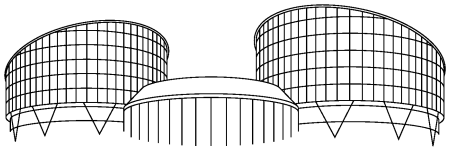

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF CANO MOYA v. SPAIN

(Application no. 3142/11)

JUDGMENT

STRASBOURG

11 October 2016

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Cano Moya v. Spain,

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

Helena Jäderblom, *President*,
Luis López Guerra,
Helen Keller,
Dmitry Dedov,
Branko Lubarda,
Pere Pastor Vilanova,
Alena Poláčková, *judges*,
and Stephen Phillips, *Section Registrar*,

Having deliberated in private on 20 September 2016,

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

PROCEDURE

1. The case originated in an application (no. 3142/11) against the Kingdom of Spain lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Spanish national, Mr Vicente Manuel Cano Moya ("the applicant"), on 4 January 2011.

2. The applicant, who had been granted legal aid, was initially represented by Mr A. Bañón López, a lawyer practising in Alicante, and later by Ms M.M. Díez Perello, a lawyer practising in Madrid. The Spanish Government ("the Government") were initially represented by their Agent, Mr F. Irurzun Montoro, and later by their Agent, Mr F. Sanz Gandasegui.

3. The applicant alleged that sanctions imposed upon him had amounted to violations of his right to be presumed innocent and his right to freedom of expression. He also complained – without formally citing Article 34 of the Convention – that the post-sentencing judge in question had refused to provide him with his case file so as to hinder his right of individual petition to the Court.

4. On 6 September 2011 the application was communicated to the Government. A decision was also made to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1972 in Villahermosa (Ciudad Real) and is currently serving a prison sentence in Spain.

6. At the time of the facts the applicant was in prison on remand in Foncalent (Alicante).

7. On 20 October 2009 the applicant was found guilty of a disciplinary offence by the disciplinary board of Alicante Prison and punished under the General Prison Rules. The punishment was: four weekends in isolation for having threatened prison officers (Rule 108 (b)); twenty days without group recreational activities for having disobeyed the orders given by prison officers in the fulfilment of their duties (Rule 109 (b)); and twenty days without group recreational activities for having damaged prison property (Rule 109 (e)).

8. The applicant appealed against the sanction before the Comunidad Valenciana post-sentencing judge no. 2 (*Juzgado de Vigilancia Penitenciaria n.º 2*).

9. On 17 November 2009 the post-sentencing judge found partially in the applicant's favour and revoked the sanction imposed under Rule 109 (b).

10. On 19 November 2009 a State agent in charge of judicial communications attempted unsuccessfully to serve the applicant in person with the post-sentencing judge's decision. The applicant had been transferred to a prison in Villena (Alicante).

11. On 28 January 2010 the applicant was served in person with the post-sentencing judge's decision of 17 November 2009. He signed an acknowledgment of receipt.

12. The applicant lodged a *reforma* appeal with the same post-sentencing judge, who on 18 February 2010 confirmed her previous decision. A copy of the decision on appeal was served on the applicant. He signed an acknowledgment of receipt.

13. The applicant lodged an *amparo* appeal with the Constitutional Court. He invoked Articles 20 (freedom of expression) and 24 (right to be presumed innocent) of the Constitution.

14. By a communication of 22 March 2010 the Constitutional Court asked the post-sentencing judge to provide it with a copy of the applicant's case file.

15. On 12 April 2010 the post-sentencing judge transferred the applicant's case file to the Constitutional Court.

16. By a decision of 30 September 2010 the Constitutional Court declared the applicant's *amparo* appeal inadmissible as devoid of any special constitutional significance. That decision was served on the applicant on 7 October 2010.

17. On 22 December 2010 the applicant asked the post-sentencing judge for a copy of his case file for submission to the European Court of Human Rights. He relied on sections 234 and 454 of the Judicature Act (see paragraph 31 below). He did so from a prison in Zuera (Saragossa) to which he had been transferred.

18. On 4 January 2011 the applicant sent his first letter to the Court giving notice of his intention to lodge an application under Article 34 of the Convention.

19. On 14 January 2011 the Court's Registry acknowledged receipt of the applicant's letter and invited him to submit a duly completed application form by 11 March 2011.

20. On 26 January 2011 the post-sentencing judge refused the applicant's request for a copy of his case file on the grounds that his case "was still pending before the Constitutional Court".

21. On 2 February 2011 the applicant sent his application form to the Court. He raised complaints under Article 6 § 2 and Article 10 § 1 of the Convention. He enclosed a copy of the Constitutional Court's decision declaring his *amparo* appeal inadmissible. He further referred to the post-sentencing judge's decisions of 17 November 2009 and 18 February 2010 in field "17. Other decisions" of the application form. However, he did not enclose a copy of those decisions.

22. On 4 February 2011 the applicant sent a communication to the post-sentencing judge. He stated that the Constitutional Court had delivered a decision in his case on 30 September 2010; that he intended to initiate proceedings before the European Court of Human Rights; and that in order to do so he should be provided with a certified copy of his case file without delay and before the deadline of 11 March 2011.

23. On 22 February 2011 the post-sentencing judge's registrar rejected the applicant's request, referring to the decision of 12 April 2010 (see paragraph 15 above) and stating that the European Court of Human Rights had the power to request the case file itself. That decision was served on the applicant on 4 March 2011.

24. On 3 March 2011 the Court acknowledged receipt of the applicant's application form and invited him to send in all relevant domestic decisions by 3 June 2011.

25. On 4 March 2011 the applicant informed the Court that he had unsuccessfully requested a certified copy of his complete case file from the post-sentencing judge. He complained that the domestic authorities were hindering his right to a defence.

26. On 14 March 2011 the applicant resubmitted his request for a copy of the whole case file to the post-sentencing judge. He referred to the Court's letter of 3 March 2011.

27. On 1 April 2011 the post-sentencing judge rejected the applicant's request and refused to provide him with a copy of his case file. She

informed the applicant that, for the purposes of subsequent applications before other courts, those courts could request the case files from the domestic courts directly. That decision was served on the applicant on 6 April 2011.

28. On 7 April 2011 the applicant informed the Court that the post-sentencing judge had refused to provide him with a copy of his case file.

II. RELEVANT DOMESTIC LAW

A. The Constitution

29. The relevant provisions of the Constitution read:

Article 20

"1. The following rights are recognised and protected:

(a) the right to freely express and disseminate thoughts, ideas and opinions through words, in writing or by any other means of communication; ...

4. These freedoms are limited by respect for the rights recognised in this Part, by the legal provisions implementing it, and especially by the right to honour, to privacy, to personal reputation and to the protection of youth and childhood. ..."

Article 24

"1. Every person has the right to obtain the effective protection of judges and the courts in the exercise of his or her legitimate rights and interests, and in no case may he go undefended.

2. Likewise, all persons have the right of access to the ordinary judge predetermined by law; to the defence and assistance of a lawyer; to be informed of the charges brought against them; to a public trial without undue delay and with full guarantees; to the use of evidence appropriate to their defence; to not make self-incriminating statements; to not declare themselves guilty; and to be presumed innocent. ..."

B. Organic Law on the Constitutional Court

1. Where an *amparo* appeal is admitted, the Chamber shall urgently request the body or authority with which the decision, act or circumstance originated or the judge or court that heard the previous proceedings, to provide it with the court records or the supporting documents within a period of not more than ten days.

2. The body, authority, judge or court shall immediately acknowledge receipt of the request, shall dispatch the documents within the prescribed period and shall invite the persons who were parties to the former proceedings so that they may appear in the constitutional proceedings within ten days.

C. Royal Decree 1201/1981 on General Prison Rules

30. The relevant provisions of the General Prison Rules read:

Rule 108

"An inmate shall be guilty of a very serious offence if he:

assaults, threatens or coerces any person within the prison premises, or any official or judicial or prison officer within or outside the prison premises in the event that he has been duly authorised to leave while serving his sentence, and the officer was performing his or her duties in an official capacity. ..."

Rule 109

"An inmate shall be guilty of a serious offence if he:

...

deliberately renders useless any prison property, items or effects, or causes minor or serious damage to anyone's property through wanton negligence. ..."

D. Organic Law 6/1985 of 1st July on the Judiciary ("the Judicature Act")

31. The relevant provisions of the Judicature Act read:

Article 234

"1. The appropriate registrars and officials within a court's office shall provide any authorised person with whatever information he may request about the state of the proceedings, and he shall be able to access reports unless they are or have been classified as restricted pursuant to the relevant legislation. They shall draft a verbatim report of the proceedings as set out in this law.

2. The parties and any other person proving a legitimate interest shall enjoy the right to obtain copies of the briefs and documents included in a case file which have not been classified as secret or confidential."

Article 454

"...

4. [Court registrars] shall provide to the parties and to whoever declares and proves a legitimate and direct interest in the action any information they may request about the state of the proceedings which has not been declared secret or confidential."

E. Regulation 1/2005 on ancillary aspects of court proceedings (approved by the Agreement of 15 September 2005 of the Plenary of the General Council of the Judiciary).

32. The relevant provisions of Regulation 1/2005 read:

Article 5

"Court registrars and appropriate civil servants within the court office shall provide to the interested parties and to whoever declares and proves a legitimate and direct interest in the proceedings any information they may request about the state of the

proceedings, which shall be made available to them for examination and consultation, unless [the information] is or has been declared secret in conformity with the law.

The information shall be provided in clear and accessible language whenever the parties or interested persons are not legal professionals.

...

Court registrars shall provide certificates or copies of the court proceedings to the parties who so request, save those which have been declared secret or confidential, specifying the intended recipient and the purpose for which they have been requested ..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION

33. The applicant complained that the refusal by the post-sentencing judge to provide him with a full copy of his case file for the purposes of lodging an application with the Court had violated his right to individual petition. Article 34 of the Convention reads, in so far as relevant, as follows:

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

34. The Court notes that the complaint falls within the sphere of the second sentence of Article 34 of the Convention (see *Gagiu v. Romania*, no. 63258/00, §§ 83 and 85, 24 February 2009). A complaint under Article 34 of the Convention is of a procedural nature and therefore does not give rise to any issue of admissibility under the Convention (see *Vladimir Sokolov v. Russia*, no. 31242/05, § 75, 29 March 2011).

A. The parties' submissions

1. The Government

35. The Government stated that the applicant had exercised his right of petition under Article 34 of the Court effectively and without any hindrance on the part of the domestic authorities. In fact, the applicant had been able to send his letter of 4 January 2011 and his subsequent application form from prison without any objection on the part of the prison authorities, which, on the contrary, had proceeded to forward them to the Court.

36. The Government, which provided the Court with the applicant's complete file, further argued that the applicant had been consistently served with the domestic decisions delivered in his case, namely all the decisions

issued by the disciplinary board of Alicante Prison, the post-sentencing judge's decisions of 17 November 2009 and 18 February 2009, and the Constitutional Court's decision of 30 September 2010. As it results from the complete file provided by the Government, every decision that was served on the applicant contained his signature as incontrovertible proof of personal notification. Accordingly, at the time the applicant had lodged his application with the Court, he had had in his possession a copy of all those decisions. The Government also stated that, from reading the applicant's submissions to the Constitutional Court, it could easily be inferred that the applicant had had a copy of the post-sentencing judge's decisions at the time he had lodged his *amparo* appeal with that court.

37. The Government also claimed that the post-sentencing judge's decisions of 26 January 2011 and 1 April 2011 could not be considered a form of pressure or intimidation directed against the applicant to prevent him from lodging his application with the Court. The post-sentencing judge's decision of 26 January 2011 had been as a result of the fact that she had been unaware that the Constitutional Court had already delivered a decision in the case. Her subsequent decision of 1 April 2011 had been a result of the analogical application of domestic rules governing individual constitutional appeals to the Constitutional Court to proceedings before the European Court of Human Rights. That analogical interpretation could be considered "erroneous or formalistic" in view of the Court's practice, but it could not be deemed obstructionist or intimidating for the purposes of Article 34 of the Convention.

38. Relying on the Court's case-law in *Chaykovskiy v. Ukraine* (no. 2295/06, 15 October 2009), the Government stated that a refusal by the domestic authorities to provide applicants with copies of sets of proceedings for the purposes of lodging an application with the Court did not in itself amount to a forbidden hindrance to the right of individual petition. The refusal should be examined in the light of the circumstances of the case and its practical implications for the applicant's rights.

39. In this connection, the Government highlighted that, in her decision of 1 April 2011, the post-sentencing judge had not refused to put the applicant's case file at his disposal. She had limited herself to indicating to the applicant an alternative means by which the European Court of Human Rights could have access to the file, namely by requesting it directly from the domestic courts.

40. The Government further argued that, as in the case of *Chaykovskiy*, cited above, the applicant in the instant case had failed to indicate to the post-sentencing judge the documents which had not been served on him personally and which he had deemed necessary for the exercise of his right of petition. It did not appear from the case file that the Court had requested specific documents from the applicant and that the judicial authorities had

refused to provide him with them. The Government added that, in any case, the applicant had been served with almost all the documents in the case file.

2. The applicant

41. The applicant stated that the post-sentencing judge had refused to provide him with a copy of his case file, even though he had informed her that he needed it for the purposes of lodging an application with the European Court of Human Rights.

42. He argued that the State's obligation not to hinder the right of petition to the Court under Article 34 of the Convention could not be considered fulfilled by a mere indication that the Court could request information itself from the domestic courts. He highlighted that the domestic courts had never even considered the possibility of submitting copies of all the documents concerning his case file, and had deprived him of access to all the necessary documents on which to base his application.

B. The Court's assessment

43. The Court reiterates that Article 34 of the Convention imposes an obligation on a Contracting State not to hinder the right of individual petition. While the obligation imposed is of a procedural nature, distinguishable from the substantive rights set out in the Convention and Protocols, it flows from the very essence of this procedural right that it is open to individuals to complain of its alleged infringements in Convention proceedings (see *Manoussos v. the Czech Republic and Germany* (dec.), no. 46468/99, 9 July 2002). The Court also underlines that the undertaking not to hinder the effective exercise of the right of individual application precludes any interference with the individual's right to present and pursue his complaint before the Court effectively (see, among other authorities and *mutatis mutandis*, *Akdivar and Others v. Turkey*, 16 September 1996, § 105, *Reports of Judgments and Decisions* 1996-IV; *Kurt v. Turkey*, 25 May 1998, § 159, *Reports* 1998-III; and *Şarli v. Turkey*, no. 24490/94, §§ 85-86, 22 May 2001).

44. In the present case, the Court observes that the domestic courts refused to provide the applicant with all the copies of a set of proceedings for the purposes of lodging an application with the Court, on the grounds that the Court could request the necessary documents directly. According to the Government, this request had been a result of the analogical application of domestic rules governing individual constitutional appeals to the Constitutional Court to proceedings before the European Court of Human Rights.

45. In this respect, the Court notes that, according to Rule 47 of the Rules of the Court, at the time of lodging the application the applicant must submit all the documents which are deemed necessary to enable the Court to

determine the nature and scope of the application without recourse to any other document.

46. The Court has already considered that a situation could arise where such a refusal, in conjunction with other specific circumstances (such as the loss of the documents due to prison transfers or some other justified and unforeseen or inevitable circumstances) would render the substantiation of an applicant's application before the Court deficient and thus impair the effectiveness of the exercise of his or her right of individual petition (see *Iambor v. Romania (no. 1)*, no. 64536/01, §§ 216-217, 24 June 2008, and *Gagiu*, cited above, §§ 93-99).

47. The domestic rules granted the applicant the right to obtain certificates or copies of the briefs and documents issued in the proceedings to which he was a party (see §§31-32). Nonetheless, this possibility was denied to the applicant by the post-sentencing judge without any reason being given as to why the internal rules invoked by the applicant where not applicable.

48. It is true that, as it results from the applicant's file, which was provided by the Government, the applicant had been properly served with: the decision of 20 October 2009 issued by the disciplinary board of Alicante Prison determining the disciplinary sanctions for having threatened prison officers, disobeyed the orders given by prison officers in the fulfilment of their duties and damaged prison property; the decision (*auto*) of 17 November 2009 issued by the post-sentencing judge rejecting the appeal against the sanctions imposed on the applicant; the decision (*auto*) of 18 February 2010 issued by the post-sentencing judge rejecting the *reforma* appeal against the decision (*auto*) of 17 November 2009; and the decision issued by the Constitutional Court declaring the *amparo* appeal inadmissible as devoid of any special constitutional significance.

49. However, the Court considers that these circumstances cannot be deemed enough to justify the post-sentencing judge's refusal to provide the applicant with a copy of his file.

50. In view of the applicant's situation, the Court cannot conclude that the applicant's demand was unreasonable or meaningless. Although the Court has found that the obligation not to hinder the right of individual petition does not automatically mean that the State has a duty to provide applicants with copies of all or any desired documents or to furnish them with the technical facilities of their choice to make their own copies (see *Kornakovs v. Latvia*, no. 61005/00, §§ 171-174, 15 June 2006, and *Chaykovskiy*, cited above, § 96), the Court has also established that Article 34 of the Convention may impose on State authorities an obligation to provide copies of documents to applicants who find themselves in situations of particular vulnerability and dependence and who are unable to obtain the documents needed for their files without State support (see, *Naydyon v. Ukraine*, no. 16474/03, § 63, 14 October 2010).

51. In the present case, such a situation of dependence resulted from the applicant's imprisonment. Differently from *Chaykovskiy*, cited above (where the applicant complained about the fact that the authorities had failed to assist him in obtaining copies of the documents necessary for lodging his application and the Court found that the applicant had been provided with access to the case file), in the instant case the applicant neither did have access to the case file due to his imprisonment nor did he have the opportunity to select the documents he considered necessary for his application before the Court. In sum, the applicant was in a position where he reasonably thought that he needed the complete judicial file and yet the answer to his request given by the domestic authorities, rather than helpful, was a categorical refusal.

52. In the light of the foregoing, in view of the explicit mandate of domestic law and the applicant's situation, the Court finds that the refusal of the post-sentencing judge to provide the applicant with photocopies of the complete case file amounted to a hindrance of the exercise of his right of individual petition. It follows that the State has failed to comply with its obligations under Article 34 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

53. Lastly, the applicant complained under Article 6 § 2 and Article 10 of the Convention that the sanctions imposed upon him had amounted to violations of his right to be presumed innocent and his right to freedom of expression.

54. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court considers that the remainder of the application does not disclose any appearance of a violation of any of the above Articles of the Convention. It follows that these complaints must be declared inadmissible as manifestly ill-founded in accordance with Article 35 § 3 (a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

55. 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."

A. Damage

56. The applicant claimed compensation in respect of non-pecuniary damage. He left its amount at the Court's discretion.

57. The Government considered that the applicant had failed to comply with the just satisfaction guidelines as the applicant did not specify any sum which in his view would be equitable.

58. The Court considers in the circumstances of the present case that its finding of a violation of Article 34 constitutes sufficient just satisfaction and accordingly makes no award as regards any non-pecuniary damage that may have been sustained by the applicant.

B. Costs and expenses

59. Without presenting any supporting documents, the applicant also claimed reimbursement of his costs and expenses, but left the exact amount to the Court's discretion.

60. The Government considered that the applicant had failed to comply with the just satisfaction guidelines as the applicant did not specify and justify the costs and expenses.

61. 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. Regard being had to the fact that the applicant failed to submit any documents in support of his claims or even specify the exact amounts spent by him in this connection, the Court rejects the applicant's claims.

FOR THESE REASONS, THE COURT,

1. *Declares*, unanimously, the complaints concerning Articles 6 § 2 and 10 of the Convention inadmissible;

2. *Holds*, by six votes to one, that the respondent State has failed to comply with its obligations under Article 34 of the Convention with respect to the refusal of judicial authorities to provide the applicant with copies of documents for this application before the Court;

3. *Holds*, by six votes to one, that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant;

4. *Dismisses*, unanimously, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 11 October 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips Registrar	Helena Jäderblom President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Dedov is annexed to this judgment.

H.J.
J.S.P.

DISSENTING OPINION OF JUDGE DEDOV

1. I regret that I cannot agree with my colleagues as regards the violation of Article 34 of the Convention. My disagreement is not based on principles, but rather pursues the aim of triggering a broader discussion of the problem raised by the applicant. I believe that the present case concerns a misunderstanding between the post-sentencing judge and the applicant more than any arbitrariness and abuse of power.

2. I must say that the Convention does not impose a general obligation on the authorities to provide an applicant prisoner with a complete judicial file. The member States "undertake not to hinder in any way the effective exercise" of the right to individual petition under Article 34 of the Convention. The central problem in the present case is whether the above provision should be interpreted more broadly in favour of the applicants, so that the authorities would have to be flexible enough for any inactivity on their part not to be considered a hindrance. The criteria for examination would be the reasonability of the request for documents, and good governance (no excessive burden on the applicant).

3. According to the facts, the applicant requested the complete case file. Although he may have had his own reasons for doing so, it is clear that the applicant was not asked by this Court to submit any particular document in addition to the domestic decisions as proposed by the Court in its letter of 3 March 2011, as indicated in paragraph 24 of the judgment (see *a contrario, Naydyon v. Ukraine*, cited in the draft, § 65).

4. When the applicant applied to the national judge again, he referred to the Court's above-mentioned letter (see paragraph 26 of the judgment) indicating that this Court had requested documents. The applicant did not specify what precise material (in addition to those decisions) he wished to submit to the Court in support of his application (see *Chaykovskiy v. Ukraine*, §§ 94-97).

5. At all events, the Rules of Court (Rule 47) (in force at the relevant time or as consequently amended) would not require the applicant to provide the Court with the complete judicial case file. Yet on each occasion he requested the complete file instead of starting with copies of domestic decisions.

6. As to the relevant domestic decisions, the applicants in the case of *Naydyon v. Ukraine* and in the more recent case of *Vasiliy Ivashchenko v. Ukraine* were not faulted for failing to obtain copies of the relevant domestic decisions during their domestic proceedings, as they could not have foreseen that they would later make an application to this Court (see *Naydyon v. Ukraine*, § 67, and *Vasiliy Ivashchenko v. Ukraine*, § 108). However, in the present case, it would appear that the authorities had already supplied the applicant with copies of all the relevant domestic

decisions, and the applicant fails to explain why he did not retain this material (see § 47 of the judgment).

7. This Court is not a court of fourth instance, and so it is not authorised to establish the facts in ordinary criminal or disciplinary cases. Indeed, the domestic decisions would, in my view, constitute a solid ground for communicating the case and starting a written adversarial procedure to examine the complaints regarding the alleged violations of the presumption of innocence and freedom of expression on the basis of the parties' observations. I am not sure that the Court should expect flexibility from the authorities in cases where the applicant has submitted a rigid request for a copy of the complete file without informing the post-sentencing judge about particular documents (that is to say decisions) requested by this Court. Otherwise the applicant would have had to substantiate his personal need for the complete file. Moreover, the applicant himself referred to the domestic decisions only in the application form (see § 21 of the judgment).

8. After the court registrar replied that the case file had been transferred to the Constitutional Court, the applicant failed to forward his request to that court, but instead informed this Court of the alleged hindrance and then reapplied to the same court (see §§ 23, 25 and 26 of the judgment). On the other hand, the national judge might take into consideration the applicant's vulnerable position, having been deprived of his liberty and being unable to engage a lawyer in order to obtain the documents, so the national judge, for the sake of a good governance, could ask the applicant for a copy of this Court's letter in order to clarify which particular documents were requested

9. In general, I see that both parties were not flexible enough, and in situations of that kind the Court prefers to decide in favour of the petitioner even if no explicit obligation to do so is set out in Article 34 and there was no impediment or pressure on the part of the domestic authorities in relation to the applicant in the present case. Flexibility is a sign of humanity, and therefore the foundation of the human rights concept. But I believe that this value should be respected by all participants (including this Court).