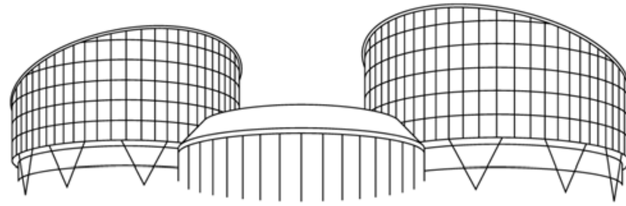

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

RESEARCH REPORT

The new admissibility criterion under Article 35 § 3 (b) of the Convention: case-law principles two years on

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THE NEW ADMISSIBILITY CRITERION UNDER ARTICLE 35 § 3 (b) OF THE CONVENTION:

CASE-LAW PRINCIPLES TWO YEARS ON

I. Introduction

1. The purpose of the current overview is to set out the case-law principles for the new admissibility criterion under Article 35 § 3 (b), as developed by the Court during the first two years of its operation. It is to be recalled that application of the criterion was reserved exclusively to Chambers and the Grand Chamber[1] from 1 June 2010 until 31 May 2012. In accordance with Article 20 of Protocol No. 14, the new provision began to apply to all applications pending before the Court, except those declared admissible.

Article 35 § 3 (b) reads as follows:

> "The Court shall declare inadmissible any individual application submitted under Article 34 if it considers that:
>
> ...
>
> (b) the applicant has not suffered a significant disadvantage, unless respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits and provided that no case may be rejected on this ground which has not been duly considered by a domestic tribunal."

2. However, at this stage it should be mentioned that the wording of the new criterion is likely to be soon amended, according to the wish of the High Contracting Parties as expressed in the Brighton Declaration (20 April 2012):

> "15. c) Concludes that Article 35 (3) (b) of the Convention should be amended to remove the words "and provided that no case may be rejected on this ground which has not been duly considered by a domestic tribunal"; and invites the Committee of Ministers to adopt the necessary amending instrument by the end of 2013;"

3. It is common ground that the terms contained in the new criterion are open to interpretation and that they give the Court some degree of flexibility, in addition to that already provided by the existing admissibility criteria.[2] The terms are not susceptible to exhaustive definition, like many other terms used in the Convention. The High Contracting Parties thus expected the Court to establish objective criteria for the application of the new rule through the gradual development of the case-law.[3]

1. Article 20 § 2 of Protocol No. 14.
2. See Explanatory Report to Protocol No. 14 (CETS No. 194), §§ 78 and 80.
3. Ibid., § 80.

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II. The purpose of the new admissibility criterion

4. The purpose of the new admissibility criterion is to enable a more rapid disposal of unmeritorious cases and thus to allow the Court to concentrate on its central mission of providing legal protection of human rights at the European level.[4] The High Contracting Parties clearly wished the Court to devote more time to cases which warrant consideration on the merits, whether seen from the perspective of the legal interest of the individual applicant or considered from the broader perspective of the law of the Convention and the European public order to which it contributes.[5]

5. In 2010, the High Contracting Parties invited the Court to give full effect to the new admissibility criterion and to consider other possibilities of applying the principle *de minimis non curat praetor*.[6] Further in 2011 the Court has been invited to "give full effect to the new admissibility criterion in accordance with the de minimis principle".[7]

III. Procedure

6. The Court may raise the new admissibility criterion of its own motion (*Adrian Mihai Ionescu v. Romania* (dec.), no. 36659/04, § 35, 1 June 2010) or in response to an objection raised by the Government (*Gaglione and Others v. Italy*, nos. 45867/07 and others, 21 December 2010). In some cases the Court looks at the new criterion before the other admissibility requirements (*Korolev v. Russia* (dec.), no. 25551/05, ECHR 2010; *Rinck v. France* (dec.), no. 18774/09, 19 October 2011; *Gaftoniuc v. Romania* (dec.), no. 30934/05, 22 February 2011; *Burov v. Moldova* (dec.), no. 38875/03, 14 June 2011; and *Shefer v. Russia* (dec.), no. 45175/04, 13 March 2012). In other cases, it moves on to addressing the new criterion only having excluded others (see *Adrian Mihai Ionescu*, cited above; and *Holub v. the Czech Republic* (dec.), no. 24880/05, 14 December 2010). In one case, in *Munier v. France* ((dec.), no. 38908/08, 14 February 2012), the Court rejected the applicant's complaints under Article 35 §§ 1, 3 (b) and 4 together.[8]

IV. "Significant disadvantage"

7. The main element contained in the new admissibility criterion is the question of whether the applicant has suffered a "significant disadvantage". In *Shefer*, cited above, the Court noted that while no formal hierarchy exists between the three elements of Article 35 § 3 (b), the question of "significant disadvantage" is at the core of the new criterion. Nevertheless, in *Finger v. Bulgaria* (no. 37346/05, 10 May 2011), the Court declined to determine whether or not the applicant suffered a significant disadvantage on account of the allegedly unreasonable duration of her court proceedings, because it considered that the second and third elements were not in place. Moreover, in *Flisar v. Slovenia* (no. 3127/09, 29 September 2011), the Government's objection based on the new criterion was rejected because the second safeguard clause was not fulfilled, without discussion of the element of significant disadvantage. This, however, does not appear to be the common approach. In most of the cases, a hierarchical approach is taken, where each element of the new criterion is dealt with in turn.

8. "Significant disadvantage" hinges on the idea that a violation of a right, however real from a purely legal point of view, should attain a minimum level of severity to warrant consideration by an

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4. Ibid., §§ 39 and 77-79.
5. Ibid., § 77.
6. See Action Plan adopted by the High Level Conference on the Future of the European Court of Human Rights, Interlaken, 19 February 2010, § 9 (c).
7. Council of Europe's High Level Conference on the Future of the European Court of Human Rights, held in Izmir from 26-27 April 2011.
8. It is also worth noting that in this case the Court did not continue with a detailed analysis of the first and second safeguard clauses, as is usually the case.

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international court. Violations which are purely technical and insignificant outside a formalistic framework do not merit European supervision (*Shefer*, cited above). The assessment of this minimum level is relative and depends on all the circumstances of the case. The severity of a violation should be assessed by taking into account both the applicant's subjective perception and what is objectively at stake in a particular case (*Korolev*, cited above). However, the applicant's subjective perception cannot alone suffice to conclude that he/she suffered a significant disadvantage. The subjective perception must be justified on objective grounds (*Ladygin v. Russia* (dec.), no. 35365/05, 30 August 2011). A violation of the Convention may concern important questions of principle and thus cause a significant disadvantage regardless of pecuniary interest (*Korolev*, cited above). In *Giuran v. Romania* (no. 24360/04, 21 June 2011), the Court found that the applicant had suffered a significant disadvantage because the proceedings concerned a question of principle for him, namely his right to respect for his possessions and for his home. This was despite the fact that the domestic proceedings which were the subject of the complaint were aimed at the recovery of stolen goods worth EUR 350 from the applicant's own apartment. Further jurisprudence should help to clarify the precise interplay between "the subjective perception justified on objective grounds" on the one hand, and "a personal question of principle" on the other.

9. Moreover, in evaluating the subjective significance of the issue for the applicant, the Court can take into account the applicant's conduct, for example in being inactive in court proceedings during a certain period which demonstrated that in this case the proceedings could not have been significant to her (*Shefer*, cited above). In *Giusti v. Italy* ((dec.), no. 13175/03, 18 October 2011), the Court introduced certain new elements to take into account when determining the minimum threshold of seriousness to justify examination by an international court, namely the nature of the right allegedly violated, the seriousness of the claimed violation and/or the potential consequences of the violation on the personal situation of the applicant. In evaluating these consequences, the Court will examine, in particular, what is at stake or the outcome of the national proceedings.

(A) LACK OF SIGNIFICANT *FINANCIAL* DISADVANTAGE

10. In a large number of cases which have so far come before the Court, the level of severity attained is assessed in light of the financial impact of the matter in dispute and the importance of the case for the applicant. The financial impact is not assessed merely in light of the non-pecuniary damages claimed by the applicant. In *Kiousi v. Greece* ((dec.), no. 52036/09, 20 September 2011), the Court held that the amount of non-pecuniary damages sought, namely EUR 1,000, was not relevant for calculating what was really at issue for the applicant. This was because non-pecuniary damages are often calculated by applicants themselves on the basis of their own speculation as to the value of the litigation.

11. As far as insignificant financial impact is concerned, the Court has thus far found a lack of "significant disadvantage" in the following cases where the amount in question was equal or inferior to roughly EUR 500:

– in a case concerning proceedings in which the amount in dispute was EUR 90 (*Adrian Mihai Ionescu*, cited above);
– in a case concerning a failure by the authorities to pay to the applicant a sum equivalent to less than one euro (*Korolev*, cited above);
– in a case concerning a failure by the authorities to pay to the applicant a sum roughly equal to EUR 12 (*Vasilchenko v. Russia*, no. 34784/02, § 49, 23 September 2010);
– in a case concerning a traffic fine of EUR 150 and the endorsement of the applicant's driving licence with one penalty point (*Rinck*, cited above);
– delayed payment of EUR 25 (*Gaftoniuc*, cited above);
– failure to reimburse EUR 125 (*Ştefănescu v. Romania* (dec.), no. 11774/04, 12 April 2011);
– failure by the State authorities to pay the applicant EUR 12 (*Fedotov v. Romania* (dec.), no. 51838/07, 24 May 2011);

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– failure by the State authorities to pay the applicant EUR 107 plus costs and expenses of 121, totalling EUR 228 (*Burov v. Moldova* (dec.), no. 38875/08, 14 June 2011);
– in a case concerning a fine of EUR 135, EUR 22 of costs and one penalty point on the applicant's driving licence (*Fernandez v. France* (dec.), no. 65421/10, 17 January 2012);
– in a case where the Court noted that the amount of pecuniary damages at issue was EUR 504 (*Kiousi*, cited above.);
– in a case where the initial claim of EUR 99 made by the applicant against his lawyer was considered in addition to the fact that he was awarded the equivalent of EUR 1,515 for the length of the proceedings on the merits (*Havelka v. the Czech Republic* (dec.), no. 7332/10, 20 September 2011);
– in the case of a salary arrears of AMD 102,882[9] (*Guruyan v. Armenia* (dec.), no. 11456/05, 24 January 2012);
– in a case concerning EUR 227 in expenses (*Šumbera v. the Czech Republic* (dec.), no. 48228/08, 21 February 2012);
– in the case concerning enforcement of a judgment for EUR 34 (*Shefer*, cited above).

12. In *Havelka*, cited above, the Court took into consideration the fact that while the award of EUR 1,515 could not strictly speaking be considered to provide adequate and sufficient redress under the Court's case-law, the sum did not differ from the appropriate just satisfaction to such an extent as to cause the applicant a significant disadvantage.

13. Finally, the Court is conscious that the impact of a pecuniary loss must not be measured in abstract terms; even modest pecuniary damage may be significant in the light of the person's specific condition and the economic situation of the country or region in which he or she lives. Thus, the Court looks at the effect of the financial loss taking into account the individual's situation. In *Fernandez*, cited above, the fact that the applicant was a judge at the administrative appeal court in Marseille was relevant for the court finding that the fine of EUR 135 was not a significant amount for her.

14. Conversely, where the Court considers that the applicant has suffered significant financial disadvantage, then the new criterion may be rejected. This has been so in the following cases:
– in a case where delays were found of between 9 and 49 months in enforcing "Pinto" judgments where the sums involved ranged from EUR 200 to 13,749.99 (*Gaglione and Others*, cited above);
– in a case concerning delays in the payment of compensation for expropriated property and amounts running to tens of thousands of euros (*Sancho Cruz and 14 other "Agrarian Reform" cases v. Portugal*, nos. 8851/07 and others, §§ 32-35, 18 January 2011);
– in a case concerning disputed employment rights with the claim being approximately EUR 1,800 (*Živić v. Serbia*, no. 37204/08, 13 September 2011);
– in a case concerning length of civil proceedings of 15 years and 5 months and the absence of any "Pinto" remedy with the claim being "an important amount" (*Giusti*, cited above);
– in a case concerning length of civil proceedings where the sum in question concerned disability allowances which were not insignificant (*De Ieso v. Italy*, no. 34383/02, 24 April 2012).

(B) LACK OF SIGNIFICANT *NON-FINANCIAL* DISADVANTAGE

15. However, the Court is not exclusively concerned with cases of insignificant financial sums. The actual outcome of a case at national level might have repercussions other than financial ones. In *Holub*, cited above, *Bratři Zátkové, a.s., v. the Czech Republic* ((dec.), no. 20862/06, 8 February 2011), *Matoušek v. the Czech Republic* ((dec.), no. 9965/08, 29 March 2011), *Čavajda v. the Czech Republic* ((dec.), no. 17696/07, 29 March 2011) and *Jirsák v. the Czech Republic* ((dec.), no. 8968/08, 5 April 2012), the Court based its decisions on the fact that the non-communicated observations of the other parties had not contained anything new or relevant to the case and the decision of the

9. The equivalent in euros was not given in the decision itself, but the sum is equivalent to approx. EUR 200.

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Constitutional Court in each case had not been based on them. Similarly, in the case of *Jančev v. "the former Yugoslav Republic of Macedonia"* ((dec.), no. 18716/09, 4 October 2011), the complaint concerned the non-pronouncement in public of a first-instance court decision. The Court concluded that the applicant had not suffered any significant disadvantage since he was not the aggrieved party. The Court also took into account that the obligation to demolish the wall and remove the bricks, which was a result of the applicant's unlawful behaviour, did not impose a significant financial burden on him. Another case in which no financial sum was directly invoked by the applicant was *Savu v. Romania* ((dec.), no. 29218/05, 11 October 2011). In that case the applicant complained of the non-enforcement of certain judgments in his favour, including the obligation to issue a certificate. In *Gagliano Giorgi v. Italy* (no. 23563/07, 6 March 2012), the Court for the first time dealt with a complaint concerning the length of criminal proceedings. Looking at the fact that his sentence was reduced as a result of the length of the proceedings, the Court concluded that this reduction compensated the applicant or particularly reduced any prejudice which he would encounter as a result of the length proceedings. Accordingly, the Court held that he had not suffered any significant disadvantage. In *Liga Portuguesa de Futebol Profissional v. Portugal* ((dec), no. 49639/09, 3 April 2012), the Court followed the same reasoning as that set out in *Holub*, cited above. The prejudice in question was the fact that the applicant had not been sent the prosecutor's opinion, and not the sum of 19 million euros which the company could have been forced to pay. In the end, the Court found that the applicant company had not been prejudiced by the non-communication of the opinion in question.

16. Turning to the cases where the Court has rejected the new criterion, in *3A.CZ s.r.o. v. the Czech Republic* (no. 21835/06, 10 February 2011), the Court found that the non-communicated observations could have contained some new information of which the applicant company was not aware. Distinguishing the *Holub* line of cases, the Court could not conclude that the company had not suffered a significant disadvantage. The same reasoning was used in *BENet Praha, spol. s r.o., v. the Czech Republic* (no. 33908/04, 24 February 2011).

17. In *Luchaninova v. Ukraine* (no. 16347/02, 9 June 2011), the Court observed that the outcome of the proceedings, which the applicant claimed had been unlawful and conducted in an unfair manner, had a particularly negative effect on her professional life. In particular, the applicant's conviction was taken as a basis for her dismissal from work. Therefore, the applicant had suffered a significant disadvantage.

18. In *Van Velden v. the Netherlands* (no. 30666/08, 19 July 2011), the applicant complained under Article 5 § 4 of the Convention. The Government argued that the applicant had not suffered any significant disadvantage since the entire period of pre-trial detention had been deducted from his prison sentence. However, the Court found that it was a feature of the criminal procedure of many contracting Parties to set periods of detention prior to final conviction and sentencing off against the eventual sentence; for the Court to hold generally that any harm resulting from pre-trial detention was thereby *ipso facto* nugatory for Convention purposes would remove a large proportion of potential complaints under Article 5 from the scope of its scrutiny. The Government's objection under the new criterion was therefore rejected.

19. In *Živić*, cited above, the Court found that the applicant's financial disadvantage together with what was at stake, namely the inconsistent case-law of the District Court in Belgrade as regards the right to fair wages and equal pay for equal work, was enough for the Court to reject the Government's objection under the new criterion.

V. Whether respect for human rights requires an examination on the merits

20. The second element contained in the new criterion is intended as a safeguard clause[10] compelling the Court to continue the examination of the application, even in the absence of any significant disadvantage suffered by the applicant, if respect for human rights as defined in the Convention and the Protocols thereto so requires. That wording is drawn from the second sentence of

10. See the Explanatory Report to Protocol No. 14, § 81.

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Article 37 § 1 of the Convention, where it fulfils a similar function in the context of decisions to strike applications out of the Court's list of cases. It is also used in Article 39 § 1 (former Article 38) as a basis for securing a friendly settlement between the parties. The Court and the Commission have consistently interpreted those provisions as compelling them to continue the examination of a case when that is necessary because the case may raise questions of a general character affecting the observance of the Convention.

21. Such questions would arise, for example, where there is a need to induce the respondent State to resolve a structural deficiency affecting other persons in the same position as the applicant (*Korolev*, cited above). Precisely this approach was taken in *Finger*, cited above where the Court considered it unnecessary to determine whether the applicant had suffered a significant disadvantage because respect for human rights required an examination of the case on the merits (concerning a potential sytemic problem of unreasonable length of civil proceedings and the alleged lack of an effective remedy).

22. In *Živić*, cited above, the Court also found that even assuming that the applicant had not suffered a significant disadvantage the case raised issues of general interest which required examination. This case shows that there is sometimes not much to distinguish the "important issue of principle" test under significant disadvantage (as elaborated first in *Korolev*, cited above) and the safeguard clause of respect for human rights requiring an examination on the merits.

23. Similarly, in *Nicoleta Gheorghe v. Romania* (no. 23470/05, 3 April 2012), the Court rejected the new criterion despite the insignificant financial award at stake (EUR 17), because a decision of principle on the issue was needed for the national jurisdiction (the case concerned a question of presumption of innocence and equality of arms in criminal proceedings and was the first judgment after the change of national law). In *Juhas Đurić v. Serbia* ((revision), no. 48155/06, 10 April 2012), the applicant complained of the payment of fees to police-appointed defence counsel in the course of a preliminary criminal investigation. The Court concluded that the issues complained of could not be considered trivial, or, consequently, something that did not deserve an examination on the merits, since they related to the functioning of the criminal justice system. Hence, the Government's objection based on the new admissibility criterion was rejected because respect for human rights required examination on the merits.

24. As noted in paragraph 39 of the Explanatory Report, the application of the new admissibility requirement should ensure avoiding the rejection of cases which, notwithstanding their trivial nature, raise serious questions affecting the application or the interpretation of the Convention or important questions concerning national law.

25. The Court has already held that respect for human rights does not require it to continue the examination of an application when, for example, the relevant law has changed and similar issues have been resolved in other cases before it (*Léger v. France* (striking out) [GC], no. 19324/02, § 51, 30 March 2009; *Rinck* and *Fedotov*, both cited above). Nor where the relevant law has been repealed and the complaint before the Court is of historical interest only (*Adrian Mihai Ionescu*, cited above). Similarly, respect for human rights does not require the Court to examine an application where the Court and the Committee of Ministers have addressed the issue as a systemic problem, for example non-enforcement of domestic judgments in the Russian Federation (*Vasilchenko*, cited above) or Romania (*Gaftoniuc* and *Savu*, both cited above) or indeed the Republic of Moldova (*Burov*, cited above) or Armenia (*Gururyan v. Armenia* (dec), no. 11456/05, 24 January 2012). Moreover, where the issue involves length of proceedings cases in Greece (*Kiousi*, cited above) or the Czech Republic (*Havelka*, cited above), the Court has had numerous opportunities to address the issue in previous judgments. This applies equally with respect to the public pronouncement of judgments (*Jančev*, cited above) or the opportunity to have knowledge of and to comment on observations filed or evidence adduced by the other party (*Bazelyuk v. Ukraine* (dec), no. 49275/08, 27 March 2012).

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VI. Whether the case has been duly considered by a domestic tribunal

26. Lastly, Article 35 § 3 (b) does not allow the rejection of an application under the new admissibility requirement if the case has not been duly considered by a domestic tribunal. The purpose of that rule, qualified by the drafters as a "second safeguard clause"[11] is to ensure that every case receives a judicial examination, either at the national or at the European level.

27. The purpose of the second safeguard clause is thus to avoid a denial of justice for the applicant (*Korolev*, *Gaftoniuc* and *Fedotov*, all cited above). The applicant should have had the opportunity of submitting his arguments in adversarial proceedings before at least one level of domestic jurisdiction (*Adrian Mihai Ionescu*, cited above and *Ştefãnescu*, cited above).

28. The second safeguard clause is also consonant with the principle of subsidiarity, as reflected notably in Article 13 of the Convention, which requires that an effective remedy against violations be available at the national level. According to the Court, the word "case" should not be equated with the word "application", in other words the complaint brought to the Strasbourg Court. Otherwise, it would be impossible to declare inadmissible an application concerning violations allegedly caused by final instance authorities, as their acts by definition are not subjected to further national examination (*Holub*, cited above). "Case" is therefore understood as the action, complaint or claim the applicant has lodged with the national courts.

29. In *Dudek v. Germany* ((dec.), nos. 12977/09 and others, 23 November 2010), the complaint for excessive length of civil proceedings under German law had not been duly considered by a domestic tribunal because there was no effective remedy yet enacted. Hence, the new criterion could not be used in this case. In *Finger*, cited above, the Court found that the chief point raised by the case was precisely whether the applicant's grievance concerning the alleged unreasonable length of the proceedings could be duly considered at the domestic level. Therefore, the case could not be regarded as complying with the second safeguard clause. The same approach was adopted in *Flisar*, cited above. The Court noted that the applicant complained precisely about not having his case properly examined by the domestic courts. It also noted that the Constitutional Court did not deal with the applicant's complaints concerning an alleged breach of the guarantees of Article 6 of the Convention. Accordingly, the Court rejected the Government's objection under the new criterion. In *Fomin v. Moldova* (no. 36755/06, 11 October 2011), the applicant complained under Article 6 that the courts had not given sufficient reasons for their decisions convicting her of an administrative offence. The Court in this case joined the issue of whether her complaint had been duly considered by a domestic tribunal to the merits of the complaints, ultimately rejecting the application of the new criterion and finding a violation of Article 6 together. However, with the exception of these four cases, the second safeguard clause has not been a major obstacle in the application of the new criterion.

30. As for the interpretation of "duly", the new criterion is not to be interpreted as strictly as the requirements of a fair hearing under Article 6 (*Adrian Mihai Ionescu* and *Liga Portuguesa de Futebol Profissional*, both cited above). Although, as clarified in *Šumbera*, cited above, some failures in the fairness of the proceedings could, by reason of their nature and intensity, impact on whether the case has been "duly" considered (hence the Court finding that the new criterion did not apply in the case of *Fomin*, cited above).

31. Moreover, the notion "duly examined" does not require the State to examine the merits of any claim brought before the national courts, however frivolous it may be. In *Ladygin*, cited above, the Court held that where an applicant attempts to bring a claim which clearly has no basis in national law, the last criterion under Article 35 § 3 (b) is nonetheless satisfied.

11. Ibid., § 82.

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VII. Concluding remark

32. Over the two-year period provided for by Article 20 § 2 of Protocol No. 14, the Court's Chambers have applied the new admissibility criterion to 26 complaints made under Articles 6 and 13 of the Convention and Article 1 of Protocol No. 1, with the majority of cases falling under Article 6. Similarly, the new criterion has been considered but rejected in cases raising complaints under the same Articles (with the exception of the *Van Velden* case, cited above). The new criterion has been considered but rejected by the Court in a further 16 cases. Both sets of cases are appended to this note. As from 1 June 2012, when the criterion may be applied by the Single Judge, its continuing impact can be assessed on the basis of the relevant statistics.

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Appendix A

LIST OF CASES APPLYING THE NEW ADMISSIBILITY CRITERION

Application	Section	Date of decision / judgment	Subject and the Court's conclusions
36659/04 *Ionescu v. Romania*	III	1/06/2010	Access to court (Article 6) – §§ 27-41 [1st case examined under Article 35 § 3 (b)]
25551/05 *Korolev v. Russia*	I	01/07/2010	Non-enforcement of a court judgment (Article 6 of the Convention and Article 1 of Protocol No. 1)
34784/02 *Vasilchenko v. Russia*	I	23/09/2010	Delayed enforcement of a court judgment (Article 6 and and Article 1 of Protocol No. 1) – §§ 48-50
18774/09 *Rinck v. France*	V	19/10/2010	Equality of arms (Article 6 § 1)
24880/05 *Holub v. the Czech Republic*	V	14/12/2010	Equality of arms (non-communication of other parties' observations – Article 6 § 1)
20862/06 *Bratři zátkové v. the Czech Republic*	V	08/02/2011	Equality of arms (non-communication of other parties' observations – Article 6 § 1)
30934/05 *Gaftoniuc v. Romania*	III	22/02/2011	Delayed payment of court fees (Article 6 and Article 1 of Protocol No. 1) – §§ 27-40
9965/08 *Matoušek v. the Czech Republic*	V	29/03/2011	Equality of arms (non-communication of other parties' observations – Article 6 § 1)
17696/07 *Čavajda v. the Czech Republic*	V	29/03/2011	Equality of arms (non-communication of other parties' observations – Article 6 § 1)
11774/04 *Ştefănescu v. Romania*	III	12/04/2011	Fairness of compensation proceedings (Articles 6 and 13) – §§ 34-47
51838/07 *Fedotov v. Moldova*	III	24/05/2011	Non-enforcement of a court judgment (Article 6 and Article 1 of Protocol No. 1)
38875/03 *Burov v. Moldova*	III	14/06/2011	Non-enforcement of a court judgment (Article 1 of Protocol No. 1) – §§ 22-38
35365/05 *Ladygin v. Russia*	I	30/08/2011	The domestic courts' refusal to examine the applicant's claim against an usher on the merits (Article 6) [Clarification of the third element contained in Article 35 § 3 (b)]
52036/09 *Kiousi v. Greece*	I	20/09/2011	Length of proceedings (Article 6 § 1)
7332/10 *Havelka (II) v. the Czech Republic*	V	20/09/2011	Length of proceedings (Article 6 § 1)
18716/09 *Jancev v. the former Yugoslav Republic of Macedonia*	I	04/10/2011	Lack of public pronouncement of a judgment (Article 6 § 1)
29218/05 *Savu v. Romania*	III	11/10/2011	Non-enforcement of a court judgment (Articles 6 and 13, and Article 1 of Protocol No. 1)
65421/10 *Fernandez v. France*	V	17/1/2012	Access to court (Article 6)
11456/05 *Gururyan v. Armenia*	III	24/1/2012	Non-enforcement of three final judgments (Article 6 and Article 1 of Protocol No. 1) – §§ 59 -63 Salary debt of only EUR 166 eventually paid.
38908/08 *Munier v. France*	V	14/2/2012	Access to court in respect of fixed rate fines (Articles 6 § 1 and 13) – § 17

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Application	Section	Date of decision / judgment	Subject and the Court's conclusions
23563/07 *Gagliano Giorgi v. Italy*	II	14/2/2012	Length of criminal procedure in respect of a "Pinto" remedy (Article 6 § 1) – § 54-66 [First time new criterion applied to length of criminal proceedings]
48228/08 *Šumbera v. the Czech Republic*	V	21/2/2012	Equality of arms (Article 6 § 1)
45175/04 *Shefer v. Russia*	I	13/3/2012	Non-enforcement of a judicial award of EUR 34 against a private party. "Nor, in the light of her prolonged inactivity, was she able to demonstrate that the enforcement proceedings were subjectively significant to her." – § 27
49275/08 *Bazelyuk v. Ukraine*	V	27/3/2012	Article 6 § 1 (Supreme Court had not informed applicant about the appeal in cassation) Concerned EUR 445 for non-pec. damages for cutting off electricity.
49639/09 *Liga Portuguesa de Futebol Professional v. Portugal*	II	3/4/2012	Equality of arms (non-communication of Minister's opinion which could have no bearing on the outcome of the case)–(Article 6) type *Holub* – § 38
8968/08 *Jirsák v. the Czech Republic*	V	12/4/2012	One complaint of lack of adversarial proceedings before the Constitutional Court (Article6) type *Holub* – §§ 89-90

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Appendix B
LIST OF CASES REJECTING THE NEW ADMISSIBILITY CRITERION

Application	Section	Date of decision / judgment	Subject and the Court's conclusions
12977/09 and others *Dudek (VIII) v. Germany*	V	23/11/2010	Length of civil proceedings. Claims not duly examined by a domestic tribunal
45867/07 and other applications *Gaglione and Others v. Italy*	II	21/12/2010	The delay in enforcing a court judgment (Article 6 of the Convention and Article 1 of Protocol No. 1) – §§ 16-19
8851/07 and other applications *Sancho cruz and 14 other applications v. Portugal*	II	18/01/2011	The delay in paying the compensation awarded to the applicants (Article 1 of Protocol No. 1) – §§ 29-35
21835/06 *3A.CZ.S.R.O. v. the Czech Republic*	V	10/02/2011	Equality of arms (non-communication of other parties' observations) (Article 6 § 1) – § 34 [*Holub* distinquished]
33908/04 and others *Benet Praha, Spol.S.R.O. v. the Czech Republic*	V	24/02/2011	Equality of arms (non-communication of other parties' observations) (Article 6 § 1) – § 135 [*Holub* distinquished]
37346/05 *Finger v. Bulgaria*	IV	10/05/2011	Length of civil proceedings and lack of an effective remedy (Articles 6 and 13) – §§ 67-77 [the Court does not determine significant disadvantage as safeguard clauses not met]
48155/06 *Juhas Durić v. Serbia*	II	07/06/2011	Access to a court (Article 6 § 1) – §§ 50-58
16347/02 *Luchaninova v. Ukraine*	V	09/06/2011	Fairness of proceedings and lack of an appeal (Article 6 §§ 1 and 3, and Article 13) – §§ 46-50
24360/04 *Giuran v. Romania*	III	21/06/2011	Fairness of proceedings and right to property (quashing of a final decision) (Article 6 § 1 and Article 1 of Protocol No. 1) – §§ 17-25 [Introduction of new considerations: emotional value, question of principle]
30666/08 *Van Velden v. the Netherlands*	III	19/07/2011	Lawfulness of the applicant's remand in detention (Article 5 § 4) – §§ 33-39
37204/08 *Živić v. Serbia*	II	13/09/2011	Fairness of proceedings (inconsistent case-law of domestic courts) (Article 6 § 1) – §§ 36-42
3127/09 *Flisar v. Slovenia*	V	29/09/2011	Lack of a public hearing (Article 6 § 1) – § 28
36755/06 *Fomin v. Moldova*	III	11/10/2011	Lack of sufficient reasons (Article 6 § 1) new criterion joined to the merits, violation of fair trial guarantees therefore case not "duly considered by a domestic tribunal" – § 20
13175/03 *Giusti v. Italy*	II	18/10/2011	Length of proceedings (Article 6 § 1) – §§ 22-36 [Introduces certain elements to take into account when determining the minimum threshold of seriousness to justify examination by an international court (§ 34)]
23470/05 *Nicoleta Gheorghe v. Romania*	III	3/4/2012	Lack of fairness of proceedings (Article 6) – § 24 [Respect for human rights required a judgment to guide the national authorities]
34383/02 *De Ieso v. Italy*	II	24/04/2012	Length of civil procedure (Article 6 § 1) – § 36 Sum in question concerned disability allowances which were not insignificant

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