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Schaus, Marchand and Chihaoui- Brussels

Deprivation of liberty / art. 5 ECHR

To be inserted in the submission at the Swedish Supreme Court

This short memo is of a general scope considering the precise facts of the case and Swedish legislation are not available to us.

According to the ECtHR, in order to determine whether someone has been « **deprived of his liberty** » within the meaning of Article 5 of the European Convention on Human Rights, the starting-point must be his concrete situation and account must be taken of a whole range of criteria such as the type, duration, effects and manner of implementation of the measure in question. The difference between deprivation of and restriction upon liberty is merely one of degree or intensity, and not one of nature or substance. Such confinement is acceptable only if it is accompanied by safeguards for the persons concerned and is not prolonged excessively. Otherwise, a mere restriction on liberty is turned into a deprivation of liberty (see *Amuur v. France*, 25 June 1996, § 42, and *Guzzardi v. Italy*, 6 November 1980, § 92).

These criteria were also set out by the ECtHR in the *Shamsa v. Poland* judgment of 27 November 2003 (see §44) as well as in the *Mogos v. Romania* judgment of 6 May 2004 and in the *Mahdid and Haddar v. Austria* judgment of 8 December 2005.

The ECtHR regards a situation as a deprivation of liberty if **two elements** concur: first, **objective elements** (type, duration and manner) and second, a **subjective element**: the choice of the person to be placed in such a situation¹.

In order to determine whether Mr. Assange's situation must be qualified as a deprivation of liberty in the sense of article 5 of the European Convention on Human Rights, both aspects must be analysed :

- the objective elements, and
- the subjective aspect.

¹ : ECtHR, *Guzzardi v. Italy*, 6/11/1980, *Raimondo v. Italy*, 22/2/1994, *Amuur v. France*, 25/10/1996, *Labita v. Italy*, 6/11/2000, *Baumann v. France*, 22/8/2001, *Luordo v. Italy*, 17/7/2003 , *Shamsa v. Poland*, 27/11/2003, *Mogos v. Poland*, 6/5/2004, *Mahdid and Haddar v. Austria*, 8/12/2005, *Riad and Idiab v. Belgium*, 24/1/2008, *Gochev v. Bulgaria*, 26/11/2009, *Stamose v. Bulgaria*, 27/11/2012.

The **objective aspect** (see below point 1) of the deprivation of liberty is the confinement of a person in a restricted area, during a certain amount of time. The ECtHR indicates moreover that the elements which may be taken into account are: the possibility to leave the area of confinement, the intensity of the surveillance and control on the person's movements, the degree of isolation and the possibility of social contacts (see, for example, *Guzzardi v. Italy*, 6 November 1980, § 95 ; *H.M. v. Switzerland*, 26 February 2002, § 45 ; *H.L. v. the U.K.*, 5 October 2004, § 91, and *Storck v. Germany*, 16 June 2005, § 73).

The **subjective aspect** (see below point 2) of the deprivation of liberty constitutes the lack of will of the individual to find himself in that situation or, in other words, the fact that the person has not validly consented to his confinement.

1. Objective aspect of the notion of deprivation of liberty.

As mentioned above, to define a situation as a deprivation of liberty, certain objective elements must be considered, as for example : the possibility to leave the area of confinement, the intensity of the surveillance and control on the person's movements, the degree of isolation and the possibility of social contacts.

In respect of these factors, the situation of Mr. Assange has been described as follows in the submission to the United Nations Working Group on Arbitrary Detention:

"For nearly four years, Mr. Assange has been deprived of a number of his fundamental liberties. For more than 900 days, he has been confined to the Embassy of Ecuador in London, in an area of 30m², he has no access to fresh air or sunlight, his communications are restricted and often interfered with, he does not have access to adequate medical facilities, he is subjected to a continuous and pervasive form of round the clock surveillance, and he resides in a constant state of legal and procedural insecurity. (...)

Mr. Assange has been deprived of the ability to exercise a range of fundamental physical and personal liberties. He has no access to any outside area, which is contrary to the requirement that all detained persons must have access to an outside area for at least one hour per day². Mr. Assange has a usable living space of approximately 30m². The Embassy is approximately 200m². (...)

Due to the physical set up of the space allocated to him in the Embassy, he is also subjected to constant visual and aural surveillance by the British police who are

² Article 21(1) of the Standard Minimum Rules for the Treatment of Prisoners, https://www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_the_Treatment_of_Prisoners.pdf.

stationed in the immediate proximity of the Embassy. There is no indication that any judicial warrant (either by Sweden or the United Kingdom) has been issued for such continuous and intrusive surveillance.

In many instances, the degree of the surveillance has intruded into Mr. Assange's right to privileged communications with his Counsel. British police officers are stationed inside the Embassy building, but out of its protected diplomatic space ; as well as immediately outside the embassy, and are positioned to survey its interior through the street-facing windows. They are therefore able to overhear conversations conducted therein. Mr. Assange's visitors are also recorded by the police operation and are often questioned as to their identities upon ingress and egress from the embassy, regardless of their age or sex".

Thus, Mr. Assange is subject to certain measures which clearly fall under the objective definition of the notion of deprivation of liberty in the sense of article 5 of the European Convention on Human Rights :

- he is detained in the Ecuadorian Embassy in London for more than two and a half years;
- he is confined in a 30m² room ;
- his passport has been seized ;
- he is subject to constant special and intrusive police surveillance (24/7) ;
- he has no access to fresh air and direct sunlight ;
- his communications are restricted and under control ;
- he has no access to adequate medical equipment.

These elements are sufficient to conclude to the objective definition of a deprivation of liberty.

2. Subjective aspect of the notion of deprivation of liberty

One must pursue by analyzing the subjective aspect of the notion of deprivation of liberty. As indicated above, this second aspect is related to the question of the valid consent to confinement, which has been principally developed by the ECtHR in cases regarding psychiatric internment and "transit zones".

In the present case, the subjective elements should be assessed in relation to the possibility granted to the person to leave the detention zone voluntarily. One should thus consider whether Mr. Assange could voluntarily leave the Embassy and put an end to his confinement situation or whether he does not face a real choice.

Before analysing the particular situation of Mr. Assange, it should be mentioned that to date, there is no ECtHR case-law that could be regarded as similar to Mr. Assange's situation. However, the ECtHR has built comprehensive case-law related to persons detained in "transit zones". The principles developed in these decisions and specifically on the subjective aspect of detention may help us define whether Mr. Assange's situation must be regarded as detention in the sense of article 5 of the European Convention on Human Rights.

Three significant judgements of the ECtHR may be pointed out as to the subjective aspect of the notion of deprivation of liberty :

- *Amuur v. France* of 25 June 1996 (point A) ;
- *Mogos and others v. Romania* of 13 October 2005 (point B) ; and
- *Shamsa v. Poland* of 27 November 2003 (point C).

A. In *Amuur v. France* of 25 June 1996³, the Strasbourg Court first analyses the possibility for the applicants to leave the transit zone and considers that if the possibility exists, one may not speak of deprivation of liberty. However, in this case, the ECtHR considered that in view of the risks of persecution and the fear of persecution in the event of a return to the country of origin, the opportunity of voluntarily leaving the transit zone was fictitious. This allowed to consider that the migrants were "deprived of their liberty".

The Court then had to decide whether article 5 of the ECHR was applicable to the specific case. In doing so, the Court first analysed the context (see §41 of the decision): *"The Court also notes that many member States of the Council of Europe have been confronted for a number of years now with an increasing flow of asylum-seekers. It is aware of the difficulties involved in the reception of asylum-seekers at most large European airports and in the processing of their applications. (...) Contracting States have the undeniable sovereign right to control aliens' entry into and residence in their territory. The Court emphasises, however, that this right must be exercised in accordance with the provisions of the Convention, including Article 5 (art. 5)".*

Considering the above-mentioned elements, the Court underlined that:

*"48. The mere fact that it is possible for asylum-seekers to leave voluntarily the country where they wish to take refuge cannot exclude a restriction on liberty, the right to leave any country, including one's own, being guaranteed, moreover, by Protocol No. 4 to the Convention (P4). **Furthermore, this possibility becomes theoretical if no other country offering protection comparable to the protection they expect to find in the country where they are seeking asylum is inclined or prepared to take them in.***

³ ECtHR, *Amuur v. France*, 25 June 1996, n° 19776/92.

Sending the applicants back to Syria only became possible, apart from the practical problems of the journey, following negotiations between the French and Syrian authorities. The assurances of the latter were dependent on the vagaries of diplomatic relations, in view of the fact that Syria was not bound by the Geneva Convention relating to the Status of Refugees.

49. *The Court concludes that holding the applicants in the transit zone of Paris-Orly Airport was equivalent in practice, in view of the restrictions suffered, to a deprivation of liberty. Article 5 para. 1 (art. 5-1) is therefore applicable to the case".*

Therefore, the Court rejected the French Government's argument that the applicants still benefitted from their freedom to come and go **taking into consideration the impossibility for these persons to return in a country they had fled.**

The ECHR did not, for that matter, evaluate in detail the risk of refoulement or persecution of the applicants in their country of origin, the Court simply indicated that the applicants had requested asylum and that, on this basis, the **voluntary basis for leaving the transit zone becomes theoretical.** In doing so, the Court establishes a presumption of risk, but does not carry out a complete evaluation of the risk.

B. In the *Mogos v. Romania* case of 13 October 2005⁴, Court was seized of a dispute relating to the existence of a "detention" situation of the applicants as well as to the detention conditions in a transit zone in regard of article 3 of the ECHR.

In this case, the Court considered that the fact that the applicants persisted in remaining in a transit zone in order to avoid entering on the territory of a State after having been expelled from another state was not a deprivation of liberty considering the possibility of the applicants to leave the transit zone voluntarily at any time. In this specific case, the applicants did not fear being refouled to a country where they would be subjected to treatment contrary to article 3 of the Convention (see §111 of the judgment, available only in French).

In short, if the individual concerned is liable for the injury he is invoking **and** that there is no fear of refoulement or persecution, it can be held against him. **On the other hand, if he is not at the origin of the claimed injury (i.e. he detention) and that there is a legitimate fear of refoulement or persecution, it cannot be held against the applicant.**

⁴ ECtHR, *Mogos and others v. Romania*, 13 October 2005, n°20420/02

C. In the *Shamsa v. Poland* case of 27 November 2003, the ECtHR analysed factually the restrictions of liberty suffered by the applicants and concluded, on the basis of the constant surveillance to which they were subjected, that they were not free to come and go and had to remain at the disposal of the Polish authorities. Not allowed to move freely, restricted in their movements, it was concluded that they had not voluntarily consented to their confinement⁵.

A parallel may be drawn between the above cases and the situation of Mr. Assange, making use of the principles established by the ECtHR.

In doing so, some precise questions should be addressed:

- Does Mr. Assange have a possibility to leave the Embassy voluntarily, that is without being exposed to any risk of refoulement or any risk of persecution?
- Is Mr. Assange liable for the detention he is suffering? Is he in a position to put an end to this situation in a voluntary and non theoretical way?
- Are there any extraneous causes, as for example a judicial decision against him, emanating from a State, which prevent him from leaving the Embassy in a voluntary way?
- Is Mr. Assange, taking into account the restrictions imposed on him, really free to come and go?
- Are there other external reasons which prevent Mr. Assange from voluntarily leaving the Embassy, whilst it is not unreasonable to believe that he would be subject to a direct or indirect refoulement to the United States of America?

In the *Amuur v. France* case mentioned above, the possibility for the applicants to leave the transit zone voluntarily was linked to a risk of refoulement to their country of origin.

Regarding Mr. Assange, the way to determine the subjective element of the notion of deprivation of liberty is connected with the question **whether he could voluntarily leave the Ecuadorian Embassy in London.**

In the present case, it is important to recall that in order to answer this question, one must first analyse whether there are reasonable grounds to believe, on the basis of objective elements, that Mr. Assange would be refouled to the United States by Sweden.

⁵ see §§ 44 à 47, only in French and Polish

Another evaluation criteria of the risk of refoulement should be used in the application of article 5 of the ECHR. One should distinguish the latter criteria from the one required for the application of article 3 of the Convention (reasonable grounds to believe) in order to avoid linking article 3 and 5 of the Convention. As these two articles do not pursue the same goal, each should be considered or else the protection granted by article 5 of the Convention would be illusory.

The purpose of article 5 of the Convention is essentially to protect individuals against arbitrary detention whilst the purpose of article 3 of the Convention is protecting individuals against refoulement in country where they would be submitted to inhuman and degrading treatment.

The evaluation criteria applied for article 3 of the Convention is one of "reasonable grounds to believe that one faces refoulement in a country where there is a risk of inhumane and degrading treatment".

Regarding article 5 of the Convention, the risk of refoulement must be based on the fact that « *it was not unreasonable to believe* » that a refoulement will occur. This risk must be founded on **objective elements**, in order to avoid a trivialisation of the application of the Convention.

One must thus answer the question whether it was not unreasonable to believe that, on objective grounds, he would face refoulement to the USA where on reasonable grounds, based on Article 3, he would be submitted to inhuman or degrading treatment.

Firstly, the objective elements which conclude that it is not unreasonable to believe that the person risks a refoulement to the USA by Sweden, will be analysed (see point a below).

Secondly, it must be pointed out that there are reasonable grounds to believe that he will be submitted to inhumane and degrading treatment if he were to be refouled to the United States (see point b below).

On a subsidiary basis, if the Court should consider that the objective elements are not sufficient to state that it was not unreasonable for the person to believe that there is a risk of direct or indirect refoulement to the United States, then, taking into account the subjective aspect of the notion of deprivation of liberty, account should also be taken of the vulnerability of Mr. Assange, in order to evaluate the realistic possibility of voluntarily leaving the Embassy (see point c below).

a. Objective elements – Not unreasonable to believe in a risk of refoulement to the United States

There are, in the present case, **objective elements**, which allow us to conclude that it is not unreasonable to believe in a risk a refoulement to the USA.

The following objective elements lead us to the conclusion that these is an important risk of refoulement of Mr. Assange to the USA by Sweden, the latter overlooking the asylum granted to Mr. Assange by Ecaudor.

- This appears from the Swedish record of unlawful refoulement in general as stated in recent condemnations by the ECtHR (Bader and Kanbor v. Sweden, 8/11/2005, N. v. Sweden, 20/7/2010 and I. v. Sweden, 5/9/2013) or by the UN Committee against Torture (CAT) (A.S. v. Sweden, 15/2/2001). The same situation has occurred regarding refoulement of political opponents as mentioned in recent condemnations at the ECtHR (R.C. v. Sweden, 9/3/2010, S.F. and others v. Sweden, 15/5/2012 and F.N. v. Sweden, 18/12/2012) or by the UN Committee against Torture (CAT) (Karoui v. Sweden, 25/5/2002, T.A. and S.T. v. Sweden, 27/5/2005, C.T. and K.M. v. Sweden, 22/1/2007, Njamba and Balikosa v. Sweden, 3/6/2010 and Aytulun and Güclü v. Sweden, 3/12/2010).
- Furthermore it can be recalled that Sweden has an old record of prosecution of journalists for “espionage offences”, that Sweden participated between 2001 and 2006 to the US extraordinary rendition program, that the asylum proceeding is harshly criticized as appeal proceedings does not have a suspensive effect, and it would appear that Swedish intelligence (SAPO) recently collaborated closely with the US police and intelligence to unlawful renditions (Kassir case, 2005, Djibouti case, 2013 and Fikre case, 2015).
- Last but not least academics consider that Swedish authorities never refuse an extradition demand to the US.

b. Elements related to the risk if inhumane and degrading treatment, unfair trial or flagrant denial of justice - Not unreasonable to believe in a risk of inhumane or degrading treatment in case of refoulement to the USA

In the same circumstances, Mr. Assange has reasonable grounds to believe, that he will be subjected to inhumane and degrading treatment, an unfair trial or flagrant denial of justice in the United States.

This is based on **six reasons**.

- First, the concrete evidence of an ongoing Criminal Investigation of WikiLeaks and Julian Assange now in its fifth year.
- Second, the declarations by US high ranking officials on threats to harm and execute (sometimes extrajudicially) Julian Assange, to prosecute him for espionage, to get WikiLeaks classed as 'enemy combatants' or to place WikiLeaks staff on a proscribed list.
- Third, the situation of Bradley MANNING (Wikileaks source) who has been subjected to inhumane and degrading treatment and unfair trial in the US. He has been sentenced to 35 year imprisonment.
- Fourth, the unlawful action by US and UK police and intelligence services against Julian Assange and Wikileaks.
- Fifth, the attacks on Julian Assanges and Wikileaks financial means.
- Sixth, the other legal actions against Wikileaks, Julian Assange and his partners or associates.

These elements allow us to conclude that Mr. Assange is not in a position where he can voluntarily leave the Embassy because it is not unreasonable to believe that he will be refouled to the United States, where he has reasonable grounds to believe he will face inhumane and degrading treatments.

The consequence of this situation is that the detention of Julian Assange within the Ecuadorian Embassy in London is not a free choice. And it cannot be considered for this reason that article 5 ECHR does not apply in this situation.

c. On a subsidiary basis: vulnerability of Mr. Assange

If the Court should consider that the above elements are not sufficiently objectivated to determine that there is a risk of refoulement to the United States, then, one should consider that it was not unreasonable for Mr. Assange himself, taking into account his vulnerability, to believe, based on the elements supra, that he would face a risk of direct or indirect refoulement.

The elements justifying his **vulnerability** are as follows:

- His confinement conditions : 30m² room with no direct access to fresh air or sunlight;
- The duration of his confinement: more than two and a half years ;
- The constant and pervasive surveillance around him ;
- The lack of medical care and access to appropriate medical infrastructures ;
- Limited and controlled communications with the outside world ;
- Stigmatisation in medias around the world ;
- Constant fear of being submitted to inhumane and degrading tratments in case of refoulement to the United States;

- Status as «human rights defense minded persons associated and engaged in exposing gross abuses through whistleblowing and publishing”.

Taking into account the factual elements developed in point a and b above, even if the Court does not consider them as sufficiently objective - *quod non*- one should also consider, in appreciating the voluntary or involuntary nature of the detention, taking into account the concrete situation of the person, which means, in the present case, considering the state of vulnerability of the person and the factual examination of the risk of refoulement with regard to the specific status of the person concerned.

For Mr. Assange, considering his personality, what he stands for and what he represents, it is not unreasonable for him to believe in a risk of refoulement. On the contrary, it is very likely. This makes it impossible for him to leave the Ecuadorian Embassy.

- ⇒ **The consequence of this situation is that the detention of Julian Assange within the Ecuadorian Embassy in London is not a free choice. And it cannot be considered for this reason that article 5 ECHR does not apply in this situation.**

3. Conclusion on the notion of deprivation of liberty

The analysis conducted above allows us to consider that the confinement of Mr. Assange does not constitute a mere "restriction of liberty" but is a situation of "deprivation of liberty". Indeed, the situation of Mr. Assange entails the objective and subjective aspects of the notion of deprivation of liberty and benefit as such from the protection of article 5 of the European Convention on Human Rights. In addition to the violations of article 5 mentioned in Legal Note 1, one may also add :

1. Violation of article 5 of the Convention considering that Swedish judicial authorities have not concluded that Mr. Assange was in detention

One should determine on what basis Mr. Assange is detained. Considering the existence of a European arrest warrant, one may conclude that article 5, §1^{er}, c) of the ECHR is applicable.

Taking into account the content of the remainder of article 5 (article 5, §1^{er}, a), b), d), e) et f)), any other conclusion would lead us to consider that if article 5, §1^{er}, c) is not applicable to the present case, then the detention of Mr. Assange is not provided for by article 5 and thus violates in any case, the said article 5.

One must thus presume that **article 5, §1, c) of the Convention** is applicable in its entirety, as well as the procedural guarantees attached to it and provided for in article 5, §3 et 5, §4 of the Convention.

2. Violation of article 5 § 3 of the ECHR

2.1. Lack of diligence

Article 5 §3 of the Convention requires that the authority which prosecutes acts diligently. If there is lack of diligence, one must conclude to a violation of article 5, §3 of the Convention (see *Scott v. Spain*, § 74 and *Wemhoff v. Germany*, §§ 16-17).

In the present case, as confirmed by the Swedish jurisdictions, the Prosecutor has not acted promptly.

2.2 Absence of reasonable suspicion

The reasonable suspicion held by the Prosecutor against Mr. Assange in the european arrest warrant (which has caused the detention), became at one point insufficient to justify Mr. Assange's lengthy detention.

The initial reasonable suspicion is a *sine qua non* condition to detain a person on the basis of article 5, §, c) of the ECHR.

However, for the continued detention, it is important that new evidence whether of an incriminating or of an exculpatory nature (after a diligent inquiry), strengthen or weaken the initial legitimate suspicion.

In this case, after more than 4 years, no new evidence has reinforced the initial suspicion and the inquiry seems to be at a halt.

2.3. Alternative Measures

In the present case, the other party, being the Swedish prosecution has demonstrated no will to explore whether alternative measure to the detention could be put into place. Indeed, article 5, §3 of the Convention indicates that release may be conditioned by guarantees to appear in trial.

In this case, no analysis has been carried out to check whether Mr. Assange could be submitted to an alternative measure, less prejudicial to his liberty, and ensuring appearance in trial.

The ECtHR has indicated that when authorities decide whether a person should be detained or released, they should examine whether other measures could guarantee appearance in trial (see *Idalov v. Russia* [GC], § 140).

Moreover, the Court has precised that article 5 § 3 of the Convention not only establishes the right to be brought before a judge within a reasonable time or released pending trial but also enshrines that release may be conditioned by guarantees to appear in trial (see *Khoudoïorov v. Russia*, § 183 ; *Lelièvre v. Belgium*, § 97 ; *Shabani v. Switzerland*, § 62).

The Swedish authorities should have examined alternative measures to the European arrest warrant. Not having done so, they have violated article 5§3 of the Convention.

3. Violation of article 5 § 4 in combination with article 5 § 1 .c of the Convention : verifying the lawfulness of the detention

Moreover, the judge, acting in the process of checking the legality of the detention, did not have access to the essential material of the investigation, the SMS exchanges from the victims. The judge was thus prevented of legally checking the legality of the detention in respect of article 5, §1, c) of the Convention. Indeed, the judge must found his decision on all evidence available in the case, incriminating or of an exculpatory nature, in order to decide whether the reasonable suspicion is still grounded or not.

On the other hand the proceedings at the appeal court did not met the standards of ECtHR case law : there was no hearing and the court did not have the investigation file of the prosecutor during its deliberation.

“ 39. The Court recalls that arrested or detained persons are entitled to a review bearing upon the procedural and substantive conditions which are essential for the “lawfulness”, in the sense of the Convention, of their deprivation of liberty. This means that the competent court has to examine “not only compliance with the procedural requirements set out in domestic law but also the reasonableness of the suspicion grounding the arrest and the legitimacy of the purpose pursued by the arrest and the ensuing detention”. A court examining an appeal against detention must provide guarantees of a judicial procedure. The proceedings must be adversarial and must always ensure “equality of arms” between the parties, the prosecutor and the detained person. Equality of arms is not ensured if counsel is denied access to those documents in the investigation file which

are essential in order effectively to challenge the lawfulness of his client's detention. In the case of a person whose detention falls within the ambit of Article 5 § 1 (c), a hearing is required (see, among other authorities, the Lamy v. Belgium judgment of 30 March 1989, Series A no. 151, pp. 16-17, § 29 and the Nikolova v. Bulgaria [GC], no. 31195/96, § 58, ECHR 1999-II).

These requirements are derived from the right to an adversarial trial as laid down in Article 6 of the Convention, which means, in a criminal case, that both the prosecution and the defence must be given the opportunity to have knowledge of and comment on the observations filed and the evidence adduced by the other party. According to the Court's case-law, it follows from the wording of Article 6 – and particularly from the autonomous meaning to be given to the notion of “criminal charge” – that this provision has some application to pre-trial proceedings (see the Imbrioscia v. Switzerland judgment of 24 November 1993, Series A no. 275, p. 13, § 36). It thus follows that, in view of the dramatic impact of deprivation of liberty on the fundamental rights of the person concerned, proceedings conducted under Article 5 § 4 of the Convention should in principle also meet, to the largest extent possible under the circumstances of an on-going investigation, the basic requirements of a fair trial, such as the right to an adversarial procedure. While national law may satisfy this requirement in various ways, whatever method is chosen should ensure that the other party will be aware that observations have been filed and will have a real opportunity to comment thereon (see, mutatis mutandis, the Brandstetter v. Austria judgment of 28 August 1991, Series A no. 211, p. 27, § 67).⁶

In the present case, there has been a violation of article 5, §4 of the Convention combined with article 5, §1, c) of the Convention.

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⁶ ECtHR, Garcia Alva v. Germany, 13 Februari 2013, n°23541.

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