007.
34. *Hasan and Chaush v. Bulgaria* [GC], no. 30985/96, ECHR 2000-XI.
35. *Hatton and Others v. the United Kingdom* [GC], no. 36022/97, ECtHR 2003-VIII.
36. *Hiernaux v. Belgium*, no. 28022/15, 24 January 2017.
37. *Hirsi Jamaa and Others v. Italy* (GC), no. 27765/09, 23 February 2012.
38. *Ivan Karpenko v. Ukraine*, no. 45397/13, 16 December 2021.
39. *Jabari v. Turkey*, no. 40035/98, ECtHR 2000-VIII.
40. *Janowiec and Others v. Russia* (dec.), nos. 55508/07 and 29520/09, 5 July 2011.
41. *Kadiķis v. Latvia* (no. 2), no. 62393/00, 4 May 2006.
42. *Karako v. Hungary*, no. 39311/05, 28 April 2009.
43. *Karandja v. Bulgaria*, no. 69180/01, 7 October 2010.
44. *Kaya v. Turkey*, no. 158/1996/777/978, 19 February 1998.
45. *Keenan v. the United Kingdom*, no. 27229/95, 3 April 2001.
46. *Khadisov and Tsechoyev v. Russia*, no. 21519/02, 5 February 2009.
47. *Klass and Others v. Germany*, Series A no. 28, 6 September 1978.
48. *Kudła v. Poland* (GC), no. 30210/96, 26 October 2000.
49. *Leander v. Sweden*, Series A no. 116, 26 March 1987.
50. *Liepajnieks v. Latvia* (dec), no. 37586/06, 2 November 2010.
51. *Makaratzis v. Greece* [GC], no. 50385/99, 20 December 2004.
52. *Mandić and Jović v. Slovenia*, nos. 5774/10 and 5985/10, 20 October 2011.
53. *Maskhadova and Others v. Russia*, no. 18071/05, 6 June 2013.
54. *Maurice v. France* [GC], no. 11810/03, 6 October 2005.

55. *Mehmet Emin Yuksel v. Turkey*, no. 40154/98, 29 July 2004.
56. *Menesheva v. Russia*, no. 59261/00, 9 March 2006.
57. *Mozer v. the Republic of Moldova and Russia* [GC], no. 11138/10, 23 February 2016.
58. *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, no. 13178/03, 12 October 2006.
59. *Neshkov and Others v. Bulgaria*, nos. 36925/10 and 5 others, 27 January 2015.
60. *Norbert Sikorski v. Poland*, no. 17599/05, 22 October 2009.
61. *Olivieri and Others v. Italy*, nos. 17708/12 and 3 others, 25 February 2016.
62. *Öneryıldız v. Turkey* [GC], no. 48939/99, 30 November 2004.
63. *Ostrovar v. Moldova*, no. 35207/03, 13 September 2005.
64. *Paksas v. Lithuania* [GC], no. 34932/04, 6 January 2011.
65. *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, ECtHR 2002-II.
66. *Peck v. the United Kingdom*, no. 44647/98, ECHR 2003-I.
67. *Polgar v. Romania*, no. 39412/19, 20 July 2021.
68. *Ramsahai and Others v. the Netherlands* [GC], no. 52391/99, 15 May 2007.
69. *Segerstedt-Wiberg and Others v. Sweden*, no. 62332/00, ECHR 2006-VII.
70. *Sejdovic v. Italy*, no. 56581/00, 1 March 2006.
71. *Sergey Smirnov v. Russia* (dec.), no. 14085/04, 6 July 2006.
72. *Shamayev and Others v. Georgia and Russia*, no. 36378/02, ECtHR 2005-III.
73. *Silver and Others v. the United Kingdom*, no. 5947/72 and others, 25 March 1983.
74. *Slimani v. France*, no. 57671/00, ECHR 2004-IX.
75. *Smith and Grady v. the United Kingdom*, nos. 33985/96 and 33986/96, ECtHR 1999-VI.
76. *Sukachov v. Ukraine*, no. 14057/17, 30 January 2020.
77. *Sürmeli v. Germany* [GC], no. 75529/01, ECHR 2006-VII.
78. *Szott-Medyńska v. Poland* (dec.), no. 47414/99, 9 October 2003.
79. *T.P. and K.M. v. the United Kingdom* [GC], no. 28945/95, ECtHR 2001-V.
80. *Tagayeva and Others v. Russia*, no. 26562/07 and 6 others, 13 April 2017.
81. *Titarenko v. Ukraine*, no. 31720/02, 20 September 2012.
82. *Valada Matos das Neves v. Portugal*, no. 73798/13, 29 October 2015.
83. *Vilvarajah and Others v. the United Kingdom*, Series A no. 215, 30 October 1991.
84. *Yaşa v. Turkey*, no. 63/1997/847/1054, 2 September 1998.
85. *Z and Others v. the United Kingdom* [GC], no. 29392/95, ECtHR 2001-V.
86. *Zavoloka v. Latvia*, no. 58447/00, 7 July 2009.