



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

SECOND SECTION

**CASE OF R.R. AND OTHERS v. HUNGARY**

*(Application no. 19400/11)*

JUDGMENT

STRASBOURG

4 December 2012

**FINAL**

**29/04/2013**

*This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.*



**In the case of R.R. and Others v. Hungary,**

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Guido Raimondi, *President*,  
Peer Lorenzen,  
Dragoljub Popović,  
András Sajó,  
Nebojša Vučinić,  
Paulo Pinto de Albuquerque,  
Helen Keller, *judges*,

and Stanley Naismith, *Section Registrar*,

Having regard to the measure indicated to the Government under Rule 39 of the Rules of Court,

Having deliberated in private on 13 November 2012,

Delivers the following judgment, which was adopted on that date:

**PROCEDURE**

1. The case originated in an application (no. 19400/11) against the Republic of Hungary lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Serbian national, Mr R.R., and four Hungarian nationals, Ms H.H together with her three minor children, on 22 March 2011.

2. The applicants were represented by Mr D. Palotai, a lawyer practising in Budapest. The Hungarian Government (“the Government”) were represented by Mr Z. Tallódi, Agent, Ministry of Public Administration and Justice.

3. The applicants alleged, in particular, that their exclusion from the witness protection programme exposed them to mortal danger.

4. On 16 May 2012 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1). At the same time, the Court indicated to the Government under Rule 39 of the Rules of Court that all necessary measures be taken in order to guarantee the applicants’ personal security pending the Court’s examination of the case.

The Serbian Government did not exercise their right to intervene in the proceedings under Article 36 § 1 of the Convention.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

5. The first applicant, Mr R.R., is a Serbian national who was born in 19... and lives in Hungary. The second applicant, Ms H.H., a Hungarian national, is his common-law wife who was born in 19.... The other three applicants are their minor children.

6. On 12 June 2007 the first applicant, once active in a drug-trafficking mafia run by Serbians in a European country and subsequently in hiding in Hungary under a false identity, was apprehended by the Hungarian police. It is disputed whether he turned himself in or was arrested. He admitted to various offences he had committed and gave information, secretly, about the activities of the mafia in question, enabling prosecution against it. He was offered a plea bargain which he accepted. Subsequently the Hungarian prosecution, despite his complaints, joined his own case to the one conducted against the criminals he had been informing about. This required him to appear in open court, disclose his identity and act publicly as a collaborator of justice.

7. Since this event apparently resulted in the applicants being exposed to vengeance from the Serbian mafia, the family was enrolled in the Witness Protection Scheme on 28 August 2007. The agreement on their enrolment contained a clause to the effect that if it was cancelled on account of a breach of the rules of the Scheme by the first applicant, the whole family would be excluded from the Scheme.

8. Within the framework of the Scheme, the following measures of special protection were introduced, in compliance with section 16(1a–c) of Act no. LXXXV of 2001 on the Protection Programme for Participants in Criminal Proceedings and Collaborators of Justice (“the Protection Act 2001”). The applicants were issued with new personal documents as part of providing them with new identities.

Ms H.H. and the children were accommodated in a three-room, then in a four-room ‘safe flat’ and finally in a five-room family house. The two elder children attended school, while the youngest child – who suffers from medium-grade autism – attended a crèche providing special care, then a kindergarten. The applicants submitted that, in any case, no adequate care was provided in respect of this child’s condition – an assertion disputed by the Government. They further alleged that during this time the Scheme’s operatives insisted that the first and second applicant should break up their relationship.

9. On or some time after their admission to the Scheme, the family – having otherwise no regular income in excess of the various welfare allowances due under the law – started to receive a monthly subsistence allowance. Their rent, public utility bills, health care and schooling costs

(including those related to the situation of the youngest child, in particular the fee of a teacher specialised in developing pedagogy) were wholly or partly paid by the Scheme. Resources were allotted to the children's clothing, the maintenance of the family's car and their travel costs incurred when visiting the first applicant, who was in detention. The latter also received a sort of allowance with regard to his participation in the Scheme. The amounts of these disbursements were raised several times.

10. During this time, the first applicant was imprisoned in an unspecified jail. As to his contact history during the programme, the Government submitted that the family had kept regular contact with him through emailing, phone calls and in the form of monthly visits (an hour per month as per the witness protection agreement). If a visit was, for some reason, omitted, it was substituted either by another occasion or by prolonging the next visit. The last time the first applicant and his family met while the programme was running was on 26 January 2012. The next visit, scheduled for 9 February 2012, was cancelled due to the illness of the youngest child. Arrangements for a substitute visit could not be made, since on 28 February 2012 the first applicant was found in the possession of prohibited articles (see paragraph 14 below) and subjected to a 30-day, then a 10-day confinement; and on 12 April 2012 the applicants' enrolment in the programme was cancelled altogether.

A month or so after his enrolment in the Scheme in 2007, the first applicant's whereabouts were communicated to his lawyer; the latter subsequently attended several of his meetings with operatives of the National Bureau of Investigations.

11. The first applicant submitted that during his trial his mother was assaulted at her home in Serbia and the perpetrators made it clear to him, in an unknown manner, that the assault was in connection with him being a collaborator of justice. He emphasised that he did not change his mind about becoming a collaborator of justice although a significant sum of 'blood money' had been set by the Serbian mafia on his head because of this, and his parents had been – and still were – being harassed by the Serbian authorities and the mafia.

12. The Government submitted that the operatives of the Scheme carried out, as is the standard practice, a careful assessment of potential threats to the applicants, including interviewing some of the first applicant's relatives. However, although the first applicant repeatedly mentioned the setting of 'blood money' of 200,000 euros on his head by Serbian mafia men, no evidence corroborated this allegation in the eyes of the authorities. In the applicants' view, the gathering of information in this respect was insufficient.

13. After numerous hearings held between 5 November 2007 and 9 February 2009, on 23 February 2009 the Budapest Regional Court convicted the first applicant, as a member of a criminal organisation

consisting of another 18 persons, of aggravated abuse of narcotics and of firearms and other offences and sentenced him to 14 years of imprisonment. In the reasoning of its 187-page judgment, the Regional Court relied *inter alia* on testimonies given by numerous experts and witnesses, including that of the first applicant, physical evidence, documents and information obtained through secret surveillance.

On 6 January 2010 the Budapest Court of Appeal reduced the first applicant's sentence to six years.

On 6 October 2010 the Supreme Court aggravated the first applicant's sentence to nine years.

Some of the persons who, in the authorities' perception, represented a threat to the applicants were convicted in the same proceedings.

14. During his ensuing detention, on 28 February 2012 a laptop computer and a mobile internet device, held without authorisation, were found by the guards in his cell. He was caught in the act of communication using a voice-over-internet service. It could not be established how the prohibited devices had been smuggled into the penitentiary. The identities of the person or persons the first applicant had communicated with could not be determined with certainty either. The authorities nevertheless deduced from the first applicant's oral statements and the circumstances that he might have maintained contacts with criminal circles.

15. As a sanction, the entire family was excluded from the Scheme on 12 April 2012. This was explained by the fact that, by carrying out illicit communications, the first applicant had seriously breached the clauses of the agreement with the Scheme. It was found that, by virtue of this exposure, he had become a source of danger in the first place for his family and also for the operatives of the Scheme. It was also recalled that the co-operation between him and the Scheme operatives had gradually become very difficult, since he had kept complaining about various matters and demanded advantages not provided in the protection agreement or their better implementation.

16. On the same day, the Scheme's operatives visited Ms H.H. and informed her about the termination of the programme and of the protection measures, and about the fact that their original identities would simultaneously be restored.

17. The Government submitted that the agreement with the first applicant had been cancelled because of him having repeatedly breached its provisions, rather than because the threat to him and his family had diminished. In any case, in their view, this threat had indeed decreased on account of the apprehension of those persons who represented a danger for the applicants. The applicants contested this view, submitting that, despite these incarcerations, the criminal organisation which was after the first applicant was still active and posing a real threat.

18. The Government further submitted that after the applicants' exclusion from the programme, another scheme called "personal protection" had been put in place for them, in application of section 4(5) of Government Decree no. 34/1999. (II.26.). They had continued benefiting from the house, the car, the telephone line and the computer and other items as well as the allowances during the transitional period of one month or so. The Witness Protection Scheme had arranged for returning their original documents and the withdrawal of cover documents, and taken the requisite steps with regard to the maintenance, under their original names, of the family's health and social care and the children's schooling. The family's public utility bills due for April 2012 had been paid by the Scheme, which had also assisted them in moving house, including the provision of free transport and free temporary storage facilities. For the first applicant, "personal protection" consisted of his relocation to the strict-regime department of S. Prison which is physically separated from the rest of the institution. Here, he has been placed in a cell of 6 square metres; the view from the window is blocked; he is entitled to have an open-air walk once a day for an hour.

19. The applicants submitted that, the programme having been terminated irrespective of the persistent threat, no real care had been taken of Ms H.H. and the children. The latter were bound to return to school under their real names; and, inevitably, the fact that the family had been in witness protection for five years must have been revealed as a consequence of this. The measures of "special protection" had included nothing but an emergency phone number available to Ms H.H. and scarce visits paid to the family by police officers enquiring if anything was wrong. The family's personal particulars and whereabouts became accessible to anyone.

## II. RELEVANT DOMESTIC LAW

20. Act no. LXXXV of 2001 on the Protection Programme for Participants in Criminal Proceedings and Collaborators of Justice ("the Protection Act 2001") provides as follows:

### Section 1

"For the purposes of this Act, the term:

1. "Protection Programme" means organised protection that cannot be secured within the framework of personal protection, which is granted to a witness, an aggrieved party, a defendant, a relative of the above persons or to any other person under threat on account of the person concerned,

a) provided by the police under a civil law agreement concluded with the person under threat, and

b) in the course of which the application of special measures (section 16) and – in order to help the social integration of the person concerned – mental, social, economic, human and legal support is needed;

2. “Agreement” means a civil-law agreement between the police and the person under threat on the latter’s enrolling in the Protection Programme, on the cooperation to be carried out under the Programme, and on the rights and obligations of the participants in the Protection Programme;

3. “Personal protection” means measures carried out, in pursuit of a separate decree..., by the police ... in order to secure personal protection for the participants in criminal proceedings and the officials of the authority in charge ...;”

#### **Section 7**

“(4) To settle a dispute emanating from the agreement, the parties shall conduct conciliatory negotiations. If the parties are unable to settle the dispute in three days, either party may seek a judicial ruling. The Budapest High Court has exclusive competence to deal with such disputes and adjudicates them in non-contentious proceedings. Where appropriate, the court shall hear the parties in person.”

#### **Section 16**

“(1) In order to prevent an unlawful act against the life, bodily integrity or personal liberty of the person concerned, the Scheme may apply the following special protection measures:

- a) placement (moving) of the person concerned in a safe place by changing his domicile or place of residence or by relocating a detainee covered by the Programme from the penitentiary institution in which he is placed into another one;
- b) granting personal protection for the person concerned;
- c) ordering that the data of the person concerned, stored in official registers, no longer be accessible and that any request for access to such data be signalled;
- d) change of name;
- e) change of identity;
- f) participation in international cooperation.”

### **III. WORK OF THE COUNCIL OF EUROPE**

21. Recommendation Rec(2005)9 of the Committee of Ministers to Member States on the protection of witnesses and collaborators of justice (adopted by the Committee of Ministers on 20 April 2005 at the 924th meeting of the Ministers’ Deputies) reads as follows:

“The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

...

Recommends that governments of member states:

- i. be guided, when formulating their internal legislation and reviewing their criminal policy and practice, by the principles and measures appended to this Recommendation;



ii. ensure that all the necessary publicity for these principles and measures is distributed to all interested bodies, such as judicial organs, investigating and prosecuting authorities, bar associations, and relevant social institutions.

### **Appendix to Recommendation Rec(2005)9**

#### **I. Definitions**

For the purposes of this Recommendation, the term:

- “witness” means any person who possesses information relevant to criminal proceedings about which he/she has given and/or is able to give testimony (irrespective of his/her status and of the direct or indirect, oral or written form of the testimony, in accordance with national law), who is not included in the definition of “collaborator of justice”;

- “collaborator of justice” means any person who faces criminal charges, or has been convicted of taking part in a criminal association or other criminal organisation of any kind, or in offences of organised crime, but who agrees to cooperate with criminal justice authorities, particularly by giving testimony about a criminal association or organisation, or about any offence connected with organised crime or other serious crimes;

- “intimidation” means any direct or indirect threat carried out or likely to be carried out to a witness or collaborator of justice, which may lead to interference with his/her willingness to give testimony free from undue interference, or which is a consequence of his/her testimony;

- “anonymity” means that the identifying particulars of the witness are not generally divulged to the opposing party or to the public in general;

- “people close to witnesses and collaborators of justice” includes the relatives and other persons in a close relationship to the witnesses and the collaborators of justice, such as the partner, (grand)children, parents and siblings;

- “protection measures” are all individual procedural or non-procedural measures aimed at protecting the witness or collaborator of justice from any intimidation and/or any dangerous consequences of the decision itself to cooperate with justice;

- “protection programme” means a standard or tailor-made set of individual protection measures which are, for example, described in a memorandum of understanding, signed by the responsible authorities and the protected witness or collaborator of justice.

...

#### **III. Protection measures and programmes**

...

18. Any decision to grant anonymity to a witness in criminal proceedings will be made in accordance with domestic law and European human rights law.

...

20. Any decision to grant anonymity should only be taken when the competent judicial authority finds that the life or freedom of the person involved, or of the persons close to him or her, is seriously threatened, the evidence appears to be significant and the person appears to be credible.

...

22. Where appropriate, witness protection programmes should be set up and made available to witnesses and collaborators of justice who need protection. The main objective of these programmes should be to safeguard the life and personal security of witnesses/collaborators of justice, and people close to them, aiming in particular at providing the appropriate physical, psychological, social and financial protection and support.

23. Protection programmes implying dramatic changes in the life/privacy of the protected person (such as relocation and change of identity) should be applied to witnesses and collaborators of justice who need protection beyond the duration of the criminal trials where they give testimony. Such programmes, which may last for a limited period or for life, should be adopted only if no other measures are deemed sufficient to protect the witness/collaborator of justice and persons close to them.

24. The adoption of such programmes requires the informed consent of the person(s) to be protected and an adequate legal framework, including appropriate safeguards for the rights of the witnesses or collaborators of justice according to national law.

25. Where appropriate, protection measures could be adopted on an urgent and provisional basis before a protection programme is formally adopted.

26. Given the essential role that collaborators of justice may play in the fight against serious offences, they should be given adequate consideration. Where necessary, protection programmes applicable to collaborators of justice serving a prison sentence may also include specific arrangements such as special penitentiary regimes.

27. Protection of collaborators of justice should also be aimed at preserving their credibility and public security. Adequate measures should be undertaken to protect against the risk of the collaborators of justice committing further crimes while under protection and therefore, even involuntarily, jeopardising the case in court. The intentional perpetration of an offence by a collaborator of justice under protection should, according to the relevant circumstances, imply the revocation of protection measures.

...”

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

22. The applicants complained that their exclusion from the Witness Protection Scheme entailed the risk of the mafia making an attempt on their lives.

The Court considers that this issue falls to be examined under Article 2 of the Convention which provides as relevant:

“1. Everyone’s right to life shall be protected by law. ...”

23. The Government contested that argument.

### **A. Admissibility**

24. The Government submitted that the applicants had not exhausted domestic remedies, since they had not availed themselves of the judicial procedure under section 7(4) of the Protection Act 2001, or else of a tort action, claiming a breach of the agreement by the authorities.

The applicants contested these views.

The Court notes that section 7(4) is reserved for adjudicating disputes emanating from the agreement (see section 20 above), whereas the present application concerns the authorities' decision to exclude the applicants altogether from the Scheme. For the Court, it is hardly conceivable that the unilateral termination by the authorities of this legal set-up falls into the category of 'disputes emanating from the agreement'. However, even assuming so, the Court finds that the Government have not demonstrated in any manner how such a procedure would have effectively protected the applicants from the threats allegedly flowing from the removal of their cover identities. It is even less the case in respect of a tort action, which evidently would have taken time and resulted most likely in pecuniary compensation, if any. In sum, the Court is not persuaded that the legal avenues suggested by the Government represent effective remedies in the circumstances. It follows that the application cannot be rejected for non-exhaustion of domestic remedies.

The Court further notes that, with regard to Ms H.H. and her children, this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

25. Concerning Mr R.R., the Court would observe that when he was excluded from the Scheme, his position was altered only to the extent that he was transferred to the strict-regime section of S. Prison (see paragraph 18 above). In the absence of any elements pointing to risks which Mr R.R. is running in that institution, the Court finds that this part of the application is unsubstantiated and must be declared inadmissible as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

The Court would stress that this conclusion is based on the first applicant's present situation, that is, his incarceration under strict regime conditions at S. Prison, and does not exclude that any change in that situation which might expose the applicant to a risk might raise an issue under the Convention.

### **B. Merits**

26. The applicants submitted that their exclusion from the Scheme entailed the risk that criminal elements might take vengeance on them for the first applicant having been a collaborator of justice. In their view, the

steps taken by the authorities after the termination of the programme, such as providing Ms H.H. with an emergency phone number and scarce visits by police officers provided no security whatsoever. The level of threat had never dropped since most of the persons representing risk to the family are still at large.

27. The Government specified that the applicants' enrolment in the Scheme had been terminated not because of the elimination of threats, but because of the first applicant's breaches of the programme's rules. In any case, the level of threat had dropped since certain persons representing a potential threat to the applicants had been apprehended and sentenced to imprisonment in the same proceedings as the first applicant, that is, finally on 6 October 2010 (see paragraph 13 above). Subsequently, the authorities had carried out a further enquiry into the threats feared by the applicants but found no evidence pointing to real risks. To counter the remaining risks, if any, the authorities had nevertheless introduced personal protection measures for the family from the moment of terminating their enrolment.

28. The Court notes that the first sentence of Article 2 § 1 enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction (see *L.C.B. v. the United Kingdom*, 9 June 1998, § 36, *Reports of Judgments and Decisions* 1998-III). The State's obligation in this respect extends beyond its primary duty to secure the right to life by putting in place effective criminal-law provisions to deter the commission of offences against the person backed up by law-enforcement machinery for the prevention, suppression and sanctioning of breaches of such provisions. Article 2 of the Convention may also imply in certain well-defined circumstances a positive obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual.

29. For the Court, such an obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities. Accordingly, not every claimed risk to life can entail for the authorities a Convention requirement to take operational measures to prevent that risk from materialising. In the opinion of the Court where there is an allegation that the authorities have violated their positive obligation to protect the right to life in the context of their above-mentioned duty to prevent and suppress offences against the person, it must be established to its satisfaction that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk. For the Court, and having regard to the nature of the right protected by Article 2, a right fundamental in the scheme of the Convention, it is sufficient for an applicant to show that the authorities did

not do all that could be reasonably expected of them to avoid a real and immediate risk to life of which they have or ought to have knowledge. This is a question which can only be answered in the light of all the circumstances of any particular case (see *Osman v. the United Kingdom*, 28 October 1998, §§ 115-116, *Reports* 1998–VIII).

30. In the instant case, the Court notes that the applicants were enrolled in the Witness Protection Scheme shortly after the first applicant had become available to the authorities as a collaborator of justice. The parties' submissions, rather vague, about the nature of the threats prevailing at that time do not enable the Court to assess whether they represented a real and immediate risk to the applicants' lives. However, it notes that, in applying the rules of witness protection to the applicants' case, the authorities implicitly accepted that there was a serious risk to their life, limb or personal liberty within the meaning of section 16 of the Protection Act 2011 (see paragraph 20 above). Given the well-known nature of mafia conflicts and the applicants' unrefuted allegations about them being wanted by criminal circles – an assertion not implausible in the light of the first applicant's having become a collaborator of justice enabling the unravelling of internationally organised criminal activities – the Court accepts that there was indeed a serious threat to the applicants' lives (rather than only to limb or liberty), when the measure was originally put in place.

31. Consequently, it has to be ascertained whether that risk was still real when the applicants were excluded from the programme, or else whether the authorities did all that could be reasonable expected of them to avoid that risk. As to its existence, the Court notes the Government's explanation according to which the persons representing a potential threat to the applicants have been apprehended. However, the Government also admitted (see paragraph 17 above) that the programme had not been terminated because of the drop in the level of risks.

In any case, since those incarcerations took place in 2010 at the latest (see paragraph 13 above), whereas the applicants were excluded from the programme only in April 2012, the Court is, for its part, unable to see any causal link between those arrests and the termination of the programme.

In these circumstances, the Court observes that the applicants were excluded from the programme for reasons other than the elimination of risks, and finds that the Government have not shown in a persuasive manner that the risks have ceased to exist.

It remains to be examined whether the authorities have effectively countered those risks.

32. The Court notes that the applicants' cover identities were withdrawn and the children started to go to school under their real names. It is not unreasonable to suppose that their identities and whereabouts have become accessible to any person with the intention of harming them. In the face of this development, the Court cannot accept the Government's assertion

according to which the security previously guaranteed by the Scheme was substituted for, in a satisfactory manner, by the measures of personal protection, that is, the availability of an emergency phone number and the occasional visits by police officers.

Given the importance of witness protection reflected by the Court's case-law (see, although in different contexts, *Ahorugeze v. Sweden* no. 37075/09, § 121, 27 October 2011; and *Doorson v. the Netherlands*, 26 March 1996, §§ 69-70, *Reports* 1996-II) as well as by Recommendation Rec(2005)9 of the Committee of Ministers (see paragraph 21 above), the Court cannot but conclude that the authorities' actions in this case may have potentially exposed Ms H.H. and her children to life-threatening vengeance from criminal circles and thus fell short of the requirements of Article 2 of the Convention.

There has accordingly been a violation of that provision in respect of the second, third, fourth and fifth applicants.

## II. RULE 39 OF THE RULES OF COURT

33. The Court recalls that, in accordance with Article 44 § 2 of the Convention, the present judgment will not become final until (a) 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) the Panel of the Grand Chamber rejects any request to refer under Article 43 of the Convention.

34. It considers that the indication made to the Government under Rule 39 of the Rules of Court (see paragraph 4 above) must continue in force until the present judgment becomes final or until the Court takes a further decision in this connection.

## III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

35. The first applicant also complained under Article 5 that the joinder of his case to the one against other perpetrators had resulted in his exposure.

The Court considers that these submissions do not raise any issue under Article 5 of the Convention.

He further complained under Article 6 that his trial had been unfair in that the courts had assessed the evidence in a one-sided manner to his detriment.

In so far as the first applicant's complaint may be understood to concern assessment of the evidence and the result of the proceedings before the domestic courts, the Court reiterates that, according to Article 19 of the Convention, its duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention. In particular, it is

not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention. Moreover, while Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I). In the present case, the Court considers that there is no indication that the courts lacked impartiality or that the proceedings were otherwise unfair.

He also complained that the alleged insistence of the Scheme's operatives that the second applicant should break up with him amounted to a breach of Article 8 (see paragraph 8 above).

The Court finds that this complaint is wholly unsubstantiated.

Without relying on any particular provisions of the Convention, he lastly complained about the restrained conditions of his detention at S. Prison (see paragraph 18 above).

The Court is satisfied that the conditions of the detention do not disclose any appearance of a violation of the first applicant's Article 3 rights, the minimum level of severity required for this provision to come into play not being attained. Furthermore, the restrained conditions, not argued to be unlawful, can be seen as pursuing the legitimate aim of prevention of crime within the meaning of Article 8 § 2 and necessary in a democratic society to secure the first applicant's personal security (see paragraphs 18 and 25 above); therefore, there is no appearance of a violation of the first applicant's rights under Article 8 of the Convention in this connection either.

It follows that the above complaints are manifestly ill-founded within the meaning of Article 35 § 3 (a) and must be rejected, pursuant to Article 35 § 4 of the Convention.

#### IV. ARTICLES 46 AND 41 OF THE CONVENTION

##### A. Article 46 of the Convention

36. The relevant parts of Article 46 of the Convention read as follows:

“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. ...”

37. The Court reiterates that by Article 46 of the Convention the Contracting Parties have undertaken to abide by the final judgments of the

Court in any case to which they are parties, execution being supervised by the Committee of Ministers. It follows, *inter alia*, that a judgment in which the Court finds a breach of the Convention or the Protocols thereto imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in their domestic legal order to put an end to the violation found by the Court and to redress as far as possible the effects (see *Menteş and Others v. Turkey* (Article 50), 24 July 1998, § 24, Reports 1998–IV; *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000–VIII; and *Maestri v. Italy* [GC], no. 39748/98, § 47, ECHR 2004–I). The Court further notes that it is primarily for the State concerned to choose, subject to supervision by the Committee of Ministers, the means to be used in its domestic legal order to discharge its obligation under Article 46 of the Convention (see *Scozzari and Giunta*, cited above; *Brumărescu v. Romania* (just satisfaction) [GC], no. 28342/95, § 20, ECHR 2001–I; and *Öcalan v. Turkey* [GC], no. 46221/99, § 210, ECHR 2005–IV).

38. With a view, however, to helping the respondent State fulfil its obligations under Article 46, the Court may seek to indicate the type of individual and/or general measures that might be taken in order to put an end to the situation it has found to exist (see *Broniowski v. Poland* [GC], no. 31443/96, § 194, ECHR 2004–V; *Scoppola v. Italy (no. 2)* [GC], no. 10249/03, § 148, 17 September 2009; and *Stanev v. Bulgaria* [GC], no. 36760/06, § 255, ECHR–2012).

39. In the instant case the Court considers that it is necessary, in view of its finding of a violation of Article 2, to indicate individual measures for the execution of this judgment without prejudice to any general measures required to prevent other similar violations in the future. It observes that it has found a violation of that Article on account of the fact that the authorities excluded the second, third, fourth and fifth applicants from the witness protection programme without satisfying themselves that the threat against the applicants was no longer there and without taking the necessary measures to protect their lives (see paragraph 32 above).

40. The Court considers that in order to redress the effects of the breach of the rights of the second, third, fourth and fifth applicants, the authorities should secure measures of adequate protection for these applicants, including proper cover identities if necessary, equivalent to those provided in section 16 of the Protection Act 2001 (see paragraph 20 above) until such time as the threat can be proven to have ceased.



## **B. Article 41 of the Convention**

41. Article 41 of the Convention provides:

“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.”

### *1. Damage*

42. Each applicant claimed 75,000 euros (EUR) in respect of pecuniary damage and EUR 25,000 in respect of non-pecuniary damage. The figure concerning pecuniary damage includes the loss of income incurred since the termination of their enrolment in the programme and the same for the future.

43. The Government contested these claims.

44. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, it considers that the second, third, fourth and fifth applicants must have suffered some non-pecuniary damage and awards them jointly, on the basis of equity, EUR 10,000 under this head.

### *2. Costs and expenses*

45. The applicants also claimed EUR 4,790 plus VAT for the costs and expenses incurred before the Court. This figure includes the legal fees payable to the applicants' lawyer, corresponding to 47 hours of legal work charged at an hourly fee of EUR 100 plus VAT as well as to EUR 90 of clerical costs.

46. The Government contested this claim.

47. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 3,000 covering costs under all heads.

### *3. Default interest*

48. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

**FOR THESE REASONS, THE COURT UNANIMOUSLY**

1. *Declares* the complaint concerning Article 2 of the Convention admissible in respect of the second, third, fourth and fifth applicants and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 2 of the Convention in respect of the second, third, fourth and fifth applicants;
3. *Decides* to continue to indicate to the Government under Rule 39 of the Rules of Court that it is desirable in the interests of the proper conduct of the proceedings to secure measures of adequate protection for the second, third, fourth and fifth applicants, including proper cover identities if necessary, equivalent to those provided in section 16 of the Protection Act 2001 (see paragraph 20 above), until such time as the present judgment becomes final or until further order;
4. *Holds*
  - (a) that the respondent State is to pay the second, third, fourth and fifth applicants jointly, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State:
    - (i) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
    - (ii) EUR 3,000 (three thousand euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses;
  - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 4 December 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith  
Registrar

Guido Raimondi  
President