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The Dock and Physical Restraints : the presumption of innocence put to the test by appearances at trial

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TABLE OF CONTENTS

INTRODUCTION	2
I – THE ACCUSED IN THE LEGAL THEATER.....	5
A – HISTORICAL BACKGROUND.....	5
1) <i>"Segmentation and segregation": the process of isolating the accused.</i>	5
2) <i>Fortified dock as a new standard</i>	6
B – PERCEPTION OF THE ACCUSED IN EUROPEAN COURTROOMS	8
1) <i>The place reserved for the accused in enclosed docks in European Courtrooms</i>	8
2) <i>Appearance of the accused at trial with physical restraints</i>	9
II – PRESUMPTION OF INNOCENCE VS SECURITY REQUIREMENTS.....	10
A – THE RESPECT OF THE PRESUMPTION OF INNOCENCE CALLED INTO QUESTION BY THE USE OF THE DOCK AND PHYSICAL RESTRAINTS	10
1) <i>The possibility for the presiding judge to take restraint measures for security reasons</i>	10
2) <i>The difficult compromise between presumption of innocence and security requirements</i>	12
B – CASE LAW	13
1) <i>Outside Europe</i>	13
2) <i>In Europe</i>	14
III – FOR BETTER RESPECT OF THE PRESUMPTION OF INNOCENCE AT THE HEARING	15
A – DOES THE EUROPEAN COURT OF HUMAN RIGHTS SHY AWAY FROM THE PRESUMPTION OF INNOCENCE?.....	16
1) <i>Fears of disorder more important than the respect of the presumption of innocence?</i>	16
2) <i>Not to deny the power of appearances</i>	16
B – SOME SUGGESTIONS FOR GREATER EFFECTIVENESS IN THE PRESUMPTION OF INNOCENCE AT THE HEARING	17
1) <i>Separate dock should be an exception</i>	17
2) <i>Trials without a dock?</i>	18
Bibliography.....	20
Reference work	20
Websites	20
Contributions	20
European Court of Human Rights Case Law.....	20

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INTRODUCTION

Scandalous or normal? MP's in the dock or the emergence of a fundamental question open to public debate. In 2010, Members of the British Parliament experienced unusual treatment when charged with fiddling their expenses and being placed in the dock. Exemption was refused; the magistrate considered that it was usual for defendants to sit there. Reports of this case published in two newspapers – the Guardian and The Times¹ – served to turn attention towards the neglected issue of the appearance of the accused at trial. The issue of “VIP's” confronted with the humiliating experience of appearing at trial provides the opportunity to expose this question to public debate, as does American Court practice of the “perp walk”, recently imposed on former head of the International Monetary Fund, Dominique Strauss Kahn, causing comparative reflection in the French Media about the respect due to the accused.

A question for European Law. In many European countries, the criminal defendant is placed in a separate area of the courtroom: the regularly used but rarely discussed dock. Sometimes he is placed in a glass cage, for instance in Spain, Italy, France or Germany. Some practices have already provoked debate, allowing reactions such as “A courtroom is not a zoo!”² when it comes to the use of metal cages in criminal trials. Countries in the Middle East, Latin America and Eastern Europe also place criminal defendants in cages at trial. As an example, the former Egyptian President Hosni Mubarak was brought into the courtroom in a hospital bed and immediately placed into something like a mesh cage. As noted by Linda Mulcahy in her book on Legal Architecture: Justice, Due Process and the Place of Law³, in a chapter entitled Presumed innocent, “these practices [of placing the defendant in a cage] are particularly interesting given that in the USA, arguably the most security-conscious country in the world, the defendant and their counsel sit shoulder to shoulder in the inner area of the court”.

The challenge of modern legal architecture: *justice must not only be done, it must also be seen to be done.* Lord Chief Justice Hewart's aphorism reveals the particular interest of this issue, not only because of the fundamental right that is at stake, but also because of the importance of the image of justice in the public eye. Is the die cast when the hearing of the case begins, or can the setting in the courtroom have some influence over the coming decision, if the courtroom is to be considered as a theatrical stage? This is a question for architects who deal with the construction of modern courthouses, as well as for jurists.

¹ Simon Hoggart, “MPs in the dock: from kings of the castle to a glass cage”, Thursday 11 March 2010, [Online] <http://www.guardian.co.uk/politics/2010/mar/11/mps-dock-expenses-westminster> (page viewed in March 2012); Ann Treneman “Elliot Morley, David Chaytor and Jim Devine above the dock but not the law”, 12 March 2010, [Online] <http://www.thetimes.co.uk/tto/news/> (page viewed in March 2012)

² Saïla Ouald Chaïb, “A courtroom is not a zoo! The use of metal cages in criminal trials”, 22 June 2010, [online] <http://strasbourgobservers.com/2010/06/30/a-courtroom-is-not-a-zoo-the-use-of-metal-cages-in-criminal-trials/> (Page viewed 21st February 2012)

³ MULCAHY Linda, *Legal Architecture: Justice, Due Process and the Place of Law*, chapter 4 “Presumed innocent”, page 59

The Dock and Physical Restraints : the presumption of innocence put to the test by appearances at trial

Indeed, fairness also has an architectural dimension. Courtrooms have to reflect important values such as faith in justice and fairness, and not just achieve functional objectives, as with many other buildings. In other words, Court design is influenced by the conceptions of due process, and determines verbal interaction and the status of the people present. However, the question of legal architecture is subject to debate in countries such as Australia, where the architectural dimension of justice being done is taken into account and subject to serious thought. This current interest for legal architecture has not developed so much in Europe, although the existence of a Court Standards and Design Guide in the United Kingdom should be mentioned. The Guide refers to the importance of avoiding a “cage-like oppressive environment for the defendants”⁴. While historical Courthouses such as the “*Palais de Justice*”, presently located in the heart of Paris, will be replaced by modern and functional constructions, how new courtrooms can recover solemnity without harming the requirements of due process appears to be a fundamental question.

Presumption of innocence and the right to a fair trial. Appearances relate in reality to the image of justice, depending on legal traditions that reflect history as well as political values. Common to many European legal traditions, the practice of physically restraining the defendant may be questioned with regards its consequences on the right to a fair trial, including the right to legal assistance, the right to participate effectively in the criminal trial and the presumption of innocence, all guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms. The presumption of innocence is a fundamental right, laid down in the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and the Charter of Fundamental Rights of the European Union (CFREU). Article 6.2 ECHR provides that « everyone charged with a criminal offense shall be presumed innocent until proved guilty according to law » and Article 48 CFREU provides that « everyone who has been charged shall be presumed innocent until proved guilty according to law ». This fundamental right already appeared in the *Magna Carta* in 1215 and in the French Declaration of the Rights of Man and of Citizens in 1789. In Germany, this principle does not appear in the Constitution (*Grundgesetz*) but its constitutional ranking is based on the principle of a State under the Rule of Law by the German Constitutional Court (*Verfassungsgericht*). It is consecrated as a constitutional right, notably in Italy, Spain and France. A large number of rulings from the European Court in Strasbourg protect this right as fundamental, which prohibits pre-trial pronouncement of guilt, limits pre-trial detention, determines the burden of proof and allows the defendant to refuse self-incrimination. A presumption deals with appearance, *id est* with the perception of something or someone – here the accused – before more careful examination has been made. This is clearly revealed by all decisions of the European Court about the way the defendant is portrayed in the Media. Remarkably, the same attention is not drawn to the way

⁴ Her Majesty’s Court Service, *Court Standards and Design Guide*, 2010, page 109.

The Dock and Physical Restraints : the presumption of innocence put to the test by appearances at trial

justice deals with the defendant's appearance, not only with the use of a fortified dock, but also by shackling the defendant, for instance with handcuffs, when appearing before the judges.

A security requirement? The balance of two opposing interests. “How is it that the defendant, while still presumed innocent came to be contained in a dock?” asks Linda Mulcahy⁵. If standing in the dock is a humiliating and degrading experience for the defendant, justification in the name of security can nevertheless be found for these practices. A secured dock may be required, not only to protect the public and court officers from the defendant, but also to protect the defendant from external attack or from himself. It is a way of avoiding violence or escape. Surveillance Society has entered the courthouses and trial judges are in charge of security with their police powers. In this context, presumption of innocence determines the limits of interference allowed by the State in the autonomy of an individual during criminal proceedings. The State's power has to be weighed up against the freedom of the individual. In other words, to answer the question of whether the dock and Physical Restraints - required in Courtrooms for security justifications - are compatible with the requirement of due process, in particular the respect of the presumption of innocence ensured by Article 6.2 ECHR, the public interest served by the dock and other shackles has to be weighed up against the particular interest of the defendant.

Presumed innocent, but restrained? To tackle this issue, a brief overview of the position of the accused at the criminal trial both in the past and today has to be given (I). Indeed, the present situation has to be described before being discussed, with regards the conflict of interests brought about by the appearance of the accused: security at the trial as a general cause for concern on the one hand and the presumption of innocence as a particular interest to the defendant on the other. The issue has already found some responses in case law, especially in that of the ECHR (II). Some questions remain, so a well-argued response needs to be proposed with regards the fundamental right to a fair trial and the conflicting interests present, while keeping an eye on the situation in other countries outside Europe (III). The challenge can be nothing but substantial: restoring the presumption of innocence in a key phase of criminal proceedings: the hearing.

⁵ MULCAHY Linda, *Legal Architecture: Justice, Due Process and the Place of Law*

I – THE ACCUSED IN THE LEGAL THEATER

This paper tackles the issue of the appearance of the accused in the dock. To identify this problem, a brief look at the historical background (A) is necessary, before giving an overview of the present situation of the accused in the dock (B).

A – HISTORICAL BACKGROUND

The evolution of legal architecture, in particular the appearance of the dock and physical restraint of the accused in criminal procedures is not neutral⁶. In the chapter entitled "presumed innocent?" of her book on legal architecture, Linda Mulcahy⁷ describes the process of segmentation and segregation of the main players on the judicial stage, where the defendant became increasingly isolated in a place where his right to a fair trial, in particular to the presumption of innocence, was not guaranteed (1). This isolation was indeed accompanied by the appearance of a fortified dock, and even of cage-like constructions made of glass (2).

1) "Segmentation and segregation": the process of isolating the accused.

From the Middle Ages onwards. A wooden barrier – “*barreau*” in French, “bar” in English – represented the space where justice was done. While French Kings were doing justice under a tree, in other countries the judicial stage could be a county hall, a church, or any other public building. Only the judge and court officials could appear on this “stage”. Witnesses, defendants, jurors, lawyers and the public remained outside. Litigants and defendants would present themselves at the “bar”. To describe the process of isolation of the defendant, the situation of French and English courtrooms can be looked at, as they concern two deeply different legal systems.

The French legal system. After the Revolution, space was made for the juries introduced by the new regime as part of a process of democratizing justice. Powerful prosecutors, a key feature of the pre-revolutionary justice process, remained with the introduction of the “*avocat général*” in the new courts, sitting significantly alongside the judges and dominating a designated bench or box facing the jury. The accused remained in an enclosed area during questioning. Like the emerging United States model, a combination was found between co-location of defence lawyer and defendant on the one hand, and considerable spatial separation between prosecution and defence on the other, in contrast with English practice.

⁶ TAIT David, *Glass cages in the dock? : Presenting the defendant to the jury*. Indeed, this author explains: “the layout of a courtroom is a reflection of a complex history of legal reform, professional evolution, and political values”.

⁷ MULCAHY Linda, *Legal Architecture: Justice, Due Process and the Place of Law*

The Dock and Physical Restraints : the presumption of innocence put to the test by appearances at trial

The English legal system. The process of segmentation and segregation in the English legal system is the result of significant evolution in the legal profession. In the fifteenth-century sergeants at law – high ranking lawyers – were not generally allowed within the bar. They stood shoulder to shoulder with their client facing the judge, as shown in the Whaddon illuminations. Defence lawyers were not accepted in criminal proceedings until about 1730 and were not allowed to address the jury directly until 1836. Only in the eighteenth century did a distinction between barristers on the one hand, and attorneys and solicitors on the other, appear. Attorneys acted as intermediaries between clients and barristers. This emerging upper branch of the legal profession was allowed to sit around the central table of the court, while prisoners, witnesses and jurors continued to be placed beyond and outside the bar. The bar table saw prosecution and defence barristers side-by-side, occupying the centre of the court. So “the accused meanwhile had become less central to the case and could be moved to the margins of the courtroom, typically in a dock at the back”.

The nineteenth century saw the emergence of informal rules that governed the position of each participant of the judicial “drama”. For historians, the new position of barristers centre stage in the court reflects the “shift towards the adversarial trial in which lawyers played the main role in telling the defendant’s story”⁸. Usually seen as the cornerstone of common law procedure, the adversarial system would actually be a relatively youthful organizational concept. Thus, and paradoxically in the nineteenth century, as all defendants began to acquire the right to full representation, their isolation increased and they were progressively encased in a fortified dock.

2) Fortified dock as a new standard

The process of fortification of the dock. The practice of placing the defendant into a closed area seems to have originated from a time “when captives were put in cages in ancient Rome and Mesopotamia,” according to Cherif Bassiouni, a professor at DePaul University's College of Law, who has worked for the United Nations on human-rights issues. While the isolation of the accused in the courtroom became a standard of courthouse design, fortification of the dock first became a common feature of courts in the Victorian era. In the eighteenth century, there were enclosures for accused persons awaiting trial. From simple railed enclosures, the dock became waist-height constructions with one open side and glass rooms within the court. In the nineteenth century, American courts largely followed the English model, already copied in Australia, and placed the accused in a dock. Linda Mulcahy notes the emergence of “citadel-like” or “cage-like” constructions in the centre of newly built courtrooms.

A justified practice? Professor Bassiouni explains: “the original rationale for doing it was the fear that criminal defendants would attack or intimidate witnesses or judges”. The positioning of the defendant

⁸ TAIT David, *Glass cages in the dock? : Presenting the defendant to the jury*, pp.470-471

The Dock and Physical Restraints : the presumption of innocence put to the test by appearances at trial

relied partly on the severity of the accusations made against him: the defendant accused of misdemeanours could sit behind counsel, while one charged with felonies could not. As newspapers regularly opened their accounts by referring to the positioning of the defendant in the dock, the emphasis laid publicly on appearance shows an inversion of Bentham's panoptical ideal in which the few surveyed the many, and illustrates that the process of administering criminal justice becomes a form of punishment in its own.

Towards an abolition of the fortified dock? Such evolution did not take place without calling into question its impact on the defendant's rights. A counsel at the Old Bailey – the English Criminal Court – submitted his reflections to the jury: "Gentlemen, you must not allow yourselves to be carried away by any effect which the prisoner's appearance may have upon you. Remember, he is in the dock; and I will undertake to say, that if my lord were to be taken from the bench upon which he is sitting, and placed where the prisoner is now standing, you, who are accustomed to criminal trials, would find, even in his lordship's face, indications of crime which you would look for in vain in any other situation!"⁹ But only at the beginning of the twentieth century did the preoccupation with human rights lead to a presumption against dock use. In the United States, the dock apparently remained in some courtrooms, to be used when required, but slowly fell into disuse, so that new courtrooms usually omitted them.

A short story of the use of glass cages: Glass for transparency or surveillance? Glass as a building material has a complex history, sometimes becoming a spectacle itself, such as Pei's pyramid over the Louvre, and changing in meaning over time. This can be demonstrated in hospital design as well as in legal architecture. Indeed, in both contexts, glass, which was a material symbolizing openness and movement, then became a manifestation of confinement and surveillance. As an example of the first meaning, in the courtroom pods of Richard Rogers' famous Bordeaux courthouse, glass permits light to come into the courtroom, indicating the link with truth and the need for accountability. Sometimes in courtrooms, even the bench and the witness stand are made of glass. This material even became a trademark of international style introduced by the Bauhaus movement in architecture.

At the same time, glass took on another meaning, which was most remarkable in Adolf Eichmann's trial. The accused was placed in a bullet-proof dock, a glass cubicle elevated on a stage, with the rest of the courtroom acting like a theatre, permitting observation by professionals and the entire world through the media. Prior to this famous trial, reported on by Hannah Arendt in her *Eichmann in Jerusalem: A Report on the Banality of Evil*, other images come to mind of courtrooms in which cages had been used, for instance the iron cages of the defendants in a 1927 mafia trial in Sicily. This configuration has been used in later trials involving high-profile defendants: the trial of the Papon war

⁹ Quoted by Linda Mulcahy in MULCAHY L., *Legal Architecture: Justice, Due Process and the Place of Law*, page 74.

The Dock and Physical Restraints : the presumption of innocence put to the test by appearances at trial

crimes in France, the Lockerbie bombings in the Netherlands or the Madrid train bombing in Spain. And this situation remains in place.

B – PERCEPTION OF THE ACCUSED IN EUROPEAN COURTROOMS

Through architecture imposing distance and respect of the litigants, the State imposes its authority. Architecture plays a role in the legal theater: the courtroom is the place where a scene is played out. And each actor has his own place. The accused in many countries sits apart, isolated from the rest of the courtroom (1), and very often appears with physical restraints (2).

1) The place reserved for the accused in enclosed docks in European Courtrooms

The dock for the accused. In many countries, the defendant sits apart from his attorney in the courtroom. Sitting isolated is not only a particularity in France, but it is also the case in other Member States of the Council of Europe. The enclosed dock has always been used in criminal trials when dealing with high-profile cases, whether it is the iron cages used in the Italian trials of Red Brigade terrorists in the 1980s or the trial of the Eichmann war crimes where he was placed in a glass-enclosed dock.

The types of enclosed docks. Through the different national legislations of the Members of the European Union, but mostly through the decisions of the European Court of Human Rights, it is possible to outline the different forms of this special place for the defendant during trial.

Indeed, in France, almost each Courtroom is built with a glass-enclosed dock. The accused is placed apart, in this glass box, which is generally a cube with glass on all sides. However, when placed in the dock, the accused is free to move and can communicate freely and secretly with his lawyer¹⁰.

In the United Kingdom, the case of Stanford¹¹ reveals that some English courts use a glass-fronted bunker. As the leader of the Justice Research Group, David Tait¹² describes it, the dock is set into the wall, with a strip of glass connecting the dock to the courtroom. Moreover, in the recent case mentioned in the introduction, three Members of Parliament, Jim Devine, David Chaytor and Elliot Morley, appeared in a glass cage at Westminster Magistrates Court in London, whilst they were charged with fiddling their expenses¹³.

In high-security cases, such as terrorism trials in Düsseldorf¹⁴ for instance, glass screens are used to separate areas for defendants from those used by other court participants or those used by the public. In this case, the trial took place in a special high-security courtroom.

¹⁰ Court of Cassation, Criminal Division, 15 May 1985, n° 84-95.752, Weekly Criminal Bulletin n°188

¹¹ ECHR, *Stanford v. The United Kingdom*, 23 February 1994, application n°16757/90, para.22

¹² TAIT David, “Glass Cages in the Dock?: Presenting the Defendant to the Jury”, pp.476-477

¹³ Simon Hoggart, “MPs in the dock: from kings of the castle to a glass cage”, Thursday 11 March 2010, [Online] <http://www.guardian.co.uk/politics/2010/mar/11/mps-dock-expenses-westminster> (page viewed in March 2012)

¹⁴ Four alleged Islamic Fundamentalists went on trial in Western Germany in 2011, accused of plotting attacks on United States citizens in several German cities; [online] http://www.rfi.fr/actuen/articles/112/article_3558.asp (Latest update 2009-04-22)

The Dock and Physical Restraints : the presumption of innocence put to the test by appearances at trial

In the latest decisions of the European Court of Human Rights against Armenia, Russia or Georgia, the accused appear in a metal cage. The use of an enclosed dock with metal bars is not rare since it has already been used in Italy for high-security trials.

But the accused may not only appear in an enclosed dock, but also with physical restraints, such as handcuffs or prisoners clothing.

2) Appearance of the accused at trial with physical restraints

Handcuffing the accused. Since a place is specially designated to the defendant, special treatment is also reserved for him at the hearing. In fact, the accused may be presented handcuffed at his trial or may appear with a police escort when considered necessary. In rare cases, the applicant adds safety measures to the hearing: for instance, in the case of *Sarban v. Moldova*¹⁵, the accused appeared in the courtroom in handcuffs, stood in the dock during the hearing, and was also under police supervision.

The legal reason for using handcuffs. In France, the fact that the accused appears free at the hearing, according to article 318 of the Code of Criminal Procedure, is widely respected. At least, the accused is generally not handcuffed in the dock as the Code of Criminal Procedure forbids this. In fact, article D. 283-4 of the Code provides that no constraints should be left on a detainee at the moment of his appearance before a court. But from the moment he leaves the Court, or even the dock, the police escort may handcuff him for safety reasons. For instance, in a case tried before the Criminal Division of the Court of Cassation in 1988¹⁶, the presiding judge of the Assize Court decided for security reasons and to verify the contention of the witness, to have the accused handcuffed and accompanied by police escort before the Court and the jury. When finished, the accused returned to the dock and the handcuffs were removed. The presiding judge of the Assize Court was just using his police powers according to article 309 of the Code of Criminal Procedure which allows him to take appropriate measures to ensure security and order at trial. At the same time, the Court of Cassation is also required to find whether the fact that the accused was handcuffed during the hearing was of such a nature as to seriously prejudice his defense rights. The Court cannot confine itself to making a statement that says that no rules stipulate that the accused shall be unconstrained at the time of delivery of the decision¹⁷.

It is interesting to examine the grounds on which the European Court of Human Rights decides if there is a violation of the European Convention. A few decisions have given rise to a violation of Article 3 of the Convention: being handcuffed or being placed in the dock, whether it is a glass-enclosed dock or behind metal bars in the courtroom, is considered as humiliating if not justified by security reasons. But,

¹⁵ ECHR, *Sarban v. Moldova*, 4 October 2005, n° 3456/05, para. 90

¹⁶ Court of Cassation, Criminal division, 26 October 1988, n° 87-91.765,

¹⁷ Court of Cassation, Criminal division, 5 March 1990, n° 89-82.817,

The Dock and Physical Restraints : the presumption of innocence put to the test by appearances at trial

as the Court has ruled in other cases, we feel that the use of a glass cage or any physical restraints, including the fact that the accused may appear in prisoners clothing¹⁸, is contradictory to the presumption of innocence, covered by Article 6¹⁹. Indeed, this kind of measure should be exceptional, as we are going to see, but in view of the proliferating case law on the subject, it is tending to become the norm.

II – PRESUMPTION OF INNOCENCE VS SECURITY REQUIREMENTS

The use of the dock and constraints in the courtroom may be seen as physically contradicting the presumption of innocence. But the most common reason cited for this use is that of safety. That is why respect of Article 6.2 of the European Convention has been called into question by the use of the dock and physical restraints in the courtroom, because of the perception that it gives of the accused in the court (A). The European Court has heard numerous cases on the subject (B).

A – THE RESPECT OF THE PRESUMPTION OF INNOCENCE CALLED INTO QUESTION BY THE USE OF THE DOCK AND PHYSICAL RESTRAINTS

In the United States of America, “there is a basic right that defendants have to appear in court free of visible restraint, such as leg irons or handcuffs or prison garb”, says Darryl Brown, a professor at the University of Virginia School of Law. “But defendants can lose that right if they are very disruptive or make threats. A judge can conclude that they have to be restrained” he says. The presiding judge of the court can in effect take restraint measures for security reasons (1), which has to be balanced with the presumption of innocence, because the accused must not seem to be guilty, even if he appears in an enclosed dock and handcuffed (2).

1) The possibility for the presiding judge to take restraint measures for security reasons

Domestic law. When examining domestic law in European countries, it is obvious that the dock is supposed to be an exception in the courtroom.

French law. Indeed, article 318 of the French Code of Criminal Procedure, for instance, provides for the accused to appear “free and only in the company of guards to prevent his escape”. Literally, “the dock” is an expression which cannot be found in the Code itself. Reference is made to it in case law, as a security measure that the presiding judge of the Assize Court, who is responsible for the proper conduct of the hearing, may take. Therefore, the decision to place the accused in a special place in the dock reserved for

¹⁸ ECHR, *Jiga v. Romania*, 16 March 2010, application n° 14352/04, para.98 : the Court had to adjudicate the question of whether making an accused person appear in prisoners clothing at a public hearing was at odds with the presumption of innocence. In that case, the Court did find a violation of article 6.

¹⁹ Two of many examples : ECHR, *Auguste v. France*, Commission Report of 7 June 1990, D.R. 69, application n° 11837/85, p. 104; see also ECHR, *Meerbrey v. Germany*, Commission decision of 12 January 1998, application n° 37998/97

The Dock and Physical Restraints : the presumption of innocence put to the test by appearances at trial

the accused falls under his discretion²⁰. It is generally considered, according to French case law, that such safety protection is legal, since the accused placed in the dock is free to move and can communicate freely and secretly with his lawyer²¹. All it takes to presume respect of article 318 is for the minutes to mention that the accused appeared freely, in the absence of a statement from the defense²².

Ukraine law. In the same vein, article 271 of the Ukrainian Code of Criminal Procedure provides that the “presiding judge maintains order during court session”. Furthermore, article 274 establishes that “during trial, the court, with grounds present, may, by its ruling, alter, revoke or impose a measure of restraint in respect of the defendant”. So the presiding judge has the power to isolate the accused, but this remains a possibility only. It is not necessarily the only way to ensure courtroom security. Moreover, the decisions of the European Court of Human Rights outline that in most of the countries in the Council of Europe, the use of the dock is the general law: in the case of *Meerbrey v. Germany*, “this was a constant security measure used for other criminal cases”²³.

Eastern Europe. Thus, it turns out that the dock is the norm, embodied in modern legal architecture. In fact, in France, almost each Courtroom is built with a glass-enclosed dock. In Eastern Europe, the dock is also a part of courtroom architecture, but it is made with metal bars, and no matter what the level of security of the case, the accused is placed behind these metal bars at the hearing. For instance, a high-profile case took place in Russia, involving Mikhail Khodorkovski. And although he was charged with economic crimes and had no previous criminal record or any history of violence, he was placed “in a metal cage and was exposed in this manner to the public and the media”. The Government “claimed that such arrangement in the court room had been justified by security considerations”²⁴. The use of a metal cage not only occurs in Russia, but also in Armenia. In Armenia, during criminal trials at the Court of Appeal all the accused have to sit in a metal cage, because of security reasons²⁵. Likewise, in Georgia²⁶, the applicant had to be placed in an enclosed dock with metal bars during the trial.

The use of the dock highlights how the presumption of innocence is contradicted. Why would the accused need security measures if he is presumed innocent, especially when there no objective reasons to use it?

²⁰ Court of Cassation, Criminal Division, 20 February 1985, Weekly Criminal Bulletin N° 81; and same division, 16 February 2011, n° 10-82.114

²¹ Court of Cassation, Criminal Division, 15 May 1985, n° 84-95.752, Weekly Criminal Bulletin N°188

²² Court of Cassation, Criminal Division, 20 December 2000, n° 00-83.007

²³ ECHR, *Meerbrey v. Germany*, 12 January 1998, application n°37998/97

²⁴ ECHR, *Khodorkovskiy v. Russia*, 31 May, application n° 20115829/04

²⁵ For an example of a statement of the defense on the use of an enclosed dock with metal bars : ECHR, *Ashot Harutyunyan v. Armenia*, 15 June 2010, application n°34334/04, para.126

²⁶ ECHR, *Ramishvili and Kokhreidze v. Georgia*, no. 1704/06, 27 January 2009

The Dock and Physical Restraints : the presumption of innocence put to the test by appearances at trial

2) *The difficult compromise between presumption of innocence and security requirements*

A physical contradiction. The fact that the defendant may appear in the dock, no matter what its form, creates a physical conflict with the presumption of innocence.

Equality before the law. On the one hand, the universal principle of equality before the law is not guaranteed when the defendant and the claimant are not perceived in the same manner. One appears in an enclosed dock, surrounded by glass or metal bars, even if there are no objective reasons to appear like this, while the other appears free, next to his lawyer. It is not neutral to appear in an enclosed dock, looking dangerous, so that juries or the public may think that the person inside may harm them. However, a judge in the Queensland Court of Appeal raised an interesting point in his dissenting opinion during a case in which the accused was placed in the dock for security reasons²⁷. Justice Dowsett said of security arrangements that they do not automatically contradict the presumption of innocence, “it depends upon an assumption of naivety in juries [...]. It assumes that a jury is unable to understand that the judicial system may decide to protect the public against the risk that a person may be dangerous even where there is a real possibility that he is not. My own experience suggests that jurors are worldly enough to understand that while the Crown, in prosecuting an accused person, is asserting that there is evidence sufficient to justify a conviction, the jury must determine whether or not that conclusion is the correct one in the circumstances”.

The accused already convicted at his hearing? On the other hand, and this is more obvious when it is a matter of an enclosed dock with metal bars, the fact that the accused is placed in an iron cage creates the impression that he has already been sentenced to prison. We are going to develop this opinion further because we think that the dock circumvents requirements under Article 6.2 of the European Convention. The enclosed dock and physical restraints at trial lead to the scarcely veiled assumption that the man in the dock is a criminal. Putting the defendant in the dock leads to observation of the accused and creates a spectacle. Indeed, in the case of *Alenet de Ribemont v. France*²⁸, the Court ruled that “the presumption of innocence...will be violated if a judicial decision concerning a person charged with a criminal offence reflects an opinion that he is guilty before he has been proved guilty according to law. It suffices, even in the absence of any formal finding, that there is some reasoning suggesting that the court regards the accused as guilty”.

The authorities may not intend to make the accused appear guilty, but it does not mean that the measure does not have such an effect.

²⁷ *Illinois v. Allen* 397 U.S. 337, 344 (1970)

²⁸ ECHR, *Alenet de Ribemont v. France*, 10 February 1995, n°15175/89

B – CASE LAW

If opinions diverge on the issue of the compatibility of glass cages or any other shackle with the presumption of innocence, courts have already adjudicated this problem, firstly outside Europe (1). In European states, opportunities have been rare for courts to consider this issue. Some decisions can however be reported. Finally, the ECHR has also given its point of view (3).

1) Outside Europe

In the United States. In Common Law Countries such as the United States, the appearance of the accused in the courtroom has been seen as problematic for a relatively long time. The US Court of Appeals for the First Circuit in *Young v. Callahan*²⁹ held that confinement to the dock against the appellant's constitutional objection and without security justification was unconstitutional. The constitutional error was not harmless beyond a reasonable doubt. The defendant's counsel had argued that " any implication that [appellant] was the type of person whom it was necessary to segregate from jurors, spectators, court personnel, and even his own counsel... cannot fail to impact upon juror deliberation". As reported by David Tait, already in 1970 in the case *Allen v. Illinois*³⁰, the US Supreme Court found that the use of shackles affronts the "dignity and decorum of judicial proceedings that the judge is seeking to uphold". The trial judge should use constraint of the defendant for the minimum time necessary and can choose between constraints within the courtroom or removal of the accused from the court completely when there is an impossibly disruptive witness. In *Estelle v. Williams*³¹ in 1976, the Supreme Court saw a violation of due process rights in the use of prison garb in a courtroom. In *Coy v. Iowa* in 1988³², the same Court deemed that an accused person should appear unfettered before a jury, unless there were very strong reasons for doing otherwise. This case law led the Court to new decisions in recent years, such as the case of *Deck v. Missouri*³³ in 2005 where any form of visible restraint, or mark of confinement, whether prison clothes, shackles, or a dock, are deemed as incompatible with the presumption of innocence.

In Australia. In Brisbane, at the Queensland Court of Criminal Appeals, the acceptability of a glass cage for the accused was not discussed until 1994. In the Farr case³⁴, the accused was placed inside a floor-to-ceiling glass screen and shackled with handcuffs attached to a body-belt. The Court had to weigh up the particular interest of the right to a fair trial for the accused against the public interest of courtroom security. For the Court, any doubt should be resolved in favor of the "correctness of the directions given

²⁹ US Court of appeal for the First Circuit, *Young v. Callahan*, 700 F.2d 32 (1983)

³⁰ Supreme Court, *Illinois v. Allen* 397 U.S. 337, 344 (1970)

³¹ Supreme Court, *Estelle v. Williams*, 425 U.S. 501, 512-13 (1976)

³² *Coy v. Iowa*, 487 U.S. 1012, 1021 (1988)

³³ *Deck v. Missouri*, 544, U.S. 622, 628-29 (2005)

³⁴ *R. v. Farr* QCA 266, 2 (1994)

The Dock and Physical Restraints : the presumption of innocence put to the test by appearances at trial

by the judge who is to preside at the trial", who is in the ideal position to "gauge the extent of security precautions which are necessary in the circumstances". The trial judge had decided that the measures were necessary because of the context - Farr was accused of beating another inmate to death with five colleagues inside a maximum-security prison and most of the witnesses appeared similarly constrained in handcuffs attached to a body-belt. The only alternative to the use of a glass cage would have been manacling of the feet, a solution dismissed as barbarous³⁵.

In two cases³⁶ concerning accused persons charged under federal anti-terrorism legislation, the Australian Courts ordered the removal of the glass screens around the dock. Indeed, in these two cases, the defendants were placed in a dock heightened by a Perspex screen. Justice Bongiorno commented, "I must confess that when I first saw the fixed screen dock I was immediately concerned about its impact on the jury. [...] The immediate impression was that they were separated in that way because they posed a threat to people in the courtroom".

In these decisions, the severity of the charges is not seen as relevant. Only current danger or potential disruption could be a sufficient argument to outweigh the prejudice of appearing shackled in a courtroom. These solutions can be seen as relevant to all jury trials where defendants are placed in such a situation. Nonetheless, the question should be raised for non-jury trials.

2) *In Europe*

○ National Court Case Law

In the United Kingdom. For the England and Wales Court of Appeal, in the *Horden Case*³⁷, "the law is simple enough. Unless there is sufficient reason (which usually means a real risk of either violence or escape), a defendant ought not to be visibly restrained by handcuffs or otherwise either in the dock or in the witness box". Indeed, "the jury must be free to decide upon the guilt or innocence of the defendant without the risk of being influenced against him by sight of restraint which in their minds suggests that he is regarded with good cause as being a dangerous criminal".

In France. The Court of Cassation³⁸ decided that placing the accused in the dock reserved for accused persons was not at odds with article 6 of the European Convention. The argument of the Court is that this positioning is part of the police powers of the President of the Court of Assizes, and so cannot be seen as a violation of the presumption of innocence.

³⁵ Already in a previous decision in 1985, the High Court of Australia had deemed that it was necessary to « avoid or mitigate the prejudicial effect which such precautions may have on the mind of the jury ». *Smith v. The Queen*, 159 CLR 532, 532 (1985)

³⁶ *R. v. Benbrika*, 182 A. Crim. R 205, 226 (2008), *R. v. Baladjam et al.* NSWSC 1462, 22 (2008)

³⁷ *Horden* (2009) EWTA Crim 388

³⁸ Court of Cassation, 16 January 2011, n° 11.01090

The Dock and Physical Restraints : the presumption of innocence put to the test by appearances at trial

o ECHR Case Law

Jiga v. Romania on the issue of prisoners clothing³⁹. In this case, the Court did find a violation of article 6 in making an accused person appear in prisoners clothing at a public hearing.

Auguste v. France on the issue of a glass cage⁴⁰. The Commission concludes that the appearance of the accused before the Criminal Court in a glass cage while the co-accused appeared outside the cage does not in this case violate the presumption of innocence. But the fact that the court referred to the seriousness of the crime to justify appearance in the dock, a permanent security measure which is used for all accused persons in custody for serious crimes and which permits communication with defense lawyers and the court, was taken into account.

Ramishvili and Kokhreidze v. Georgia on the issue of a caged dock⁴¹. In this case, the Court decided that the use of a caged dock and the high number of government agents and Special Forces in the courthouse was not justified for security reasons. This “harsh and hostile appearance of judicial proceedings could lead an average observer to believe that “extremely dangerous criminals” were on trial”, which undermined the presumption of innocence.

Ashot Harutyunyan v. Armenia⁴² **on the issue of a metal cage**. During the entire proceedings - two months, twelve public hearings - before the Court of Appeal, Mr. Ashot Harutyunyan was placed in a metal cage in the courtroom. For the Court, "the metal cage was a permanent security measure used for all criminal cases examined in the Criminal and Military Court of Appeal. Therefore, the imposition of this measure does not suggest that the Court of Appeal regarded the applicant as guilty". If the Court "undoubtedly disapproves of the use of such an indiscriminate and humiliating security measure in respect of the applicant, which it has found to be unacceptable in the light of the requirements of Article 3 of the Convention", nevertheless, it cannot be said that the principles of the presumption of innocence were violated.

III – FOR BETTER RESPECT OF THE PRESUMPTION OF INNOCENCE AT THE HEARING

For the ECHR, the presumption of innocence is not endangered by the use of a dock contrary to other legal values, whereas more and more legal experts consider that there is a real risk (A). We would like to propose some solutions for better respect of the presumption of innocence at the hearing (B).

³⁹ ECHR, *Jiga v. Romania*, 16 March 2010, application n°14352/04

⁴⁰ ECHR, *Auguste v. France*, 7 June 1990, application n°11837/85, 69/104

⁴¹ ECHR, *Ramishvili and Kokhreidze v. Georgia*, 27 January 2009, application n°1704/06

⁴² ECHR, *Ashot Harutyunyan v. Armenia*, 15 June 2010, application n° 34334/04

The Dock and Physical Restraints : the presumption of innocence put to the test by appearances at trial

A – DOES THE EUROPEAN COURT OF HUMAN RIGHTS SHY AWAY FROM THE PRESUMPTION OF INNOCENCE?

We have seen that the problems caused by designated enclosures have not been denied by the Court. What we do not agree with is that it refused to take into account the effects of such measures on the presumption of innocence.

1) *Fears of disorder more important than the respect of the presumption of innocence?*

Dignity. The European Court of Human Rights only tackles the use of the dock from the point of view of dignity covered by article 3 of the ECHR. In the case concerning Armenia,⁴³ the Court explains that there has been a violation of Article 3 of the Convention. For the Court: “such a stringent and humiliating measure [...] was not justified by any real security risk”.

The presumption of innocence really respected? But in the same case, the Court refuses to consider that these measures also constitute a violation of the principle of the presumption of innocence. The Court explains that “the metal cage was a permanent security measure used for all criminal cases examined in the (...) court of appeal. Therefore, the imposition of this measure does not suggest that the Court of appeal regarded him as guilty”. Whereas the ECHR disapproves of the use of such an indiscriminate and humiliating security measure, it also considers that the principle of the presumption of innocence is not violated. We disagree with this conclusion because, even if the authorities do not want the accused to appear guilty, the effect of such a measure is real.

2) *Not to deny the power of appearances*

Justice must also be seen to be done - We are surprised to see that the Court does not take into account the power of appearances. Yet, the Court often says that “*justice must not only be done, but must also be seen to be done*”. The impact on the jury cannot be denied. It is necessary to render these words more effective as they usually guide the judicial officers of this Court. Why did the ECHR consider in another case⁴⁴ the fact that the appearance of the accused in prisoner clothing at the hearing violates the presumption of innocence? Isn't it incoherent with the position regarding the dock? For us, the fact that the accused is sitting in a designated enclosure constitutes such a violation.

The example of handcuffs – Handcuffs really come into conflict with the presumption of innocence. An accused person who does not appear free at trial cannot benefit from a perfectly fair trial because he is still to be judged. Nevertheless, the impression of handcuffs is not the same for the jury as for a professional judge. In fact, it is easier for a judge to try without prejudice because of his experience, but we feel that this is not the case for juries. Handcuffs symbolize dangerousness and fear. Is it possible for

⁴³ ECHR, *Ashot Harutyunyan v. Armenia*, 15 June 2010, application n° 34334/04

⁴⁴ ECHR, *Jiga v. Romania*, 16 March 2010, application n° 14352/04

The Dock and Physical Restraints : the presumption of innocence put to the test by appearances at trial

juries to consider the defendant as an innocent person while his appearance shows the contrary? In our opinion, the presumption of innocence is not respected in such a case. That is why the accused generally appears without handcuffs during a trial. They are removed when the hearing starts. Why doesn't the European Court of Human Rights react in the same way towards the Dock?

Not yet judged. The placing of the accused in a dock could create a preconceived idea about his guilt or have him regarded by the jury as a criminal. That is why some accused persons sometimes demand to sit elsewhere. Let us remember the court appearance of the Members of Parliament, Eliot Morley, David Chaytor and Jim Devine, who didn't want to sit in the dock⁴⁵. It is a real risk for the presumption of innocence: an accused person should not be considered as a criminal in the eyes of the jury and the public until his guilt has been proved. Sitting in a glass cage, a metal cage or another type of dock creates an impression of danger and contributes to identifying the defendant as a criminal, which is forbidden. He is placed in a subordinate position compared to other court players.

A biased trial - Placing the defendant in a secured area implies that he is dangerous and that he requires restraints. How can the jury judge with fairness and without bias if the defendant is presented in an inferior position and as a person who requires security measures? It is obvious that appearances go against the accused, creating a bias in the perception of the defendant by members of the jury and the public. Yet, it is important for justice to protect appearances...

B – SOME SUGGESTIONS FOR GREATER EFFECTIVENESS IN THE PRESUMPTION OF INNOCENCE AT THE HEARING

Comparing laws around the world is very informative and we can draw inspiration from countries like the USA or Norway, which have already taken into account conflicts at the hearing between the presumption of innocence and security measures. Firstly, it is essential to remember that restraints should be an exception, contrary to what happens in a lot of European countries, such as France (1). Nevertheless, the best solution is to put an end to the use of the secure stand (2).

1) Separate dock should be an exception

Not a normal practice. Our first proposal is to reserve the dock for situations which deserve it. The use of secure stands should not constitute normal practice. They must be reserved for exceptional cases.

Necessity. Defendants who do not threaten to use violent behavior or to escape should not be placed in such a dock. The judge needs to assess whether the dock is really necessary in each context, without forgetting that the dock is an exception. He has to decide where the accused should sit within the

⁴⁵Simon Hoggart, "MPs in the dock: from kings of the castle to a glass cage", Thursday 11 March 2010, [Online] <http://www.guardian.co.uk/politics/2010/mar/11/mps-dock-expenses-westminster> (page viewed in March 2012)

The Dock and Physical Restraints : the presumption of innocence put to the test by appearances at trial

circumstances of each case. It should become the exception rather than the norm. The use of the dock has to be prescribed by law and assessed by judges. If French law says that freedom is the norm⁴⁶, the corresponding article is in fact enforced restrictively.

Proportionality. Moreover, in accordance with article 309 of the French Code of Criminal Procedure, “The president maintains order in court and conducts the proceedings”. This article allows the president to adapt security measures to the case. Thus, during the hearing, if there is a risk of escape or violence, the president could decide that the defendant has to sit in the dock. In fact, according to article 318 of the French Code of Criminal Procedure “The accused appears free and only in the company of guards to prevent his escape”.

Reasonable reasons. In the case of *Ashot Harutyuyan v. Armenia* of 15th June 2010, the Court demands that such a measure be justified by security considerations. States cannot make a general reference to security but “*provide any detailed reasons as to why the applicant’s release from the metal cage would endanger security in the courtroom*”.

Last resort. If the risk exists, there are less extreme means that justice can use, such as prison garb. The law says that defendants can lose this right to appear free if they are very disruptive or threatening. The dock must be the last resort. The presumption of innocence will be more effective with limited resort to the use of designated enclosures. Individual rights have to triumph over security fears.

2) Trials without a dock?

The courtroom is not an extension of prison. Surveillance Society takes away a lot of excesses and the use of the dock as a normal practice is one of them. We feel that we must be more courageous and opt for new spatial organization at trial.

Norway's example - To explain our point of view, we would like to use the recent example of the Anders Behring Breivik trial in Norway. He was accused of killing seventy-seven people in twin attacks last year in his country. His trial began on 16th April 2012. A lot of people in France were surprised to see his trial on television: he had his handcuffs removed as he arrived for trial and there was no dock. Throughout his trial, he was sitting at a table, surrounded by his two lawyers and facing the judges. The public, including the victims, was behind him. His trial was an example of the respect of the rights of the defense. The presumption of innocence was really respected because of the absence of the dock and there were not any issues of escape or violence. He was judged fairly, even though such a trial was “sensitive”, because of the number of victims, the violence of the crimes and Anders Behring Breivik's provocation throughout proceedings.

⁴⁶ Article 318 of the French Code of Criminal Procedure

The Dock and Physical Restraints : the presumption of innocence put to the test by appearances at trial

The U.S. example. Moreover, in the United States, the accused generally appears unrestrained and sits at the bar table. The dock was removed in the nineteenth and twentieth centuries. This change was due to several court rulings that asserted that the dock violates the defendant's common law right to consult his lawyer⁴⁷. Later rulings spoke about dignity and the presumption of innocence finding that the use of shackles⁴⁸, prison garb⁴⁹ and the presence of a dock⁵⁰ were inconsistent with these values. This system has worked successfully, so why can't it be extended to France, Germany and other countries? The presumption of innocence is clearly more respected in the USA and Norway, countries where the accused is placed at the bar table at the trial, than in countries such as France, in which the accused sits in a designated enclosure.

To extend trials without a dock. It is the same situation in Ireland and the Australian Capital Territory: the accused sits behind the bar table totally free. We feel that this is the best solution when it comes to respecting the principles of equality of arms, presumption of innocence and also the right to legal defense, because defendants cannot communicate with their lawyers as well as when they sit at the same table. The lawyers can speak with them during the trial and the message sent to the jury when their client is not isolated is better. We consider that these models should be extended to countries in which defendants sit in the dock. This would require a change in mentality, particularly in France, because fear about insecurity is tenacious. Nevertheless, foreign examples show that trials without a designated enclosure exist and that hearings occur without clashes. Serious thought about the trial's spatial organization is necessary to ensure that the presumption of innocence has the place it deserves.

Such a change will not take place if the European Court of Human Rights does not give impulse to this change in mentality and if the Court refuses to ensure that the presumption of innocence prevails over security measures. Why does the Court shy away from appearances at the hearing? The presumption of innocence of the accused is strongly protected in the Media: judges make sure that the accused is not shown as a criminal in the newspapers before trial. Journalists have to use their words and pictures carefully. Why doesn't the Court protect the appearance of the accused at the hearing with the same strength as in the newspapers?

47 For instance Court of Pennsylvania 1914, *Commonwealth v. Boyd*, 92 A.705 (Pa.1914)

48 Supreme Court 1970, *Illinois v. Allen*, 397.US 337, 344.

49 Supreme Court 1976, *Estelle v. Williams* 425 US.501, 512-513.

50 US Court of appeal for the First Circuit, *Young v. Callahan*, 700 F.2d 32,36

BIBLIOGRAPHY

REFERENCE WORK

- ✎ MULCAHY L., *Legal architecture : justice, due process and the place of the law*, ed. Routledge, December 14th 2010, 224 pages

WEBSITES

- ✎ <http://www.echr.coe.int/echr>
- ✎ <http://www.lexadin.nl/wlg/other/nofr/lxsoft.htm>

CONTRIBUTIONS

- ✎ KOKOREFF M., “Les trajectoires recomposées, ou le pénal entre mises en scène et zones d'ombre”, in Dan KAMINSKI et Michel KOKOREFF *Sociologie pénale : système et expérience* érès « Trajets », 2004 p. 107-131.
- ✎ MILLER J.J., “A Right-Based Argument Against the Dock”, *Criminal Law Review* Issue 3, 2011
- ✎ TAIT D., “Glass cages in the dock? : Presenting the defendant to the jury”, *Symposium on Comparative jury systems*, in *Chicago-Kent Law Review*, Vol. 86 n°2, 2011.

EUROPEAN COURT OF HUMAN RIGHTS CASE LAW

- ✎ *Barberà, Messegué ans Jabardo v. Spain*, no. 10588/83, 6 December 1988
- ✎ *Auguste v. France*, no. 11837/85, D.R. 69, p. 104, Commission Report of 7 June 1990
- ✎ *Kozlov v. Finland*, no. 16832/90, 28 May 1991
- ✎ *Stanford v. The United Kingdom*, no. 16757/90, 23 February 1994
- ✎ *Allenet de Ribemont v. France*, no.15175/89, 10 February 1995
- ✎ *Meerbrey v. Germany*, no. 37998/97, Commission decision of 12 January 1998
- ✎ *Henaf v. France*, no. 65436/01, §§ 51 and 56, ECHR 2003-XI, 27 November 2003
- ✎ *Sarban v. Moldova*, no. 3456/05, § 90, 4 October 2005
- ✎ *Potapov v. Russia*, no. 14934/03, 1 August 2006
- ✎ *Istratii and Others v. Moldova*, nos. 8721/05, 8705/05 and 8742/05, §§ 57 and 58, 27 March 2007
- ✎ *Gorodnichev v. Russia*, no. 52058/99, §§ 105-109, 25 May 2007
- ✎ *Ramishvili and Kokhraidze v. Georgia*, no. 1704/06, §§ 98 et seq., 27 January 2009
- ✎ *Jiga v. Romania*, no. 14352/04, 16 March 2010
- ✎ *Ashot Harutyunyan v. Armenia*, no. 34334/04, §§ 126 et seq., 15 June 2010
- ✎ *Khodorkovskiy v. Russia*, no. 5829/04, 31 May 2011