CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

INFORMATION NOTE No. 63
on the case-law of the Court
April 2004

The summaries are prepared by the Registry and are not binding on the Court.

CONTENTS

Article 6

Judgments

Admissible

Inadmissible

Article 8

Judgments

Communicated

Article 10

Judgment

Admissible

Inadmissible

Communicated

Article 13

Admissible

Article 34

Judgment

Article 35(1)

Judgments

Admissible

ARTICLE 1

JURISDICTION OF STATES
"Jurisdiction" of Georgia over the Autonomous Republic of Adjaria.

ASSANIDZÉ - Georgia (N° 71503/01)
Judgment 8.4.2004 [Grand Chamber]
(see Article 5(1), below).

RESPONSIBILITY OF STATES
Responsibility of Georgia for acts directly imputable to the local Adjarian authorities.

ASSANIDZÉ - Georgia (N° 71503/01)
Judgment 8.4.2004 [Grand Chamber]
(see Article 5(1), below).

ARTICLE 2

LIFE
Death of civilian as result of explosion of tracer bullet and alleged negligence of the security forces in taking him promptly to a hospital: *inadmissible*.

EVCIL – Turkey (N° 46260/99)
Decision 6.4.2004 [Section IV]

The applicant's husband was wounded by the explosion of an unidentified object which he picked up in a pasture when taking his animals out to graze. An eyewitness informed the security forces who were stationed 500 metres away from the scene. Some time later the applicant arrived in a minibus and took her husband to a health clinic for initial treatment. He died during his transfer to a State hospital. A preliminary investigation was opened by the public prosecutor the same day. An autopsy was carried out and statements were taken from eyewitnesses. One of the witnesses stated that the security forces had told him that one of their "special teams" would arrive shortly. Another declared that the incident had taken place at around 11.00 a.m. The applicant subsequently gave a statement in which she maintained that the incident had occurred around 9.30 a.m. She thus held the security forces responsible for his death for not having provided him with help speedily, as well as for allegedly leaving the explosive device which had killed her husband. A ballistic examination of the shrapnel collected at the scene found that the shrapnel bore resemblance to tracer bullets used for military purposes. The prosecutor enquired with the Gendarmerie and Brigade on the possible use of such bullets by the security forces in the area. Their response was that tracer bullets stolen from the army were also used by the PKK,. The prosecutor issued a decision of non-prosecution. A year later the investigation was reinitiated and the security forces were required to continue the investigation into the identification of those responsible for the incident.

Inadmissible under Article 2: On the basis of the evidence submitted by the parties it was not possible to conclude that the security forces were responsible for the abandoned tracer bullet that caused the death of the applicant's husband. As regards the alleged negligent behaviour

of the security forces for not having promptly taken the victim to a hospital, there was nothing in the case file which showed exactly when the security forces had called for help, and the exact time of the incident was disputed. Given the road conditions in the area, it was not unreasonable to believe that a minibus would have taken one hour to arrive at the scene. Thus, the State's responsibility for the death of the applicant's husband could not be engaged. Although the investigation had not resulted in the identification of the person(s) responsible for leaving the tracer bullet behind, it had not been devoid of effect, and could be regarded as having satisfied the requirements of Article 2: manifestly ill founded.

LIFE
Alleged abduction and killing by State agents, and lack of effective investigation into the disappearance: *violation*.

TAHSIN ACAR – Turkey (N° 26307/95)
Judgment 8.4.2004 [Grand Chamber]

Facts: The applicant claims that his brother, a farmer living in a village in south-east Turkey, was abducted in August 1994 by two gendarme officers. He maintains that his brother was subsequently detained incommunicado at a gendarmerie command and was now to be presumed dead. Two of the eyewitnesses to the abduction alleged the applicant's brother had been tied and blindfolded. Following several petitions by the victim's relatives to the authorities, investigations into his disappearance were initiated. However, the Provincial Administrative Council decided not to take any proceedings against the two accused gendarme officers on grounds of insufficient evidence. The victim's relatives subsequently claimed to have seen him in a news broadcast of suspected terrorists apprehended in Diyarbakir. They attempted to obtain a video recording of these broadcasts but without success. In a judgment of 9 April 2002 a Chamber of the Court decided, by six votes to one, to strike out the case on the basis of a unilateral declaration by the Turkish Government. The applicant requested that the case be referred to the Grand Chamber, which considered that the in the particular circumstances the application should not be struck out and that it should pursue its examination.

Law: Article 2 (disappearance) – The applicant did not offer any elements in support of his allegation that the gendarme officers had been involved in the abduction of his brother. The only eyewitnesses to the abduction had initially declared they did not know those responsible for the abduction, whereas one of them later stated he explicitly knew the accused gendarme officers. The applicant's claim is therefore based on hypothesis and speculation rather than on reliable evidence. In the circumstances, it has not been established beyond reasonable doubt that the responsibility of the State was engaged in the disappearance of the applicant's brother.
Conclusion: no violation (unanimously)

Article 2 (effective investigation) – The initial investigation, which had been conducted under the authority of one of the accused gendarme officers, could be regarded as being *prima facie* in accordance with the authorities' procedural obligations under Article 2. However, once the applicant had informed the authorities of his suspicions against the gendarme officers, the public prosecutor had not verified the manner in which that initial investigation had been carried out. Similarly, no steps had been taken to verify certain statements by the victim's wife or to obtain a video recording of the television broadcast where the family members had allegedly seen the victim. In these circumstances, the authorities had not conducted an adequate and effective investigation into the disappearance, and there had thus been a breach of the State's procedural obligations under Article 2.
Conclusion: violation (unanimously)

Article 38 – The failure of the authorities to comply diligently with requests by the Court to make available evidence, such as the case-file at the Provincial Administrative Council and the video recording of the news broadcast, was not compatible with the Government's obligations under this Article. No separate issue arose under Article 34.

Article 41 – The Government awarded the applicant 10,000 euros in respect of non-pecuniary damage. It also made an award for costs and expenses.

LIFE
Inhuman and degrading treatment of villagers by security forces, and deaths related thereto: *violation*.

AHMET ÖZKAN and others – Turkey (N° 21689/93)
Judgment 6.4.2004 [Section II]

Facts: The applicants claimed that in February 1993 security forces had attacked their village, as a result of which two children had died. They maintained that on the same day the security forces had set fire to their houses and had taken most of the male villagers into detention. After assembling the villagers in the village square, the security forces had obliged adult male villagers to lie face down on the ground, in a mixture of mud and slush, in view of their families. These boys and men had occasionally been beaten, kicked and trampled on by the soldiers guarding them. A number of the men had then been made to walk for two to three hours barefoot through the snow and slush from the village to the gendarme station, and had been subjected to ill-treatment during detention, resulting in serious injuries of some villagers and the death of one. The applicants further alleged that the security forces had returned to their village later that year, when they had burned other houses and destroyed harvested crops, and that they had returned once again in the spring of 1994 when they had killed four villagers and forced the villagers to leave. The Government disputed this version of events and claimed that when the security forces had approached the village to carry out a search in the valley they had come under fire and had responded in self-defence. In the course of the ensuing clash, the roofs of some houses in the village had caught fire, and nobody, besides a gendarme, had been injured or killed during the events. The facts being disputed by the parties, a delegation of the former European Commission of Human Rights took evidence.

Law: Article 2 (use of force by security forces) – Bearing in mind that at the time of the events there were serious disturbances in south-east Turkey involving armed conflict between the security forces and members of the PKK, the security forces' tactical reaction to the initial shots fired at them from the village had not represented a disproportionate degree of force, and had been "absolutely necessary" for the purpose of protecting life.
Conclusion: no violation (unanimously).

Article 2 (deaths of villagers) – In relation to the daughter of one of the applicants, it remained unsubstantiated that she had died as a consequence of the failure of the security forces to secure appropriate medical treatment. However, the callous disregard displayed by the security forces as to the possible presence of civilian casualties after the exchange of fire amounted to a breach of the authorities' obligation to protect life under Article 2. As regards the villager who had died of pneumonia whilst in custody, it had been established beyond reasonable doubt that in all likelihood he had contracted this illness as a result of having been made to walk barefoot through the snow, as well as by the conditions of his subsequent detention. The authorities were therefore regarded as liable for the cause of his death. In both cases, the Court found that the public prosecutors involved had failed to conduct effective investigations into the circumstances surrounding theses deaths, amounting to violations of Article 2 under its procedural limb.
Conclusion: violation (unanimously)

Article 3 (treatment of villagers in the village square) – In the absence of any resistance from the villagers, the treatment of the men in the square was unjustified and surpassed the usual degree of intimidation and humiliation inherent in every arrest or detention. In consequence, there had been a breach of Article 3 of the Convention.
Conclusion: violation (unanimously).

Article 3 (taking into detention and conditions of detention) – Several of the male villagers had developed frostbite on their feet as a result of the conditions in which they had been made to walk from the village to the gendarme station. The conditions in which they had been held in detention in two unfurnished rooms in the basement of the gendarme station, for periods of between six and thirteen days, had had detrimental effects on their health and well-being. In consequence, the Court found that they had been subjected to inhuman and degrading treatment in violation of Article 3. There had also been a procedural violation of this Article in view of the total inactivity of the judicial authorities to investigate the manner in which the detained villagers had sustained their foot injuries.
Conclusion: violation (unanimously).

Article 5 – The villagers had not been held in unacknowledged detention, but the complete lack of custody records at one of the gendarme stations and the unreliability of such records at another implied there had been an infringement of the prohibition of arbitrariness inherent in Article 5.
Conclusion: violation (unanimously).

Article 5(1) (procedure prescribed by law) – It had not been sufficiently shown that the villagers' detention had been duly authorised by a public prosecutor, as required under domestic law. Moreover, there were no facts or circumstances showing that the villagers' detention without adequate authorisation had been strictly required by the exigencies of the situation envisaged by Article 15(1).
Conclusion: violation (unanimously).

Article 5(3) (promptly before a judge) – The failure to bring twenty eight of the villagers before a "judge or other officer authorised by law to exercise judicial power" and the holding of sixteen other villagers for seventeen days before they were brought before the Magistrates' Court were not strictly required by the situation in south-east Turkey, as relied on by the Government.
Conclusion: violation (unanimously)

Article 5(3) (length of pre-trial detention) – One villager had been indicted by the State Security Court to stand trial for PKK-related offences in April 1993. Although the nature of the charges and the strength of the evidence against him may initially have justified his detention, that of itself was not a sufficient ground for prolonging his detention pending first-instance trial proceedings until September 1998 (five years, six months and fifteen days).
Conclusion: violation (unanimously).

Article 8 – It was established that two houses had been deliberately set on fire by the security forces during the events, and that the houses of eleven other villagers had also caught fire as a result of the security forces' intensive firing on the village. These acts represented grave and unjustified interferences with the right to respect for their private and family lives of the applicants concerned.
Conclusion: violation (unanimously).

Article 41 – The Court made individual awards to the applicants under all heads of damage. It also made an award in respect of costs and expenses.

ARTICLE 3

INHUMAN OR DEGRADING TREATMENT
Ill-treatment of a minor in police custody : *violation*.

RIVAS - France (N° 59584/00)
Judgment 1.4.2004 [Section I]

Facts: The applicant, a juvenile at the relevant time, had been arrested as part of an investigation into a burglary. During police custody, he was questioned by a police officer inside an office. In circumstances which were disputed, the latter kneed him, resulting in a ruptured testicle which required surgery and causing temporary unfitness for work lasting five days. The Criminal Court convicted the police officer of assault. It was established that the applicant had not hit the police officer at any point; in the court's opinion, the blow inflicted by the police officer was unnecessary and disproportionate to the applicant's behaviour. The Court of Appeal overturned the judgment and acquitted the police officer on the ground of self-defence. It considered that the blow inflicted had not been intentional and accepted the police officer's explanations, which it held to be credible, ruling that the response had been proportionate to the real threat posed to the police officer by the applicant's attitude at that precise moment: the latter had suddenly risen from a chair to leave the office, turning round with his arm raised ready to strike just as the police officer had grabbed him to prevent his escape. An appeal by the applicant on points of law was dismissed by the Court of Cassation.

Law: Article 3 – With regard to the proportionality of the physical force used against the detainee by an agent of the State, the Court was not convinced by the Government's arguments that the police officer had responded reasonably to the applicant's conduct. The applicant's alleged escape attempt did not absolve the State of its responsibility. The applicant had been unarmed and in a police station. At the very least, the police officer could have used other methods to make him sit down again. The Court held that the Government had not shown that the use of force against the applicant had been necessary. Having regard to the suffering caused and to the applicant's age, the treatment inflicted on him had been inhuman and degrading.
Conclusion: violation (unanimous).

Article 41 – The Court awarded the applicant 15,000 euros in respect of non-pecuniary damage. It also made an award for costs and expenses.

DEGRADING TREATMENT
Adequacy of medical care of detainee: *admissible*.

KOVAL – Ukraine (N° 65550/01)
Decision 30.3.2004 [Section II]

Facts: The applicant was detained in November 1997 on charges of forgery, unlawful currency transactions and abuses of power. Whilst in detention he had a heart attack and suffered a number of other diseases. A medical examination nevertheless concluded that the applicant could be held in custody in an Investigative Detention Centre (hospital). He was released on bail for health reasons in June 1998, when his wife deposited the requisite bail amount. In the ensuing criminal investigations, a witness alleged that the applicant had attempted to influence his testimony. As it was considered that he had breached the bail

conditions, and as new charges had been brought against him, the applicant was placed in hospital custody for a second time, from November 1998 until June 2000. He was then transferred to a Penitentiary to serve the sentence of imprisonment which the courts imposed on him. In the course of the proceedings which led to his applicant's conviction, his bail was forfeited and his request to question a particular witness was refused. The applicant was amnestied and released in April 2001. He complains of a lack of adequate medical treatment from the moment of his initial detention until he was released, and of inadequate conditions of detention. He also complains that the procedure whereby the bail sum was forfeited to the State was unfair.

Admissible under Articles 3, 6 and 13: The Government's preliminary objections (i) out of time: accepted for two of the periods of detention, but dismissed concerning the applicant's detention in hospital between November 1998 and June 2000, a period which fell within the six-month period; (ii) non-exhaustion: dismissed as it had not been shown that challenging the conditions of detention in the courts would have been an effective remedy; (iii) non-applicability of Article 6: dismissed given that interference with witnesses was a criminal offence under domestic legislation and Article 6(1) was therefore applicable under its criminal head.

EXPULSION
Expulsion to Syria of a family, although the father had been convicted there of complicity to murder: *communicated*.

BADER – Sweden (N° 13284/04)
Decision 27.4.2004 [Section IV]

The applicants, who are a family of Syrian nationality, arrived in Sweden in 2002 and applied for asylum. They claimed that the father had been imprisoned, tortured and ill-treated by the Syrian Security Police. Their asylum applications were rejected, as well as their appeals, by the Migration Authorities on the ground that they had not shown that they risked persecution if returned to Syria. On the basis of new information received by the applicants that the father had been convicted, *in absentia*, of complicity to murder and sentenced to death by the Regional Court, they submitted a new application for asylum, and the expulsion order was stayed. In the meantime, the Swedish embassy in Syria verified that the judgment was authentic and received a report from a local lawyer stating that it was probable that the case would be re-tried in court if the accused were found. The report also indicated that it was very rare that death sentences were imposed at all by the Syrian courts nowadays and if a case was "honour related", such as the one the father was charged with, it was generally considered as an extenuating circumstance leading to a lighter sentence. On the basis of this information, the Aliens Appeals Board rejected the new asylum request, finding that the applicant did not have a well-founded fear of being arrested and executed if returned to Syria.
Communicated under Articles 2 and 3.

ARTICLE 5

Article 5(1)

LAWFUL DETENTION
Continued detention despite a final and binding decision : *violation*.

ASSANIDZÉ - Georgia (N° 71503/01)
Judgment 8.4.2004 [Grand Chamber]

Facts: The applicant was formerly the mayor of the capital of the Ajarian Autonomous Republic in Georgia and a member of the Ajarian Supreme Council. He was sentenced by the Ajarian High Court to twelve years' imprisonment in October 2000 on a charge of kidnapping. He appealed on points of law. In January 2001 the Supreme Court of Georgia quashed the conviction and acquitted the applicant in a decision that was final and unappealable. It also made an order for the applicant, who was in the custody of the local Ajarian authorities, to be released immediately. The central Georgian authorities made various attempts through both legal and political channels to get the local Ajarian authorities to release the applicant. Nevertheless, he was still being held in the Ajarian Security Ministry prison when the Court adopted its judgment.

Law: Article 1 of the Convention – The applicant's complaints against the Autonomous Republic of Ajaria, a Georgian entity with autonomous status, came within Georgia's jurisdiction within the meaning of Article 1. The central authorities had made repeated attempts through the available legal and political channels to obtain the applicant's release. Under the domestic system, the matters complained of were directly *imputable* to the local authorities of the Autonomous Republic of Ajaria, but only the Georgian State's *responsibility* was engaged under the Convention.

Article 5(1) – Although the applicant had been acquitted and his immediate release ordered by the Supreme Court of Georgia and although his case had not been reopened and no further order had been made for his detention, he was still in custody. His detention was not founded on any statutory provision or judicial decision.
Conclusion: violation (unanimously).

Article 6(1) – Right to a trial in criminal proceedings: the failure to comply with a final and enforceable decision to acquit for more than three years had deprived Article 6(1) of all useful effect.
Conclusion: violation (14 votes to 3).

Article 41 – The Court awarded compensation for pecuniary and non-pecuniary damage and a sum for costs and expenses.
As to the measures which the respondent State should take under the supervision of the Committee of Ministers to put an end to the violations (Article 46), Georgia was required to secure the applicant's release at the earliest possible date.

ARTICLE 6

Article 6(1) [civil]

ACCESS TO COURT
Impossibility of lodging an appeal against dismissal from employment at an airport on grounds of security risk: *admissible*.

JONASSON – Sweden (N° 59403/00)
Decision 30.3.2004 [Section IV]

The applicant was hired as a cook in a company which ran a restaurant at an airport (on premises it rented from the Civil Aviation Administration (CAA)). As a person having access to sensitive areas at the airport, the applicant was subjected to a security check which revealed that he had twice been convicted of assault. Considering that he represented an unsuitable security risk, the CAA requested the company which employed him to prevent the applicant from participating in activities which required a police record check and to turn in his airport access card. The company informed the applicant by letter of the decision by the CAA, which could not be appealed against to a court. As the company could not offer the applicant a job on another location, he was given notice and suspended from work. The applicant's trade union instituted proceedings against the company at the Labour Court claiming that the dismissal was unjustified. The court found against the applicant, concluding that the CAA's decision had been taken pursuant to applicable domestic rules and that the company had been obliged to comply with it.
Admissible under Articles 6, 8 and 13.

FAIR HEARING
Alleged legislative intervention in pending court proceedings : *no violation*.

GORRAIZ LIZARRAGA and Others - Spain (N° 62543/00)
Judgment 27.4.2004 [Section IV]
(see Article 34, below).

Article 6(1) [criminal]

RIGHT TO A COURT
Refusal to release detainee following final acquittal : *violation*.

ASSANIDZÉ - Georgia (N° 71503/01)
Judgment 8.4.2004 [Grand Chamber]
(see Article 5(1), above).

FAIR HEARING
Admission in trial of evidence obtained with entrapment by a journalist: *inadmissible*.

SHANNON – United Kingdom (N° 67537/01)
Decision 6.4.2004 [Section IV]

The applicant is a former actor who starred in a popular television series. In 1997, a journalist working in a tabloid newspaper received a call from an informant stating that the applicant had been supplying drugs in 'show business' circles. The journalist arranged a meeting with the applicant to discuss an employment offer as a celebrity guest in a night-club in Dubai. For the meeting, which was recorded, the journalist posed as a sheikh and others from the newspaper staff posed as his entourage. During the conversation, the journalist said he required cocaine for a party and the applicant said he could supply it (as well as the cannabis requested by the sheik's personal assistant). He subsequently made some telephone calls, including to his agent who stated that he had spoken to him in an excited manner about the sheikh wanting him to get some cocaine, and then went out to collect the drugs. Eleven days after the events, the journalist published a front page headline article based on the recorded material. A few days after the publication of the article, the police arrested the applicant and charged him with three drug offences. Before the trial began, the applicant applied for the exclusion of the evidence obtained by the journalist. The trial judge refused the request since the applicant had volunteered to supply the drugs without being subject to pressure. Further, even if he had been entrapped, that could not constitute a defence in English law. The applicant's request during the trial that the journalist disclose the identity of his informant was also refused, as non-disclosure did not affect the fairness of the trial as a whole. The applicant was convicted and sentenced on two counts. The Court of Appeal dismissed his appeal.

Inadmissible under Article 6(1): It cannot be excluded that evidence obtained as a result of entrapment by a private individual may render proceedings unfair. However, in the instant case there were no reasons to question the assessment which had been made by the trial judge or the Court of Appeal that the evidence fell short of establishing actual entrapment, or that in any event, even if the applicant had been encouraged in a broad sense, he had readily applied himself to supplying the drugs. Moreover, the applicant had not at any stage, either in the domestic proceedings or in those before the Court, alleged that the evidence against him was not genuine or unreliable. In these circumstances, the admission of evidence had not resulted in any unfairness and there was no appearance of a violation of Article 6.

FAIR HEARING
Imposition of a fine to a registered car owner who refused to disclose the name of the person who had driven his car: *no violation*.

WEH – Austria (N° 38544/97)
Judgment 8.4.2004 [Section I]

Facts: The applicant, who was the registered owner of a car that had exceeded the speed limit, was served with an anonymous order by the District Authority. As the sum in the order was not paid, the District Authority opened criminal proceedings against unknown offenders and ordered the applicant to disclose who had been driving the car. The applicant responded with imprecise information, as a result of which he was sentenced to pay a fine under the relevant provision of the Motor Vehicles Act. His successive appeals, including one to the Constitutional Court, were dismissed. The courts considered, *inter alia*, that the provision in the Motor Vehicles Act whereby a registered car owner was under the obligation to disclose the name and address of the driver was one of constitutional rank. The applicant was never prosecuted or sentenced for having committed a traffic offence. He complained to the Court

that the obligation to disclose the name of the driver had breached his right to remain silent and the privilege against self-incrimination.

Law: Article 6(1) – The applicant had been punished under the Motor Vehicles Act for failure to give accurate information, not for having committed a traffic offence. The criminal proceedings for speeding were conducted against unknown offenders and it could not be maintained that such proceedings were anticipated against the applicant, against whom the authorities did not have any element of suspicion. Establishing such a link would be remote and hypothetical. In the absence of a concrete link with criminal proceedings, the use of compulsion to obtain information from the applicant did not raise any issue with his right to silence and privilege against self-incrimination under Article 6.
Conclusion: no violation (4 votes to 3).

IMPARTIAL TRIBUNAL
Impartiality of trial judges who had previously participated in an appeal concerning temporary suspension of the accused from his post: *violation*.

CIANETTI – Italy (Nº 55634/00)
Judgment 22.4.2004 [Section I]

Extract: "The Court notes that in the present case the fear of a lack of impartiality arose from the fact that the judges who had sat in the trial court at first instance were also part of the division of the Perugia court that re-examined whether to apply a precautionary measure consisting in the applicant's suspension from his duties. In addition, two of these judges, X and Y, had made an order rejecting a request for a precautionary measure against the applicant in separate criminal proceedings concerning similar offences. Such a situation may give rise to misgivings on the part of the accused as to the judges' impartiality. However, whether such misgivings may be regarded as objectively justified depends on the circumstances of each particular case; accordingly, the mere fact that a judge has also taken pre-trial decisions in a case cannot in itself justify fears as to his or her impartiality. In this respect, the Court notes that, according to the order adopted on 20 May 1994 by the division of the Perugia Court that re-examined the precautionary measures, no issue arose regarding the existence of cogent evidence against the applicant. This order and the order of 4 July 1994 also considered the existence of illegal administrative practices regarding the recruitment of temporary staff within the department in which the applicant was employed. Admittedly, in ruling on the adoption of precautionary measures the judges impugned by the applicant had summarily assessed the available evidence in order to decide whether at first sight the prosecution service's suspicions had some substance, and had not sought to ascertain whether the evidence produced was sufficient to secure a conviction. However, the terms used in the disputed orders suggested that there had been sufficient evidence to conclude that an offence had been committed. The same judges who had adopted these orders then ruled on the applicant's guilt. The Court considers that, in the circumstances of this case, the impartiality of the trial court could arouse genuine doubts. The applicant's fears in that connection could thus be regarded as objectively justified."

ARTICLE 8

PRIVATE LIFE
Recording and storing by penitentiary authorities of a prisoner's telephone conversations subsequently used as evidence to convict him for another criminal offence: *violation*.

DOERGA – Netherlands (N° 50210/99)
Judgement 27.4.2004 [Section II]

Facts: The applicant, who was serving a prison sentence, was suspected of giving a false tip-off to the police about an escape plan by other detainees. His telephone conversations were therefore tapped and recorded on tape. Still whilst in detention, the applicant was suspected of having organised - from prison - the detonation of an explosive device in the car of his former partner. The telephone conversations which had been recorded were made available to the criminal investigation into the bomb attack. The applicant was convicted by the Court of Appeal of complicity in pre-meditated grievous bodily harm and making a threat to kill. The conviction was based, *inter alia,* on some of the applicant's telephone conversations recorded by the prison authorities prior to the bomb attack, in particular one in which he warned his sister never to approach his former partner's car. The Court of Appeal rejected the applicant's arguments that the conversations should be disregarded as unlawfully obtained evidence, finding that their recording served the lawful purpose of preserving order within the penitentiary. Although the internal prison regulations prescribed the immediate erasure of recorded conversations, they had been stored as there were indications of an on-going escape plan. The Supreme Court rejected the applicant's cassation appeal, finding that the erasure obligation in the internal prison regulations could be interpreted in such a manner that the keeping of the recorded telephone conversations could be justified until the danger which gave rise to their recording ceased to exist.

Law: Article 8 – The recording of the applicant's telephone conversations had constituted an interference with his rights under Article 8. Whilst it was accepted that the interception, recording and retention of the applicant's telephone conversations had a basis in domestic law - a Circular by the Deputy Minister of Justice of 1980 and the internal regulations issued by the Governer of the penitentiary - the interference was not compatible with the "in accordance with law" requirement. This phrase implied conditions beyond the existence of a legal basis in domestic law and required the legal basis to be "accessible" and "foreseeable". The rules in question lacked both in clarity and detail and gave no precise indications as to the circumstances in which prisoners' conversations could be monitored, recorded or retained by penitentiary authorities or the procedures to be observed. Whilst accepting, having regard to the ordinary and reasonable requirements of imprisonment, that it could be necessary to monitor detainee's contacts with the outside world, including contacts by telephone, the Court found that the rules did not afford appropriate protection against arbitrary interference by the authorities with the applicant's right to respect for his private life. Given that the interference was not "in accordance with the law", there had been a violation of Article 8. In these circumstances, an examination of the necessity of the interference was not required.
Conclusion: violation (unanimously).

Article 41 – The Court made an award in respect of costs and expenses.

FAMILY LIFE
Withdrawal of parental rights and prohibition on access to children: *violation*.

HAASE – Germany (N° 11057/02)
Judgment 8.4.2004 [Section III]

Facts: At the time of submitting their application to the Court the applicants were a married couple who had four children together. They were also living with the three younger children the wife had had with her first husband. In February 2001 they applied for family aid, which was made subject to an assessment of their family situation by a psychological expert. On 17 December 2001 the expert submitted his report to the Youth Office recommending secure long-term placement of the children in view of the deficiencies in their care and family conditions. The same day the Youth Office applied to the District Court for an interim injunction for the withdrawal of the applicants' parental rights. The court granted the injunction that same day without hearing the parents or children. It found that the parents' inability to give the children satisfactory care and education as well as an abusive exercise of their parental authority jeopardised their development. The children were taken on the same day, including a new-born baby who was removed from the hospital nursery. The following day, 18 December, the District Court adopted another decision prohibiting all access between the applicants and their children. The applicants appealed against the decision of 17 December 2001 by which their parental rights had been revoked but the appeal was dismissed. In June 2002, the Constitutional Court found that the decisions of the lower jurisdictions had violated the applicant's family rights and referred the case back to the District Court. The new set of proceedings in the District Court led to a decision on the merits in March 2003, in which the applicants' parental rights were again withdrawn and access to their children prohibited for an additional period of time. In the meantime, the children continued to be separated from their parents.

Law: Government's preliminary objections – (i) non-exhaustion: The applicants had failed to appeal to the Court of Appeal as regards the District Court decision of 18 December 2001 on prohibition of access (objection accepted), but had effectively exhausted remedies in relation to the decision of 17 December 2001 (objection rejected); (ii) victim status: although the decision of the Constitutional Court of June 2002 could be seen as an acknowledgement of a breach of Article 8, the decision had had no *de facto* suspensive or remedial effect (objection rejected).

Article 8 – The measures taken by the District Court clearly amounted to an interference with the right of the applicants to respect for their family life. The interference was also in accordance with the law and pursued a legitimate aim, namely to protect the "health or morals" and the "right and freedoms" of the children. Notwithstanding, the Court found that the provisional withdrawal of the parental rights was not supported by relevant and sufficient reasons and that the applicants had not been sufficiently involved in the decision-making process. There had been no urgency to justify the interim injunction as an imminent danger to the children had not been established. Moreover, the manner in which the measure was implemented, removing the children the following day from their respective schools or from home, went beyond the exigencies of the situation. In particular, the removal of the new-born baby from the hospital was an extremely harsh measure. The Court was not satisfied that there were extraordinarily compelling reasons for the authorities to proceed in such an intrusive manner in the applicants' family life, placing the mother under considerable physical and mental strain and depriving the baby of close contact with its natural mother. Although the impugned measure was later set aside by the Constitutional Court, it formed the basis of the continuing separation of the applicants and the children. The measures taken, because of their immediate impact and consequences, were therefore difficult to redress. In such circumstances, there had been a violation of Article 8.

Article 41 – The Court awarded the applicants 45,000 euros under both heads of damage. It also made an award for costs and expenses.

EXPULSION
Effect on family of deportation to Jamaica after conviction for a drugs offence: *communicated*.

HEADLEY – United Kingdom (N° 39642/03)
Decision 6.4.2004 [Section IV]

The first applicant is a Jamaican national who submits the complaint together with his wife and two children. In 1993, the applicant suffered serious injuries after being shot twice by gang members in Jamaica. His girlfriend at the time was killed during one of the shootings. He entered the United Kingdom on a medical visa in 1994, and in 1996 he met his present wife. The couple had a child together and in 1998, the first applicant's son, born to his deceased girlfriend in Jamaica, joined them in the United Kingdom. In 2000, the applicant was convicted of a drugs offence and sentenced to seven years' imprisonment. Although the trial judge did not recommend that the applicant be deported, the Secretary of State made a deportation order in 2002. The applicant appealed and claimed asylum on the basis that he would risk violence from gang members if returned to Jamaica. His asylum application and subsequent appeals were refused. A report by a psychologist states that the applicant's son who was born in Jamaica has developed a high level of emotional dependence with his step-mother and wider family in the United Kingdom and that it would be damaging for him to return with his father to Jamaica, or to stay in the United Kingdom becoming permanently separated from his father.
Communicated under Article 8.

FORESEEABILITY
Judicial interpretation of concept of "debauchery": *communicated*.

S.B. and others - Belgium (N° 63403/00)
Decision 6.4.2004 [Section I]
(see Article 10, below).

ARTICLE 10

FREEDOM OF EXPRESSION
Conviction of lawyer for criticising a decision of the Constitutional Court : *violation*.

AMIHALACHIOAIE - Moldova (N° 60115/00)
Judgment 20.4.2004 [Section II]

Facts: The applicant is a lawyer and the President of the Moldova Bar Association. The Constitutional Court ruled that a law requiring lawyers to be members of the Moldova Bar Association was unconstitutional. A local newspaper published an article on the debate which the Constitutional Court's decision had sparked off among lawyers; the article quoted comments the applicant had made during a telephone interview with a journalist. The Constitutional Court found that the applicant's comments were disrespectful and discourteous and imposed a fine of the equivalent of 36 euros.

Law: Article 10 – The interference, which was prescribed by law, pursued a legitimate aim, namely maintaining the authority and impartiality of the judiciary. As to whether it was necessary in a democratic society, the Court noted that the impugned comments concerned a matter of general interest and were not excessive, or insulting of the judges. Since the applicant had not overstepped the bounds of acceptable criticism, there had been no "pressing social need" to restrict his right to freedom of expression.
Conclusion: violation (six votes to one).

Article 41 – The Court held that the finding of violation was sufficient to redress any non-pecuniary damage sustained by the applicant.

FREEDOM OF EXPRESSION
Award of damages for defamation: *admissible*.

STEEL and MORRIS – United Kingdom (N° 68416/01)
Decision 6.4.2004 [Section IV]

The applicants were associated with a small organisation called London Greenpeace (unconnected with Greenpeace International). The organisation launched an anti-McDonald's campaign in the mid-1980's. A six-page factsheet was produced and distributed as part of that campaign. The factsheet contained allegations against McDonald's stating, for instance, that it was responsible for starvation in the Third World or for the eviction of small farmers from their land or of tribal people from their rainforest territories. A number of allegations were related to the lack of nutritional qualities of McDonald's food, and the health risks involved in consuming it. Finally, other allegations referred to the abusive targeting of children in their advertising, the cruel practices in the rearing and slaughter of the animals used to produce the food or the unsatisfactory working conditions in the corporation. McDonald's brought proceedings against the applicants claiming damages for libel. The applicants denied publication of the factsheet or that the meanings in it were defamatory. They applied for legal aid but were refused it since legal aid is not available for defamation proceedings in the United Kingdom. They represented themselves throughout the trial, although they received some help from barristers and solicitors acting *pro bono* (it was the longest trial - 313 court days - in English legal history). At one stage of the trial the applicants were unable to pay for the daily transcripts of the proceedings. They eventually obtained copies with some delay, using donations from the public. During the trial, one of the applicants signed an affidavit related to another set of proceedings in which he mentioned that the libel action had arisen from the "leaflets we had produced". Despite the applicant's objection that his solicitor had by mistake omitted to include the words "allegedly produced", the trial judge admitted the affidavit as evidence. On the basis of the affidavit, McDonald's were permitted to amend their statement at a late stage in the trial. The applicants were held liable for publication of the factsheet, which was found to include several statements that were untrue and others which were not justified. The judge made an award for damages in favour of McDonald's. In the appeal proceedings before the Court of Appeal some of the contentious allegations were considered comment and others as being justified. The damages award was in consequence reduced. Leave to appeal to the House of Lords was refused.
Admissible under Articles 6 and 10.

FREEDOM OF EXPRESSION
Conviction for defamation : *inadmissible*.

ALVES COSTA - Portugal (N° 65297/01)
Decision 25.3.2004 [Section III]

The applicant was convicted after the publication in a regional newspaper of an open letter to the director of a treatment centre, to which he had taken his daughter and which he considered had provided sub-standard care; in the letter, he complained of shortcomings in the management of treatment. The court ruled that the expressions "unworthy", "unskilled" and "unspeakable" used by the applicant to describe the director of the treatment centre had been defamatory and that the applicant had not succeeded in proving that his allegations concerning a child's death at the treatment centre were true. The applicant appealed unsuccessfully.

Inadmissible under Article 10: Where specific allegations were made, it was necessary at the very least to provide a solid factual basis for them, which the applicant had failed to do with regard to the alleged death. Furthermore, the three expressions complained of were such as to offend the person targeted, and the applicant could have worded his criticisms regarding the treatment centre's poor management, and thus contributed to an open public debate, without using such terms. Accordingly, the Court considered the grounds of the conviction "relevant and sufficient". In addition, it considered that the sentence imposed, namely a fine of 100,000 PTE and damages of 250,000 PTE, had not been disproportionate. In short, the national authorities had not overstepped their margin of appreciation in this area: manifestly ill-founded.

FORESEEABILITY
Judicial interpretation of the concept of "debauchery": *communicated*.

S.B. and others - Belgium (N° 63403/00)
Decision 6.4.2004 [Section I]

The application, lodged by seven applicants, concerned the use of the term "debauchery" in several provisions of the Belgian Criminal Code and the fact that advertising for certain sexual practices (erotic phone-lines, prostitution, sexual relations with multiple partners, etc.) was punishable by law. In particular, one applicant, who made use of advertisements in the written press which were published to enable individuals to meet other sexual partners, complained that he was exposed to the threat of criminal proceedings on the basis of an article in the Criminal Code making punishable any advertisement for prostitution or debauchery. He argued that these concepts, which were not legally defined, had been liberally and unpredictably interpreted in the courts. For the same reason, he referred to the threat of closure of establishments in which sexual intercourse between multiple adult partners, an activity in which he participated, were possible in a designated room, since such establishments could be prosecuted for running a "disorderly house". Another applicant, who described herself as an independent prostitute, complained of the existence in the Criminal Code of an article punishing public incitement to debauchery, which had obliged her to stop plying her trade in public. Now working from a studio flat, she considered that she had been deprived of a means of publicising her activity by the threat of criminal prosecution for any advertising for prostitution or debauchery.

Communicated under Articles 8 (private life) and 10 (freedom to impart information) for the first applicant, and Article 10 for the second.

Inadmissible for the other applicants. The complaint under Article 10 concerning the legal prevention of advertising for "erotic phone-line" services, which, according to one applicant, while intended to protect young people, infringed his rights and exceeded the requirements of the aim pursued, was dismissed for non-exhaustion of domestic remedies. The disputed criminal-law provision was added to the Criminal Code by a law of 27 March 1995; since the adoption of the revised Constitution of 15 July 1988, the Administrative Jurisdiction and Procedure Court had jurisdiction for ensuring that legislation complied with Articles 10 and 11 of the Constitution, which guaranteed the principles of equality and non-discrimination. In addition, any natural person who could establish an interest was entitled, within six months of the promulgation of a law which allegedly infringed the said principles, to request the above-mentioned court to have it annulled. These domestic remedies were held to be effective for the purpose of redressing the alleged violation, but had not been used by the applicant.

ARTICLE 13

EFFECTIVE REMEDY
Effectiveness of a constitutional complaint as remedy in respect of the excessive length of pending civil proceedings.

SÜRMELI - Germany (N° 75529/01)
Decision 29.4.2004 [Section III]

The case concerned civil proceedings for damages and an allowance, brought by the applicant following an accident of which he had been the victim. The proceedings had been pending before the Hanover Regional Court since 1989. In 1991 the court delivered a partial judgment in which it noted that the applicant was entitled to claim damages for the consequences of the accident at a rate of 80%. This judgment was upheld by the Federal Court of Justice in December 1993. In 1994 proceedings resumed in the regional court for the purpose of assessing the amount of damages and the allowance. In 2001 and 2002 the appeals by the applicant to the Federal Constitutional Court, complaining of the length of the proceedings, were dismissed, the first by a decision that did not state reasons. The applicant had also sued the State for the length of the proceedings. The applicant complained before the Court of the length of the pending proceedings and of the absence of an effective remedy to challenge the excessive length of the proceedings.
Admissible under Article 6(1) (reasonable time) and Article 13.

ARTICLE 34

VICTIM
Individual applicants who were not parties to the domestic proceedings but belong to the applicant association which brought those proceedings in order to defend their interests: *victim status accepted*.

GORRAIZ LIZARRAGA and others - Spain (N° 62543/00)
Judgment 27.4.2004 [Section IV]

Facts: The applicants lived in a village which was due to be flooded in order to construct a dam. They were the chairperson and members of an association, also an applicant, which had been set up for the purpose of co-ordinating efforts to prevent the dam's construction. The association successfully applied to the courts for temporary suspension of work on the dam.

However, a few months later a law on natural sites was passed which, according to the applicants, allowed construction work to resume. The Supreme Court, ruling on a point of law, definitively cancelled the construction project in part. On an application for a preliminary ruling, the Constitutional Court held that the law was compatible with the Constitution and noted that enforcement of the Supreme Court's judgment had become impossible in that the cancelled project was compatible with the new law.

Law: Article 6(1) – *"Victim" status of the individual applicants*: The applicants were not parties to the impugned proceedings in their own name, but through the intermediary of the applicant association. The Court considered that an evolutive interpretation had to be applied to the concept of "victim" in the light of contemporary conditions. It concluded that, having regard in particular to the fact that the applicant association had been set up for the specific purpose of defending its members' interests before the courts and that those members were directly affected by the dam project, the individual applicants could claim to be victims, within the meaning of Article 34 of the Convention, of the alleged violations of the Convention (Articles 6 and 8 and Article 1 of Protocol No. 1) and that they had exhausted domestic remedies with regard to the complaints under Article 6(1) of the Convention.

Applicability: In so far as the association complained of a specific and direct threat to its members' personal possessions and lifestyles, the appeal had an "economic" and civil aspect and was based on an alleged breach of rights which were also economic. The proceedings before the Constitutional Court, although governed by public law, had been decisive for the final outcome of the action against the proposed dam. Accordingly, Article 6(1) was applicable to the proceedings in dispute.

Equality of arms: During the proceedings on the application for a preliminary ruling, the applicant association had not been invited to submit observations, unlike Counsel for the State and State Counsel's Office. However, all the memorials in support of the arguments on the law's unconstitutionality, previously submitted by the applicants through the intermediary of the applicant association, had been formally joined to these proceedings and the Constitutional Court had replied fully to the arguments; in addition, the applicants had not requested leave to participate in the proceedings although they could have relied on the Court's previous case-law in the case of *Ruiz-Mateos*.
Conclusion: no violation (unanimous).

Enactment of a law during proceedings: The enactment of the law on regional planning during the proceedings concerning the proposed dam had not supported the applicants' submissions, but the Court considered that it had not been passed for the purpose of circumventing the principle of the rule of law; in particular, the law had not been intended to remove the courts' power to rule on the lawfulness of the proposed dam; it did not refer only to the area concerned by construction of the dam, but was of general application. Further, the applicants had successfully applied for examination of the compliance of certain of the law's provisions with the Constitution and their arguments had been examined on the merits. In short, the dispute between the applicants and the State had been examined in compliance with the principle of a fair trial.
Conclusion: no violation (unanimous).
The Court considered that there was no need to examine separately the complaints lodged under Article 8 and Article 1 of Protocol No. 1.

ARTICLE 35

Article 35(1)

EXHAUSTION OF DOMESTIC REMEDY
Failure to raise Convention complaint in substance : *inadmissible*.

AZINAS – Cyprus (Nº 56679/00)
Judgment 28.4.2004 [Grand Chamber]

Facts : In 1982 the Public Service Commission brought disciplinary proceedings agains the applicant, a senior civil servant, and decided to dismiss him in view of his conviction for theft, breach of trust and abuse of authority. As a consequence of his dismissal, the applicant forfeited his retirement benefits, including his pension. The applicant's application to have his dismissal declared null and void as a disproportionate sanction was rejected by the Supreme Court, which held that it had no jurisdiction to intervene unless it was evident that the disciplinary body had exceeded its discretion. In 1991 the applicant appealed on points of law, setting out five grounds, the fifth of which asserted that the loss of retirement benefits was contrary to the constitutional provisions guaranteeing the right of property. At the hearing in 1998 the applicant's lawyer stated that he would deal only with the third and fourth grounds of appeal and, in reply to the court's query, confirmed that the other grounds were withdrawn. The court consequently dismissed these other grounds. At a further hearing of the appeal in 1999 the applicant's lawyer again confirmed that all grounds except the third and fourth had been withdrawn. The Supreme Court dismissed the appeal.

Law: Government's preliminary objection (non-exhaustion of domestic remedies) – In so far as there exists at national level a remedy enabling the national courts to address, at least in substance, the alleged violation of the Convention right at issue, it is that remedy which should be exhausted. It is not sufficient that the applicant may have exercised another remedy which could have overturned the impugned measure on other grounds unconnected with the complaint of a violation of the Convention. In the present case, since the Convention forms an intergal part of Cypriot law and Article 1 of Protocol No. 1 is directly applicable, the applicant could have relied on that provision or on arguments to similar effect based on the equivalent constitutional provision. However, he did not refer to Article 1 of Protocol No. 1 in his appeal and, even if his fifth ground of appeal invoked his constitutional right of property, his lawyer expressly withdrew that ground and later confirmed that withdrawal, his reference to the forfeiture of retirement benefits being intended to show that the dismissal was a disproportionate sanction. For that reason, the Supreme Court never ruled on whether the applicant's dismissal violated his right to a pension. Thus, the applicant did not give the national courts the opportunity to address and, if appropriate redress the alleged violation, and the application must be rejected as inadmissible.

EXHAUSTION OF DOMESTIC REMEDIES
Exhaustion of one several effective domestic remedies for the same complaint: *preliminary objection dismissed*.

MOREIRA BARBOSA - Portugal (N° 65681/01)
Decision 29.4.2004 [Section III]

The applicant had lodged a criminal complaint and an application for damages in 1996 in connection with the drawing of a bad cheque. Four years later he applied for an order to expedite the proceedings. The Supreme Council of the Judiciary dismissed the application. The criminal trial ended in December 2000. The applicant applied for enforcement proceedings. He complained of the length of proceedings, which were still pending in April 2004.

Admissible under Article 6(1): Having used a domestic remedy which is considered effective within the meaning of Article 35(1) (application for an order to expedite the criminal proceedings), the applicant was not also obliged to bring a second appeal, considered equally effective, in order to complain of the excessive length of a set of Portuguese judicial proceedings (an action concerning the State's non-contractual liability). Where a remedy to be exhausted under Article 35(1) had been used, it was not necessary to use a second remedy, also considered as a remedy to be exhausted and in which the objective was practically the same. The objection that domestic remedies had not been exhausted was dismissed.

EFFECTIVE DOMESTIC REMEDY
Extraordinary procedure in domestic law.

ASSANIDZÉ - Georgia (N° 71503/01)
Judgment 8.4.2004 [Grand Chamber]
(see Article 5(4), above).

EFFECTIVE DOMESTIC REMEDY (Belgium)
Effectiveness of remedy in the Court of Arbitration : *inadmissible*.

S.B. and others - Belgium (N° 63403/00)
Decision 6.4.2004 [Section I]
(see Article 10, above).

ARTICLE 41

JUST SATISFACTION
Indication by the Court that the State should free the applicant in order to remedy the violations found.

ASSANIDZÉ - Georgia (N° 71503/01)
Judgment 8.4.2004 [Grand Chamber]
(see Article 5(1), above).

ARTICLE 3 OF PROTOCOL No. 1

STAND FOR ELECTION
Termination of Member of Parliament's mandate and imposition of temporary restrictions on her political rights following dissolution of her party : *communicated*.

KAVAKÇI - Turkey (N° 71907/01)
[Section III]

In 1999 the applicant was elected to the National Assembly as a member of the Fazilet Partisi political party. She was obliged to leave the parliamentary chamber when she entered wearing a headscarf. She lost her parliamentary seat once a decision withdrawing her Turkish nationality had become definitive. In 2001 the Constitutional Court dissolved her party on the ground that it had become a "centre of activities contrary to the principle of secularism" and, as an additional penalty, prohibited the applicant from founding, belonging to or leading another political party for five years.
Communicated under Articles 9 (freedom of thought), 10 and 11 and Article 3 of Protocol No. 1.

Other judgments delivered in April

Articles 2 and 13

Özalp and others - Turkey (Nº 32457/96)
Judgment 8.4.2004 [Section I]

death of detainee in explosion while showing location of terrorist shelter to security forces, effectiveness of investigation and lack of effective remedy – violation.

Buldan – Turkey (Nº 28298/95)
Judgment 20.4.2004 [Section II]

abduction and murder of applicant's brother by unidentified perpetrators in 1994, effectiveness of investigation and lack of effective remedy – violation.

Articles 3 and 5(3)

Sadak – Turkey (Nº 25142/94 and Nº 27099/95)
Judgment 8.4.2004 [Section III]

denial of contact with the outside world during 11 days of police custody – no violation; failure to bring detainee promptly before a judge – violation.

Articles 3, 5, 6, 13 and 34

Notar – Romania (Nº 42860/98)
Judgment 20.4.2004 [Section II]

alleged ill-treatment in custody; lawfulness of detention and alleged lack of possibility of review; access to court; disclosure of applicant's identity in TV programme about juvenile delinquency; alleged harassment on account of application to Court – friendly settlement (*ex gratia* payment of 40,000 euros plus further sums in respect of pecuniary damage and costs; undertakings to exempt civil actions for damages for ill-treatment from stamp duty, to inform the police as to how to respect the presumption of innocence and to pursue efforts to improve the protection of vulnerable children).

Articles 3 and 6

Madi – France (Nº 51294/99)
Judgment 27.4.2004 [Section II]

alleged ill-treatment in police custody and length of criminal proceedings which the applicant joined as a party seeking damages – friendly settlement.

Balasoui – Romania (Nº 37424/97)
Judgment 20.4.2004 [Section II]

effectiveness of investigation into allegations of ill-treatment by the police; length of criminal proceedings which the applicant joined as a party seeking damages – friendly settlement.

Article 5(3)

J.G. - Poland (Nº 36258/97)
Judgment 6.4.2004 [Section IV]

length of detention on remand – violation.

Article 5(3) and (4)

M.B. - Poland (Nº 34091/96)
Judgment 27.4.2004 [Section IV]

ordering of detention on remand by prosecutor and absence of right for detainee to attend hearings on detention on remand – violation (cf. *Niedbala v. Poland*, judgment of 4 July 2000).

Article 5(3) and (4), and Article 6

Mamaç and others – Turkey (Nº 29486/95, Nº 29487/95 and Nº 29853/96)
Judgment 20.4.2004 [Section II]

Sarikaya – Turkey (Nº 36115/97)
Judgment 22.4.2004 [Section III]

failure to bring detainees promptly before a judge and absence of review of lawfulness of detention – violation; denial of access to lawyer during custody – no violation.

Article 5(3) and (5), and Article 6

Belchev - Bulgaria (Nº 39270/98)
Judgment 8.4.2004 [Section I]

role of investigator and prosecutor in ordering detention, reasonableness of detention on remand, absence of right to compensation and length of criminal proceedings – violation.

Hamanov - Bulgaria (Nº 44062/98)
Judgment 8.4.2004 [Section I]

length and reasonableness of detention on remand, scope of court review of lawfulness of detention, absence of right to compensation and length of criminal proceedings – violation.

Article 5(4) and (5)

Hill - United Kingdom (Nº 19365/02)
Judgment 27.4.2004 [Section IV]

absence of review of lawfulness of continuing detention on basis of mandatory life sentence, and absence of right to compensation – violation.

Article 6(1)

Bulena – Czech Republic (Nº 57567/00)
Judgment 20.4.2004 [Section II]

access to court – refusal of Constitutional Court to examine merits of constitutional complaint which it considered to be directed against the first instance decision rather than the appeal judgment – violation.

Karalyos and Huber – Hungary and Greece (Nº 75116/01)
Judgment 6.4.2004 [Section II]

length of civil proceedings – violation (with regard to Hungary ; inadmissible with regard to complaint against Greece).

Krzak – Poland (Nº 51515/99)
Judgment 6.4.2004 [Section IV]

Soares Fernandes - Portugal (Nº 59017/00)
Judgment 8.4.2004 [Section III]

Krzewicki – Poland (Nº 37770/97)
Janik – Poland (Nº 38564/97)
Góra – Poland (Nº 38811/97)
Surman-Januszewska – Poland (Nº 52478/99)
Sabol and Sabolová – Slovakia (Nº 54809/00)
Politikin - Poland (Nº 68930/01)
Judgments 27.4.2004 [Section IV]

Garcia da Silva - Portugal (Nº 58617/00)
Judgment 27.4.2004 [Section III]

length of civil proceedings – violation.

Lóška - Slovakia (Nº 45126/98)
Judgment 27.4.2004 [Section IV]

length of enforcement proceedings brought against the applicant – friendly settlement.

Quiles Gonzalez – Spain (Nº 71752/01)
Judgment 27.4.2004 [Section IV]

length of proceedings in the labour courts concerning pension rights – violation.

Dagot - France (Nº 55084/00)
Judgment 27.4.2004 [Section II]

length of administrative proceedings – violation.

Ardex S.A. - France (Nº 53951/00)
Judgment 6.4.2004 [Section II]

Lizzy Petersen - Denmark (Nº 70210/01)
Judgment 22.4.2004 [Section I]

length of administrative proceedings – friendly settlement.

Slimane-Kaïd - France (no. 3) (Nº 45130/98)
Judgment 6.4.2004 [Section II]

length of criminal proceedings which the applicant had joined as a party seeking damages – violation.

Quesne - France (Nº 65110/01)
Judgment 1.4.2004 [Section I]

non-disclosure in Court of Cassation proceedings of report and draft judgment of the *conseiller rapporteur*, available to the *avocat général* ; presence of *avocat général* during deliberations of Court of Cassation – violation.

Coorbanally - France (Nº 67114/01)
Judgment 1.4.2004 [Section I]

non-disclosure in Court of Cassation proceedings of report of the *conseiller rapporteur*, available to the *avocat général* – violation.

Kansal - United Kingdom (Nº 21413/02)
Judgment 27.4.2004 [Section IV]

use at trial of statements made under threat of sanction to receiver in bankruptcy – violation (cf. *Saunders* judgment of 17 December 1996).

Takak - Turkey (Nº 30452/96)
Judgment 1.4.2004 [Section III]

Serdar Özcan – Turkey (Nº 55427/00)
Judgment 8.4.2004 [Section III]

Tezcan Uzunhasanoğlu – Turkey (Nº 35070/97)
Judgment 20.4.2004 [Section II]

Haydar Güneş – Turkey (Nº 46272/99)
Özer and others – Turkey (Nº 48059/99)
Yavvuzaslan – Turkey (Nº 53586/99)
Judgments 22.4.2004 [Section III]

independence and impartiality of State Security Court – violation.

Maat – France (Nº 39001/97)
Judgment 27.4.2004 [Section II]

obligation to comply with an arrest warrant as a prerequisite to contesting a default judgment declaring an appeal inadmissible, and refusal of court to allow lawyer to represent absent appellant – violation.

Articles 6 and 10

Mehdi Zana – Turkey (no. 2) (Nº 26982/95)
Judgment 6.4.2004 [Section II]

conviction for making separatist propaganda; independence and impartiality of State Security Court – violation.

Articles 6 and 13

Plaskin - Russia (Nº 14949/02)
Judgment 29.4.2004 [Section I]

E.O. and V.P. - Slovakia (Nº 56193/00 and Nº 57581/00)
Judgment 27.4.2004 [Section IV]

length of civil proceedings and lack of effective remedy – violation.

Article 6 and Article 1 of Protocol no. 1

Lucilla Petrini - Italy (Nº 66292/01 and Nº 66299/01)
Judgment 22.4.2004 [Section I]

staggering of granting of police assistance to enforce eviction orders; prolonged non-enforcement of judicial decision and absence of possibility of court review of prefectoral decisions staggering granting of police assistance – friendly settlement.

Article 8

Radovanovic – Austria (Nº 42703/98)
Judgment 22.4.2004 [Section I]

expulsion of 18-year old following conviction after eight years of residence – violation.

Surugiu – Romania (Nº 48995/99)
Judgment 20.4.2004 [Section II]

adequacy of measures taken by authorities to stop incursions into the applicant's courtyard by third parties granted title to the land by an administrative authority despite recognition of the applicant's title by the courts – violation.

Article 8, Article 1 of Protocol No. 1 and Article 2 of Protocol No. 4

Neroni – Italy (Nº 7503/02)
Judgment 22.4.2004 [Section I]

restrictions on bankrupt's receipt of correspondence and freedom of movement, and effect of excessive length of bankruptcy procedure on property right – violation (cf. *Luordo* judgment of 17 July 2003).

Article 8 and Article 2 of Protocol No. 4

Vadala – Italy (Nº 51703/99)
Judgment 20.4.2004 [Section II]

restrictions on bankrupt's receipt of correspondence and freedom of movement – violation (cf. *Luordo* judgment of 17 July 2003).

Article 41

Paulescu – Romania (Nº 34644/97)
Judgment 20.4.2004 [Section II]

just satisfaction – friendly settlement.

Nastou – Greece (Nº 51356/99)
Judgment 22.4.2004 [Section I]

just satisfaction.

Article 1 of Protocol No. 1

Kayihan and others – Turkey (Nº 42124/98)
Judgment 8.4.2004 [Section III]

Yazgan – Turkey (Nº 49657/99)
Yazganoğlu – Turkey (Nº 50915/99)
Judgments 22.4.2004 [Section III]

Mehmet Salih and Abdülsamet Çakmak – Turkey (Nº 45630/99)
Dönmez – Turkey (Nº 48990/99)
Judgments 29.4.2004 [Section III]

delays in payment of compensation for expropriation – violation.

Angelov – Bulgaria (Nº 44076/98)
Judgment 22.4.2004 [Section I]

delays by authorities in complying with court judgment awarding compensation, resulting in depreciation in value of claim – violation.

Judgments which have become final

Article 44(2)(b)

The following judgments have become final in accordance with Article 44(2)(b) of the Convention (expiry of the three month time limit for requesting referral to the Grand Chamber) (see Information Notes Nos. 58-60):

D.L. - Italy (Nº 34669/97)
Judgment 6.11.2003 [Section I]

SESZTAKOV – Hungary (Nº 59094/00)
Judgment 16.12.2003 [Section II]

BALIKÇI – Turkey (Nº 26481/95)
ROUILLE - France (Nº 50268/99)
Judgments 6.1.2004 [Section II]

AYDER and others – Turkey (Nº 23656/94)
Judgment 8.1.2004 [Section I]

SADIK ÖNDER – Turkey (Nº 28520/95)
ILKAY – Turkey (Nº 42786/98)
PANEK – Poland (Nº 38663/97)
ÇOLAK and FILIZER – Turkey (Nº 32578/96 and Nº 32579/96)
GÜÇLÜ and others – Turkey (Nº 42670/98)
TOPRAK – Turkey (Nº 57561/00)
Judgments 8.1.2004 [Section III]

NÉMETH – Hungary (Nº 60037/00)
Judgment 13.1.2004 [Section II]

SAKKOPOULOS – Greece (Nº 61828/00)
Judgment 15.1.2004 [Section I]

YAGTZILAR and others – Greece (Nº 41727/98)
Judgment (just satisfaction) 15.1.2004 [Section II (former composition)]

EARL – Hungary (Nº 59562/00)
LOVÁSZ – Hungary (Nº 62730/00)
Judgments 20.1.2004 [Section II]

SEKIN and others – Turkey (Nº 26518/95)
ALGE – Austria (Nº 38185/97)
Judgments 22.1.2004 [Section III]

TERZIS – Greece (Nº 64417/01)
Judgment 29.1.2004 [Section I]

Statistical information[1]

Judgments delivered	April	2004
Grand Chamber	3	6
Section I	15(16)	52(57)
Section II	19(21)	45(53)
Section III	15(16)	49(53)
Section IV	15(16)	41(42)
former Sections	0	2
Total	**67(72)**	**195(213)**

Judgments delivered in April 2004					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	2	0	0	1	3
Section I	12	2(3)	0	1	15(16)
Section II	14(16)	4	0	1	19(21)
Section III	15(16)	0	0	0	15(16)
Section IV	14(15)	1	0	0	15(16)
Total	**57(61)**	**7(8)**	**0**	**3**	**67(72)**

1. The statistical information is provisional. A judgment or decision may concern more than one application: the number of applications is given in brackets

Judgments delivered in 2004					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	5	0	0	1	6
former Section I	0	0	0	0	0
former Section II	1	0	0	1	2
former Section III	0	0	0	0	0
former Section IV	0	0	0	0	0
Section I	43(44)	7(11)	1	1	52(57)
Section II	37(45)	6	1	1	45(53)
Section III	46(50)	3	0	0	49(53)
Section IV	35(36)	5	1	0	41(42)
Total	**167(181)**	**21(25)**	**3**	**4**	**195(213)**

Decisions adopted		April	2004
I. Applications declared admissible			
Section I		25	88(96)
Section II		8	27(28)
Section III		14	50(51)
Section IV		9	42(44)
Total		**56**	**207(219)**
II. Applications declared inadmissible			
Grand Chamber		0	1
Section I	- Chamber	7	46(48)
	- Committee	443	1878
Section II	- Chamber	2	24
	- Committee	186	1215
Section III	- Chamber	2	16
	- Committee	225	768
Section IV	- Chamber	2	31
	- Committee	171	1060
Total		**1038**	**5039(5041)**
III. Applications struck off			
Section I	- Chamber	3	22
	- Committee	5	22
Section II	- Chamber	1	11
	- Committee	0	20
Section III	- Chamber	6	27
	- Committee	2	8
Section IV	- Chamber	4	16
	- Committee	2	13
Total		**23**	**139**
Total number of decisions[1]		**1117**	**5385(5399)**

1. Not including partial decisions.

Applications communicated	April	2004
Section I	37	172(190)
Section II	24	129(153)
Section III	100	161(162)
Section IV	6	57
Total number of applications communicated	**167**	**519(562)**

Articles of the European Convention of Human Rights and Protocols Nos. 1, 4, 6 and 7

Convention

Article 2	:	Right to life
Article 3	:	Prohibition of torture
Article 4	:	Prohibition of slavery and forced labour
Article 5	:	Right to liberty and security
Article 6	:	Right to a fair trial
Article 7	:	No punishment without law
Article 8	:	Right to respect for private and family life
Article 9	:	Freedom of thought, conscience and religion
Article 10	:	Freedom of expression
Article 11	:	Freedom of assembly and association
Article 12	:	Right to marry
Article 13	:	Right to an effective remedy
Article 14	:	Prohibition of discrimination
Article 34	:	Applications by person, non-governmental organisations or groups of individuals

Protocol No. 1

Article 1	:	Protection of property
Article 2	:	Right to education
Article 3	:	Right to free elections

Protocol No. 2

Article 1	:	Prohibition of imprisonment for debt
Article 2	:	Freedom of movement
Article 3	:	Prohibition of expulsion of nationals
Article 4	:	Prohibition of collective expulsion of aliens

Protocol No. 6

Article 1	:	Abolition of the death penalty

Protocol No. 7

Article 1	:	Procedural safeguards relating to expulsion of aliens
Article 2	:	Right to appeal in criminal matters
Article 3	:	Compensation for wrongful conviction
Article 4	:	Right not to be tried or punished twice
Article 5	:	Equality between spouses