SECOND SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 15914/11
by Igor NASKOVIĆ
against Serbia

The European Court of Human Rights (Second Section), sitting on 14 June 2011 as a Chamber composed of:

Françoise Tulkens, *President,*
David Thór Björgvinsson,
Dragoljub Popović,
Giorgio Malinverni,
András Sajó,
Guido Raimondi,
Paulo Pinto de Albuquerque, *judges,*
and Stanley Naismith, *Section Registrar,*

Having regard to the above application lodged on 10 March 2011,

Having regard to the decision of the President of the Section of 11 March 2011 not to apply the interim measure sought by the applicant under Rule 39 of the Rules of Court, requesting his immediate transfer to another penitentiary,

Having regard to the decision of the President of the Section of even date to invite the applicant to discontinue his hunger strike, in the interest of the proper conduct of the proceedings before the Court and with a view to ensuring his participation in the examination of the case,

Having regard to the information provided by the applicant, as well as the information furnished by the Government under Rule 54 § 2 (a) of the Rules of Court,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Igor Nasković, is a Serbian national who was born in 1982 and is currently serving his sentence in the Niš Penitentiary (*kazneno-popravni zavod*). He was represented before the Court by Mr M. Jovanović, a lawyer practising in Niš.

2. The facts of the case, as submitted by the parties, may be summarised as follows.

A. The circumstances of the case

1. As regards the applicant's request for transfer and other related issues

3. On 8 April 2004 the District Court in Gnjilane, Kosovo[1], found the applicant guilty of murder and illegal possession of firearms, and sentenced him to 18 years' and 3 months' imprisonment.

4. On an unspecified date thereafter this judgment became final.

5. The applicant started serving his sentence in Kosovo, but on 9 December 2004 and upon his own request he was transferred to the Sremska Mitrovica Penitentiary, pursuant to the Agreement concluded between the Federal Republic of Yugoslavia and the United Nations Interim Administration Mission in Kosovo (hereinafter "the Agreement"; see paragraphs 44-50 below).

6. On 13 September 2007 the applicant was transferred once again, this time to the Niš Penitentiary.

7. On an unspecified date the applicant filed a request to be transferred back to a prison in Kosovo based on Article 2 § 2 of the Agreement (see paragraph 44 below).

8. On 4 August 2010 the Directorate for the Enforcement of Criminal Sanctions (hereinafter "the Directorate"), as a department within the Ministry of Justice (see Article 12 § 2 at paragraph 27 below), rejected this request, noting that it had been based on family-related and health reasons. The Directorate firstly observed that the applicant had only complained about the pain in his ankles, in which respect he had been duly provided with adequate medication. Secondly, the Niš Penitentiary had its own prison hospital and, if needed, the applicant could also be taken to other medical institutions outside of the penitentiary. Thirdly, the Niš Penitentiary was the closest prison to Kosovo, which was where the applicant's family lived. Fourthly, the Niš Penitentiary was best placed to secure the applicant's rehabilitation. Finally, the Agreement did not establish the applicant's "right to be transferred" to a prison of his choice. On the contrary, any transfer depended on the consent of the parties to the Agreement.

9. On 5 February 2011 the applicant filed a fresh request to be transferred to Kosovo. Therein he explained that his entire family lived there and could not afford to visit him on a regular basis in Niš, nor for that matter, in view of the postal costs involved, even send him packages. The applicant further maintained that the quality of medical services provided in the Niš Penitentiary was not adequate.

10. On 29 March 2011 the Directorate rejected this transfer request. For the most part, it restated the reasons given on 4 August 2010, adding, *inter alia*, that the applicant had had regular contact with his family, albeit with some "technical" difficulties recently. Lastly, the Directorate noted that family reasons could not be decisive in the assessment of a transfer request, and recalled that the applicant had initially been transferred from Kosovo upon his own request.

11. On 4 April 2011, not having yet received the Directorate's decision of 29 March 2011 and relying on Article 116 § 3 of the Enforcement of Criminal Sanctions Act 2005 and Article 208 § 2 of the General Administrative Proceedings Act (see paragraphs 27 and 29 below), the applicant filed an appeal with the Minister of Justice wherein, *inter alia*, he complained about the failure of the Directorate to consider his request of 5 February 2011.

[1] All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

12. Having been served with the Directorate's decision of 29 March 2011, on 14 April 2011 the applicant filed an appeal with the Minister of Justice against it. Therein he stated that: (i) the Directorate was not competent to consider the transfer request; (ii) it should instead have properly been examined by another department within the Ministry of Justice; (iii) the Directorate had not complied with the procedures set forth in the Agreement; and (iv) the impugned reasoning was incoherent since the applicant's family lived in Kosovo, some 120 kilometres from Niš, and had had to negotiate a certain administrative procedure whenever leaving its territory.

13. It would seem that on 18 April 2011 the applicant filed another submission with the Minister of Justice in support of his appeal of 14 April 2011.

14. On 20 April 2011, and in view of the Directorate's ruling of 29 March 2011, the Minster of Justice rejected the applicant's appeal of 4 April 2011, deeming it moot. The appeal of 14 April 2011 is apparently still pending.

2. As regards the applicant's hunger strikes

15. On 20 September 2010 the applicant started a hunger strike, seeking his transfer to a prison in Kosovo.

16. As of 5 October 2010 the applicant also refused to take any water.

17. On 19 October 2010 the applicant discontinued the strike altogether.

18. On 17 January 2011 the applicant again started a hunger strike, seeking his transfer to Kosovo.

19. On 17 March 2011, following respiratory, kidney and orientation problems, as well as weight loss (more than fourteen kilograms in all), the applicant discontinued the hunger strike.

20. However, on 12 April 2011, having received the Directorate's decision of 29 March 2011, the applicant decided to resume the strike, which included his refusal to take either food or water.

21. The applicant thereafter apparently lost consciousness on several occasions, received an infusion and experienced kidney pains.

22. On 20 April 2011 the applicant informed his lawyer that, fearing even more serious consequences, he had started taking water and would discontinue his hunger strike shortly.

23. On 5 May 2011 the applicant's lawyer informed the court that his client had indeed discontinued the strike altogether.

24. The applicant maintained that throughout the strikes referred to above, he had been examined by the prison doctor on a daily basis, but that when he had needed urgent medical assistance no such assistance had been provided.

25. The applicant seems to have also been subjected to blood tests periodically, as well as to blood pressure and weight monitoring. The applicant was repeatedly warned by the prison medical staff that the strike was seriously endangering his health.

26. Lastly, the applicant stated that it was never his intention to commit suicide, but merely to be transferred to a prison in Kosovo.

B. Relevant domestic law and practice

1. *The Enforcement of Criminal Sanctions Act 2005 (Zakon o izvršenju krivičnih sankcija; published in the Official Gazette of the Republic of Serbia – OG RS – nos. 85/05 and 72/09)*

27. The relevant provisions of this Act read as follows:

Article 1 § 1

"This Act governs, unless specifically provided otherwise by law, the procedure of enforcement of criminal sanctions ..."

Article 8 § 1

"... [Convicted persons] are entitled to the protection of fundamental rights guaranteed by the Constitution, ratified international agreements, generally accepted rules of international law, and this Act."

Article 9 § 1

" ... [Convicted persons are entitled to] ... judicial review of individual ... [decisions] ... related to their rights and duties, in accordance with the provisions of this Act.

Article 12 §§ 1 and 2

"The Directorate for the Enforcement of Criminal Sanctions ... [hereinafter 'the Directorate'] ... shall organise, implement and supervise the enforcement of imprisonment ...

The ... [Directorate] ... is an administrative authority within the Ministry of Justice of the Republic of Serbia."

Article 78

"Convicted persons are entitled to receive visits from ... [their family members and others in accordance with the conditions set forth by this Act] ..."

Article 84 § 1

"Convicted persons shall have the right to receive packages ..."

Article 101 §§ 1 and 2

"Convicted persons are entitled to medical care according to the general rules on health care, as well as the provisions of this Act.

Convicted persons who cannot receive adequate medical treatment ... [in prison] ... shall be transferred to the Special Prison Hospital or another health [care] institution ..."

Article 102 §§ 1-3

"Medical treatment of a convicted person may only be effected with his consent.

Forced feeding of a convicted person shall not be allowed.

Exceptionally, if a convicted person seriously impairs his health or his life, by refusing medical treatment or food, ... measures shall be applied as determined by a doctor."

Article 103 § 1

"The [prison] doctor ... shall be obliged to:

...

(4) examine on a daily basis a convicted person who is ill or is refusing food or water ...”

Article 114

“A convicted person may, for the purpose of exercising his rights, file a request with ... [a person authorised by the prison to deal with the matter at issue] ...

The [authorised] person referred to in paragraph 1 of this Article must, within five days as of receipt of the request, provide the convicted person with a written and reasoned response.

A convicted person shall have the right to lodge a complaint with the prison governor concerning any breach or irregularity suffered by him whilst in prison.

The prison governor, or another person authorised by him, shall consider the convicted person’s complaint, and shall decide upon it within 15 days.

A convicted person who receives no such ... [decision] ... or is not satisfied with the decision rendered shall have the right to file an appeal with the Head of the Directorate within a period of eight days.

The Head of the Directorate shall be obliged to rule on this appeal within a period of 30 days as of its receipt.”

Article 114a

“Should a convicted person consider that his right has been breached by the prison governor personally, he may file a complaint with the Head of the Directorate.

Should the Head of the Directorate, or another person authorised by him, ascertain that the complaint was not brought for reasons cited in paragraph 1 [of this Article], the complaint shall be forwarded to [another] competent body and the convicted person shall be informed thereof.

The Head of the Directorate, or another person authorised by him, may investigate the merits of the complaint by means of looking into the relevant prison records, [and/or] by interviewing the prison governor[,] ... the prison staff ... [or] the convicted person concerned ... [, as well as] ... other convicted persons without the presence of prison staff.

Should the complaint be deemed well-founded, the Head of the Directorate shall order that the breach of the convicted person’s right be rectified.”

Should [the Head of the Directorate] consider that the breach of a convicted person’s right was caused by the actions of a member of the prison staff, ... [he] ... shall inform in writing the prison governor, as well as the authorised prison supervisor, and, should he consider that the breach was caused by the action of the prison governor personally, he shall [likewise] inform the authorised prison supervisor.”

Article 114b

“A convicted person shall have the right to complain to the authorised prison supervisor, without the presence of prison staff.

The content of the complaint shall be confidential.”

Article 116

“Upon request of a convicted person or the proposal of the prison governor, and where there are good reasons for so doing, the Head of the Directorate may transfer the convicted person from one institution to another.

The Head of the Directorate may [also], for reasons of security, transfer a convicted person *ex officio*.

A convicted person may file an appeal against the decision of the Head of the Directorate referred to in paragraphs 1 and 2 of this Article with the Minister of Justice, within three days as of ... [its receipt] ... An appeal against the decision of the Head of the Directorate shall not postpone its enforcement."

Article 117 § 2

"A convicted person whose transfer request has been rejected may not re-submit the request before six months have elapsed following the adoption of the decision of the Head of the Directorate in response to his earlier request."

Article 165

"A convicted person shall be entitled to judicial recourse against the final decision ... limiting or violating one of his rights set forth under this Act.

Judicial recourse referred to in paragraph 1 of this Article shall be secured through an administrative dispute."

Article 166

"An action seeking judicial redress shall be filed within three days as of receipt of the decision in question.

The court of competent jurisdiction shall rule on the action referred to in paragraph 1 of this Article within 30 days as of its receipt."

Article 245

"The enforcement of detention [in an ongoing criminal case] is subject to supervision by the president of the District Court that has jurisdiction for the territory where the main premises of the detention facility are located."

2. The General Administrative Proceedings Act (Zakon o opštem upravnom postupku; published in the Official Gazette of the Federal Republic of Yugoslavia – OG FRY – nos. 33/97 and 31/01, as well as in OG RS no. 30/10)

28. Article 208 § 1 provides, *inter alia*, that in simple matters an administrative body shall be obliged to issue a decision within one month as of when the claimant lodged his or her request. In all other cases, the administrative body shall render a decision within two months thereof.

29. Article 208 § 2 enables the claimant whose request has not been decided within the periods established in the previous paragraph to lodge an appeal as if his or her request has been denied. Where an appeal is not allowed, the claimant shall have the right to directly initiate an administrative dispute.

3. The Administrative Disputes Act 2009 (Zakon o upravnim sporovima; published in OG RS. 111/09)

30. Articles 4 and 6 provide, *inter alia*, that an "administrative act" is an act/decision adopted by a State body in the determination of one's rights and obligations concerning "an administrative matter".

31. Article 8 § 1 provides that administrative disputes shall be adjudicated by the Administrative Court.

32. Articles 14 and 15 provide, *inter alia*, that an administrative dispute may be instituted against an administrative act/decision rendered at second instance, as well as

against one issued at first instance should no appeal lie against it. Moreover, an administrative dispute may also be instituted, under conditions set forth by this Act, in situations where a competent State body has failed to decide on a party's request or has failed to rule on appeal at second instance.

33. Article 19 § 1 provides, *inter alia*, that should an appellate body fail to issue a decision upon a claimant's appeal within sixty days the claimant may repeat the request, and if the appellate body declines to rule within an additional period of seven days the claimant may institute an administrative dispute.

34. Article 19 § 2 provides, *inter alia*, that should a first instance administrative body fail to issue a decision upon the claimant's request within a period provided in the General Administrative Proceedings Act (see paragraph 28 above), in matters where an appeal has been excluded, the claimant may repeat the request and if the first instance body declines to rule within an additional period of seven days the claimant may institute an administrative dispute before a court of law.

35. Article 41 provides, *inter alia*, that the court shall consider the lawfulness (*zakonitost*) of the impugned administrative decision, as well as any reasons for its possible nullity (*ništavost*).

36. Article 42 § 1 provides, *inter alia*, that should the court rule in favour of the claimant, the impugned administrative decision shall be quashed fully or partially, and the matter shall be remitted to the competent administrative authority for re-examination.

37. Articles 43 provides, *inter alia*, that should the court rule in favour of the claimant, it shall also, where the established facts of the case and its nature so warrant, have the power to decide on the merits of the claimant's original request (*spor pune jurisdikcije*).

38. Article 43 § 2 provides that the court may not rule on the merits in cases where an administrative decision has been adopted by the competent body in the exercise of its discretion.

39. Article 43 § 5 provides, *inter alia*, that in cases where repeated administrative proceedings, following the quashing of an impugned decision adopted earlier, would cause the claimant serious harm, the court shall be obliged to rule on the merits of the claimant's original request, providing that the relevant facts have been established before the court itself.

40. Article 44 provides that where an administrative dispute has been brought under Article 19 the court shall, should it rule in favour of the claimant, order the administrative body in question to decide upon the claimant's original request. However, should the established facts of the case and its nature make it possible, the court shall also have the power to decide on the merits thereof.

4. The Supreme Court's case-law in relation to administrative disputes

41. The Supreme Court has frequently considered, on their substance, requests filed by convicted persons, involving various issues regulated by the Enforcement of Criminal Sanctions Act 2005 (see, for example, judgments U. nos. 1658/06, 1717/06, 1334/06, 1165/06 and 1884/06).

5. The Constitution of the Republic of Serbia (Ustav Republike Srbije; published in OG RS no. 98/06)

42. Article 170 provides that a "constitutional appeal may be lodged against individual decisions or actions of State bodies or organisations exercising delegated public powers which violate or deny human or minority rights and freedoms guaranteed by the Constitution, if other legal remedies for their protection have already been exhausted or have not been prescribed."

6. The Constitutional Court Act (Zakon o Ustavnom sudu; published in OG RS no. 109/07)

43. The relevant provisions of this Act read as follows:

Article 7 § 1

"The decisions of the Constitutional Court shall be final, enforceable and binding."

Article 82 §§ 1 and 2

"A constitutional appeal may be lodged against an individual decision or an action of a State body or an organisation exercising delegated public powers which violates or denies human or minority rights and freedoms guaranteed by the Constitution, if other legal remedies have already been exhausted or have not been prescribed or where the right to their judicial protection has been excluded by law.

A constitutional appeal may be lodged even if all available remedies have not been exhausted in the event of a breach of an applicant's right to a trial within a reasonable time."

Article 83 § 1

"A constitutional appeal may be lodged by any individual who believes that any of his or her human or minority rights or freedoms guaranteed by the Constitution have been violated or denied by an individual decision or an action of a State body or an organisation exercising delegated public powers."

Article 84 § 1

"A constitutional appeal may be lodged within thirty days of receipt of the individual decision or the date of commission of the actions ... [in question] ..."

Article 89 §§ 2 and 3

"When the Constitutional Court finds that an ... individual decision or action has violated or denied a human or minority right or a freedom guaranteed by the Constitution, it shall annul the ... decision in question or ban the continuation of such action or order the implementation of other specific measures as well as the removal of all adverse consequences within a specified period of time.

The decision of the Constitutional Court accepting a constitutional appeal shall constitute a legal basis for requesting compensation or the removal of other adverse consequences before a competent body, in accordance with the law."

Article 90

"... [An applicant who has obtained a Constitutional Court decision in his or her favour] .., may lodge a compensation claim with the Commission for Compensation in order to reach an agreement in respect of the amount ... [of compensation to be awarded] ...

If the Commission for Compensation does not rule favourably in respect of a compensation claim or fails to issue a decision within thirty days from the date of its submission, the applicant may file a

civil claim for damages before the competent court. If only partial agreement has been achieved, a civil claim may be filed in respect of the remainder of the amount sought.

The composition and operation of the Commission for Compensation shall be regulated by the Minister of Justice."

C. The Agreement concluded between the Federal Republic of Yugoslavia and the United Nations Interim Administration Mission in Kosovo (UNMIK) on 21 March 2002 concerning the transfer of convicted persons (Sporazum između Savezne Republike Jugoslavije i UNMIK-a o premeštanju osuđenih lica)

44. Article 2 § 2 provides, *inter alia*, that a convicted person may be transferred from a prison supervised by one party to the Agreement to a prison supervised by the other party. The convicted person at issue shall be entitled to express his interest to be transferred in accordance with the Agreement.

45. Article 2 § 3 provides that the transfer may formally be requested by one of the parties to the Agreement.

46. Under Article 3 § 2, a convicted person may be transferred to Kosovo if, *inter alia*, the following conditions are met: (i) the criminal offence is punishable by the criminal law of both parties; (ii) the sentencing judgment is final; (iii) the convicted person still has at least six months of the sentence to serve; and (iv) the convicted person, as well as the parties to the Agreement, have all consented to the transfer in question. It is lastly stated that when it comes to transfers of convicted persons to Kosovo, special priority shall be granted to those who were born in Kosovo, as well as those whose family members live there.

47. Article 4 § 1 provides that all convicted persons in respect of whom the Agreement may be applicable shall be informed thereof.

48. Article 4 § 5 provides that a convicted person shall be informed, in writing, about any and all decisions adopted by the parties to the Agreement in respect of the transfer.

49. Article 13 provides that the Agreement shall be applicable to criminal sanctions imposed before as well as after its entry into force.

50. Article 15 § 2 provides that the Agreement shall enter into force on the date of its signature by the parties.

D. Recommendation Rec(2006)2 of the Committee of Ministers to member States on the European Prison Rules (adopted by the Committee of Ministers of the Council of Europe on 11 January 2006 at the 952nd meeting of the Ministers' Deputies)

51. Rule 17.1 provides that "[p]risoners shall be allocated, as far as possible, to prisons close to their homes or places of social rehabilitation".

52. Rule 17.3 provides that "[as] far as possible, prisoners shall be consulted about their initial allocation and any subsequent transfer from one prison to another".

COMPLAINTS

53. The applicant complained under Article 6 § 1 of the Convention about the length of the proceedings concerning his request to be transferred to a prison in Kosovo.

54. The applicant further complained about the inability of his family members to visit him on a regular basis, given the distance between their place of residence in Kosovo and the Niš Penitentiary.

55. Finally, the applicant complained about the quality of the medical services provided in the Niš Penitentiary.

THE LAW

56. The Court considers that the applicant's complaints, as described above, fall to be examined under Articles 6 § 1, 8 and 3 of the Convention, respectively.

57. The relevant provisions of these Articles, in so far as relevant, read as follows:

Article 3

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

Article 6 § 1

"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

Article 8

"1. Everyone has the right to respect for his ... family life ...

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

A. As regards the health care provided in prison

58. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention requires applicants first to use the remedies provided by the national legal system, thus dispensing States from answering before the Court for their acts before they have had an opportunity to put matters right through their own legal system. The rule is based on the assumption that the domestic system provides an effective remedy in respect of the alleged breach. The burden of proof is on the Government claiming non-exhaustion to satisfy the Court that an effective remedy was available in theory and in practice at the relevant time; that is to say, that the remedy was accessible, capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success. However, once this burden of proof has been satisfied it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted or was for some reason inadequate and ineffective in the particular

circumstances of the case or that there existed special circumstances absolving him or her from the requirement (see *Mirazović v. Bosnia and Herzegovina* (dec.), no. 13628/03, 6 May 2006).

59. The Court has long stated that mere doubt as to the prospects of success is not sufficient to exempt an applicant from submitting a complaint to the competent authority (see *Elsanova v. Russia* (dec.), no. 57952/00, 15 November 2005). Furthermore, the effectiveness of a remedy does not depend on the certainty of a favourable outcome for the applicant. Nor does the authority before which the remedy is pursued necessarily have to be a judicial authority; but if it is not, its powers and the guarantees which it affords are relevant in determining whether the remedy before it is effective (see *Ramirez Sanchez v. France* [GC], no. 59450/00, § 159, ECHR 2006-IX).

60. Turning to the present case and even assuming that the health care issue raised by the applicant may be considered as a complaint in its own right, rather than merely an argument offered in support of his transfer request, the Court is of the opinion that it must be declared inadmissible due to the non-exhaustion of the domestic remedies.

61. In particular, the applicant should have fully pursued the administrative mechanism, and thereafter made use of the judicial review procedure, as provided by the Enforcement of Criminal Sanctions Act 2005 and the Administrative Disputes Act 2009 (see paragraphs 27 and 30-40 above). The Court, in this context, further recalls the existence of relevant case-law indicating that the competent domestic courts have been willing to consider complaints filed by convicted persons based on the said legislation (see paragraph 41 above). Finally, the Court has already held that a constitutional appeal should, in principle, be considered as an effective domestic remedy within the meaning of Article 35 § 1 of the Convention in respect of all applications introduced against Serbia as of 7 August 2008 (see *Vinčić and Others v. Serbia*, nos. 44698/06, 44700/06, 44722/06, 44725/06, 49388/06, 50034/06, 694/07, 757/07, 758/07, 3326/07, 3330/07, 5062/07, 8130/07, 9143/07, 9262/07, 9986/07, 11197/07, 11711/07, 13995/07, 14022/07, 20378/07, 20379/07, 20380/07, 20515/07, 23971/07, 50608/07, 50617/07, 4022/08, 4021/08, 29758/07 and 45249/07, § 51, 1 December 2009). It finds no reason to hold otherwise in the present case, meaning that the applicant could, in due course and if needed, also have filed an appeal with the Constitutional Court in accordance with the requirements of the relevant domestic law (see paragraph 43 above).

62. It follows that the applicant's complaint about the health care provided in the Niš Penitentiary must be rejected under Article 35 §§ 1 and 4 of the Convention. It is further noted that the present case is clearly distinguishable from the *Stojanović* case, which involved, *inter alia*, administrative practices in breach of the Convention and the application of legislation which had been in force prior to the adoption of the Enforcement of Criminal Sanctions Act 2005, as well as the *Đermanović* case, which concerned a detainee (*pritvorenik*) in an ongoing criminal case, not a convicted prisoner (*osuđenik*) such as the applicant (*Stojanović v. Serbia*, no. 34425/04, 19 May 2009, and *Đermanović v. Serbia*, no. 48497/06, 23 February 2010; see also Article 245 at paragraph 27 above).

B. As regards the length of the impugned proceedings

63. Under the Court's case-law, proceedings concerning the execution of a criminal sentence are not in principle covered by Article 6 § 1 of the Convention (see, among other authorities, *Aydin v. Turkey* (dec.), no. 41954/98, 14 September 2000). Furthermore, in the present case a prison transfer, according to the Agreement, is itself merely a modality of enforcement of a criminal sentence with no established right for convicted persons to be transferred to a prison of their own choice (see *Ernő Szabó v. Sweden* (dec.), no. 28578/03 , 27 June 2006). Indeed, any transfer depends on the consent of the parties to the Agreement, i.e. Serbia as the successor of the Federal Republic of Yugoslavia and, thereafter, of the State Union of Serbia and Montenegro, on the one hand, and the United Nations Interim Administration Mission in Kosovo on the other (see, *mutatis mutandis*, *Vezir Plepi, Fersilet Plepi and Miaftoni Zeka v. Albania and Greece* (dec.), nos. 11546/05, 33285/05 and 33288/05, 4 May 2010). Lastly, although the Agreement sets forth a procedural framework for the transfer of convicted persons, it does not impose an obligation on the parties thereto to comply with a request to this effect (*ibid*., see also paragraphs 44-50 above). The transfer proceedings consequently do not relate either to the determination of a criminal charge or to a civil right or obligation within the meaning of Article 6 § 1 of the Convention.

64. It follows that the applicants complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must, therefore, be rejected in accordance with Article 35 § 4 (see *Ernő Szabó v. Sweden* (dec.) and *Vezir Plepi, Fersilet Plepi and Miaftoni Zeka v. Albania and Greece* (dec.), both cited above).

C. As regards the applicant's contact with his family

65. The Court recalls that the Convention does not grant prisoners the right of choosing their place of detention, and that the separation and distance from one's family are inevitable consequences thereof (see *Vezir Plepi, Fersilet Plepi and Miaftoni Zeka v. Albania and Greece* (dec.), cited above).

66. In the absence of evidence that "any [family] visit[s]" to the applicant have been rendered "very difficult, if not impossible" (see paragraphs 10 and 12 at (iv) above), it follows that the applicant's complaint is manifestly ill-founded and must, as such, be rejected in accordance with Article 35 §§ 3 and 4 of the Convention (see *Selmani v. Switzerland* (dec.), no. 70258/01, 28 June 2001).

For these reasons, the Court unanimously

Declares the application inadmissible.

Stanley Naismith
Registrar

Françoise Tulkens
President