CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

INFORMATION NOTE No. 70
on the case-law of the Court
December 2004

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

CONTENTS

ARTICLE 8

Judgments

Admissible

Inadmissible

ARTICLE 9

Judgment

ARTICLE 10

Judgments

ARTICLE 14

Judgment

ARTICLE 35

Judgment

ARTICLE 41

ARTICLE 1 OF PROTOCOL No. 1

Judgment

ARTICLE 3 OF PROTOCOL No. 7

Communicated

ARTICLE 2

LIFE
Use of firearms by police officers in a hot-pursuit operation – adequacy of legal framework protecting the right to life by law and effectiveness of the investigation: *violation*.

MAKARATZIS - Greece (Nº 50385/99)
Judgment 20.12.2004 [Grand Chamber]

Facts: The applicant, who drove through a red traffic light in the centre of Athens, was pursued by several police cars and motorcycles. He did not stop, and during the pursuit his car collided with several other vehicles, injuring two drivers. The applicant alleged that, after he had broken through five police roadblocks, the police officers started firing at his car. He eventually stopped at a petrol station, but did not get out. The police officers continued firing. The applicant alleged that the policement knelt down and fired at him, whereas the Government maintained they were firing in the air. The applicant was finally arrested by a police officer who managed to break into the car. He was immediately driven to hospital, where he remained for nine days. He was injured in the right arm, the right foot, the left buttock and the right side of the chest. One bullet was removed from his foot and another is still inside his buttock. The applicant's mental health, which had broken down in the past, has deteriorated considerably since the incident. The administrative investigation carried out by the police after the incident identified twenty-nine of the police officers who had taken part in the chase, but other policemen who had left the scene without revealing their identity were left unidentified. Laboratory tests on the applicant's car and the firearms were also conducted. The public prosecutor opened criminal proceedings against seven police officers on charges of causing serious bodily harm and unauthorised use of weapons. They were acquitted as it had not been established beyond reasonable doubt that the accused officers where the ones who had injured the applicant, given that many other shots had been fired from unidentified weapons. Moreover, the first-instance criminal court held that the police officers had used their weapons for the purpose of trying to immobilise a car whose driver they considered to be a dangerous criminal. The applicant did not have the right to appeal against the judgment.

Law: Article 2 – *Applicability*: Physical ill-treatment by State officials which does not result in death may, in exceptional circumstances, bring the facts of a case within the scope of the safeguard afforded by Article 2. The policemen who had chased the applicant and repeatedly fired at him had not intended to kill him. However, the fact that he was not killed was fortuitous. He had been the victim of conduct which had put his life at risk and Article 2 was thus applicable.

As to the State's positive obligation to protect life by law: At the time of the events, the legislative framework concerning the use of firearms by police officers was contained in a law dating back to 1943 which listed a wide range of situations where police officers could use firearms without being liable for the consequences. The law had been subsequently amended with a provision stating that their use was authorised "only when absolutely necessary and less extreme methods had been exhausted". Given the uncontrolled and dangerous manner of driving of the applicant, the police could reasonably have considered that there was a need to resort to the use of weapons, and, as such, recourse to some lethal force could be said to have been justified. However, the operation had involved a large number of police officers in a chaotic and largely uncontrolled chase in which there was an absence of clear chains of command. The degeneration of the situation could largely be attributed to the fact that at the time neither the individual police officers nor the chase, seen as a collective police operation,

had benefited from an appropriate structure in domestic law or practice setting out clear guidelines and criteria governing the use of force. The authorities had not complied with their positive obligations under this provision, and, accordingly, the applicant had been the victim of a violation of Article 2 on this ground. In view of this conclusion, it was not necessary to examine the life-threatening conduct of the police under the second paragraph of this article.
Conclusion: violation (12 votes to 5).

As to the adequacy of the investigation: The investigation had been incomplete and inadequate, highlighted in particular by the inability of the authorities to identify all the officers who had been involved in the shooting and wounding of the applicant.
Conclusion: violation (unanimously).

Article 3 – In view of the grounds on which a dual violation of Article 2 had been found, no separate issue arose under this article.
Conclusion: no separate issue (15 votes to two).

Article 13 – In view of the finding of a violation of Article 2 in respect of its procedural aspect, no separate issue arose under this article.
Conclusion: no separate issue (16 votes to one).

Article 41 – The Court awarded the applicant 15,000 euros in respect of non-pecuniary damage.

ARTICLE 3

INHUMAN OR DEGRADING TREATMENT
Continued detention of convicted prisoner with AIDS: *no violation*.

GELFMANN - France (N° 25875/03)
Judgment 14.12.2004 [Section II]

Facts: The applicant was imprisoned after being convicted on several criminal charges. He suffered from AIDS, whi
ch he had contracted before his imprisonment. The applicant considered that his state of health was incompatible with imprisonment and applied for a stay of execution of his sentence. Medical experts found that the applicant regularly turned down and contested any therapeutic care and periodic monitoring of his health. Two experts concluded that his illness was developing in such a way as to enable him to be detained in an ordinary prison, since medical treatment could be administered in prison and medical supervision was adequately provided by a team of specialist doctors. Another expert stated that the applicant's health was incompatible with ordinary imprisonment and required specialised inpatient care. A psychiatrist found that the applicant continued to be criminally dangerous. An initial decision was given in favour of the applicant's release, on the ground that two experts had concluded that his serious and progressive illness was incurable. That decision was quashed on an appeal by the prosecutor.

Law: Article 3 – The applicant had suffered from AIDS for almost twenty years and had contracted several so-called opportunistic infections, which appeared to have been treated or to have stabilised, although a recurrence of these illnesses could not of course be ruled out. The three experts appointed as part of the procedure concerning his two applications for a stay of execution had noted that the applicant was "uncooperative" and had refused or interrupted treatment on several occasions, sometimes for long periods. Although all three experts

considered that the applicant's short- and medium-term chances of survival were reasonable, since there had been considerable progress in treatment to manage AIDS, something, however, that did not make it possible to consider that the illness could be definitively overcome, their conclusions were nonetheless different with regard to the compatibility of his health and any consequential treatment with imprisonment: in one doctor's opinion, the applicant's state of health required hospitalisation and was incompatible with ordinary imprisonment; a second doctor had concluded that his illness was compatible with detention, as treatment was simple and could be administered in prison, and the third doctor thought that the medical care provided in prison was entirely suitable, although detention in a hospital setting would be more coherent. In addition, the authorities were attentive to the applicant's state of health. Thus, he had been hospitalised for assessment following deterioration in his general health, then, in view of the tests carried out and his state of health, the hospital had authorised his release and return to prison, since the treatment in prison for his illness was of the same quality as that which could be provided outside. It also appeared from the case file that the applicant's health was being monitored in a civil hospital. In those circumstances, and in the light of an overall appreciation of the relevant facts on the basis of the evidence before it, the Court considered that neither the applicant's state of health nor his alleged distress were so severe as to entail a violation of Article 3. In any event, were the applicant's health to deteriorate further, French law provided the national authorities with means of taking action. In particular, the applicant could lodge another application for a stay of execution, as part of which new expert reports would be ordered.
Conclusion: no violation (unanimously).

DEGRADING TREATMENT
Prolonged detention of invalid in conditions unsuitable for his state of health : *violation*.

FARBTUHS - Latvia (N° 4672/02)
Judgment 2.12.2004 [Section I]

Facts: The applicant, aged 83, was found guilty of crimes against humanity and genocide. Medical experts stated that the applicant, a paraplegic, was fit to serve a custodial sentence if, as well as receiving appropriate medication for his many debilitating illnesses, he received constant care and had access to special equipment. The Prisons Service acknowledged that its establishments did not have appropriate equipment for the needs of seriously ill prisoners or qualified staff capable of providing appropriate care. The applicant submitted numerous unsuccessful applications to be released from the obligation to serve his sentence. That sentence was served in a prison infirmary. He applied for early release on health grounds, without success. A medical report by a panel of experts recommended his early release on the ground of ill-health. On that basis, and using an option available under domestic law, the prison governor sought an order from the courts for the applicant's early release. The court acknowledged that the prison conditions were not adapted to the applicant's specific needs, but refused to order his release. The medical and prison authorities, which were also authorised to take action for that purpose, recommended the applicant's release, emphasising that the prison had neither the equipment nor the staff required to meet his specific needs; in addition, during his imprisonment, two further illnesses had appeared and the other illnesses had worsened. The court refused to order his release, as it considered that the case file did not clearly indicate the incurable illnesses from which the applicant was suffering and how exactly the prison conditions were unsuited to his needs. The applicant appealed successfully. He was released a year and one month after the date on which the administrative authorities had taken steps to that end on the basis of a concurring official expert report.

Law: Article 3 – The applicant complained of his detention in the prison infirmary. Aged 84 when he was imprisoned, he had been paraplegic and disabled to the point of being unable to

attend to most basic daily tasks unaided. In particular, he was unable to get up, sit down, move, get dressed or washed without assistance. Moreover, when taken into custody he was already suffering from a number of serious illnesses, the majority of which were chronic and incurable.
When the national authorities decided to imprison such a person and to keep him in custody, they had to be particularly careful to ensure that the conditions of detention were consistent with the specific needs arising out of the prisoner's infirmity.
In this particular case, before handing down a custodial sentence, the authorities had submitted the applicant to medical examinations in order to determine whether he was fit to serve a prison sentence, and he had not been placed in prison immediately: before becoming a prisoner, he had undergone medical examinations for two weeks. The Latvian authorities could not therefore be said to have failed to weigh up the consequences of imprisoning the applicant. During his incarceration, however, the applicant's illnesses had worsened and new illnesses had appeared, indicating that a prolonged spell in prison was inappropriate for him.
The authorities and the prison staff had made considerable efforts to ease the applicant's situation. While the authorities could not be accused of seeking to humiliate or debase the applicant, Article 3 could also be infringed by inaction or lack of diligence on the part of the public authorities.
In the case before the Court, the prison governor, and later the representatives of the prison administration, had acknowledged and emphasised the inadequacy of technical and staff conditions in the prison in relation to the applicant's specific needs, and had then applied to the court for his early release; although an official expert report made the same recommendation, the relevant courts did not order the applicant's release until a year later. Admittedly, the applicant's family, the infirmary staff and, in their absence, fellow-prisoners looked after the applicant in prison, but the anxiety and discomfort which such an infirm person, conscious that he would not receive any qualified help in the event of an emergency, could be expected to experience in such circumstances posed in themselves a serious problem under Article 3. The detention conditions were unsuited to the applicant's state of health: the situation in which he had been put was bound to cause him permanent anxiety and a sense of inferiority and humiliation so acute as to amount to "degrading treatment". By delaying his release in spite of the existence of a formal application setting out the need for his release and an expert report which supported that request, and by keeping him in prison for more than a year, the national authorities had failed to comply with the provisions of Article 3.
Conclusion: violation (six votes to one).

Article 41 – The Court awarded the applicant a sum in respect of the non-pecuniary damage sustained as a result of his prolonged detention in conditions unsuited to his health. The Court also made an award in respect of costs, in spite of the failure to submit adequate vouchers.

ARTICLE 5

Article 5(1)(a)

AFTER CONVICTION
Mandatory life sentence for murder: *communicated*

PYRAH – United Kingdom (Nº 17413/03)
Decision 14.12.2004 [Section IV]

The applicant was convicted of murder and sentenced to life imprisonment after having intervened in a street fracas to stop a man assaulting a woman. During the incident, he

knocked the woman's assailant to the ground and kicked him in the head, causing his death. The trial judge deemed that the applicant did not pose a danger to society and that a prison term well below the norm would be sufficient. The High Court refused the applicant's application for judicial review of the decision to impose a mandatory sentence of life imprisonment. The applicant complains that the imposition of a mandatory life sentence represented inhuman punishment and was an unjustified deprivation of his liberty.
Communicated under Articles 3 and 5.

Article 5(3)

LENGTH OF DETENTION ON REMAND
Continued detention on remand despite illness: *admissible*.

BIÇ - Turkey (Nº 55955/00)
Decision 2.12.2004 [Section III]

The applicants' relative, who was arrested on suspicion of having participated in an attack on a military convoy organised by the PKK, was placed on detention on remand in November 1993. The State Security Court, in September 1995, found there was insufficient evidence to prove his participation in the armed attack, but convicted him of membership of an illegal organisation. This decision was quashed by the Court of Cassation in 1996 and the case sent back for re-examination. However, the applicants' relative, who was kept in detention on remand during the course of the trials, had to be operated in the stomach on two occasions and was diagnosed with hepatitis B. He died in hospital in October 1999. On the basis of an autopsy report which established the cause of death as liver cirrhosis, the public prosecutor issued a decision of non-prosecution. The applicants allege that their relative did not receive proper medical treatment, in breach of the State's positive obligation to protect the life of those who are in detention. They also complain of the unreasonable length of the detention on remand and of the criminal proceedings.

Admissible under Articles 5 and 6 (reasonable time).

Inadmissible under Article 2: The applicants had not made use of an appeal which was available to challenge the decision of the public prosecutor on non-prosecution: non-exhaustion.

ARTICLE 6

Article 6(1) [civil]

ACCESS TO COURT
Refusal to dispense from payment of court tax required for lodging action: *admissible*.

V.M. - Bulgaria (N° 45723/99)
Decision 9.12.2004 [Section I]

The applicant had provided legal assistance for which he ultimately received no fees. He brought proceedings before a court in order to obtain payment of his fees and applied for exoneration from advance payment of the court tax and the costs of the proceedings. The

court tax, which was calculated with reference to the amount sued for, was in this case considerable. The authorities responsible for ruling on exoneration applications on the basis of claimants' financial situations refused to grant the exoneration. As payment of the court tax and of the costs of the proceedings was a precondition for the admissibility of an application before the civil courts, the applicant's action was discontinued. He brought a fresh civil action. He again lodged an unsuccessful application for exoneration from advance payment of the court tax. The applicant was obliged to desist from any further proceedings.
Admissible under Article 6(1).

Article 6(1) [criminal]

FAIR HEARING
Alleged procedural defects in proceedings concerning tax penalties, including the imposition of a lien on company's assets pending litigation: *communicated*.

YUKOS OIL COMPANY - Russia (Nº 14902/04)
Decision 14.12.2004 [Section I]

The applicant company was fined by the Tax Ministry for selling oil through a network of sham companies registered in low-tax areas created by the Government, without having invested in return into those regions' economy. In court proceedings at three levels of jurisdiction the Ministry's decision was in the most part upheld. The City Commercial Court, which examined the case in first instance, prohibited the applicant company from disposing of its assets pending the litigation. At the stage of the enforcement proceedings, a bailiff only gave the applicant company five days to comply with the judgment. The applicant complains that the proceedings before the domestic courts and the bailiff's service were tainted with procedural defects and were as a whole unlawful. It also complains that the penalty/debt artificially created by the State was likely to ruin the company.
Communicated under Articles 6, 7 and Article 1 of Protocol No. 1.

REASONABLE TIME
Length of criminal proceedings (over 5 years 9 months): *no violation*.

PEDERSEN and BAADSGAARD - Denmark (Nº 49017/99)
Judgment 17.12.2004 [Grand Chamber]
(see Article 10, below).

ARTICLE 8

PRIVATE LIFE
Registration in the former State Security Agency files alleged to have been unjustified and to have negatively affected private life: *admissible*.

TUREK - Slovakia (Nº 57986/00)
Decision 14.12.2004 [Section IV]

The applicant worked in the State administration system, and as such, his job fell under an Act which laid down certain conditions for the holding of posts in the public administration.

In accordance with the Act, in March 1992, the Ministry of the Interior of the former Czech and Slovak Federal Republic issued a security clearance on the applicant, stating that he was registered in the files of the former State Security Agency (StB). The information was made public in newspapers and on the internet. The applicant resigned from his post. He subsequently lodged an action for the protection of his good name and reputation with the City Court. In May 1999, the Regional Court dismissed the action, finding it established that the applicant had been listed as a "candidate for secret collaboration" and as an "agent" of the StB. Moreover, he had held meetings with StB agents which had amounted to a formal collaboration. The Supreme Court upheld the judgment, finding that the applicant had not proved his registration had been contrary to the then applicable rules. The applicant complains under Article 8 that his registration was wrongful, and that the security clearance had been an unwarranted interference with his reputation, which had had negative effects on his private life.

Admissible under Articles 6 and 8.

PRIVATE AND FAMILY LIFE
Issuing of passport in foreign name written according to phonetic and grammatical rules of the national language, resulting in a spelling different from the original: *inadmissible*.

MENTZEN *alias* MENCENA - Latvia (N° 71074/01)
Decision 7.12.2004 [Section IV]

The applicant, a Latvian national, married Mr Mentzen, a German national, in Germany and took his surname. She then followed the procedure to replace her previous Latvian passport, which showed her maiden name, with a new passport that would contain her new surname. Her surname was given as "*Mencena"*, rather than "Mentzen", on the main page of her new Latvian passport, providing all the main information about the passport-holder. This change in the spelling of her surname was based on the Latvian rules for transcribing and identifying names and surnames in Latvian documents, which stated that all surnames and names were to be reproduced "in accordance with the spelling rules of the Latvian literary language" and "as close as possible to their pronunciation in the original language", with the addition of an ending to reflect the person's sex. Accordingly, the letters "tz" were replaced by the letter "c", which read as [ts] in Latvian and were thus the phonetic equivalent, and the applicant's surname was suffixed by the flexible ending "-a", the feminine marker. In the section of the passport designated for "special comments", which appeared towards the end of the document, a special entry indicated that the original form of the surname was "Mentzen". The phonetic transcription and grammatical alteration in Latvian of the applicant's German surname were endorsed by the domestic courts in spite of complaints lodged by the applicant. The Latvian authorities had correctly applied the national rules, intended to bring the spelling of names into harmony with their pronunciation in Latvian and to adapt them to the specific features of the Latvian grammatical system. The Constitutional Court acknowledged that this caused difficulties for the applicant in her everyday life, but stated that the Latvian transcription of a foreign name in an official document delivered by the Republic of Latvia was intended to protect and strengthen the use and status of Latvian as the official language within the national territory. Admittedly, the transcription resulted in changes to the applicant's surname, but did not amount to a translation: it merely entailed an adjustment to reflect the grammatical features of Latvian. Nonetheless, the Constitutional Court indicated that, if the interference was not to be disproportionate, the indication of the original version of the foreign name should appear more visibly in the passport, next to its Latvian spelling. The passport is the main form of identification for Latvian nationals within the country.

Inadmissible under Article 8: The applicant had been subject to rules governing the use of surnames, and not to a forced change of surname. The implementation of a rule concerning

surnames could amount to an "interference" in the exercise of the right to respect for private and family life if it had as a consequence a visual discrepancy between the surname's new spelling and the original spelling which was sufficiently great that an uninformed observer might doubt that they concerned one and the same name. The difference between the two spellings "Mentzen" and "*Mencena*" was sufficiently great to provoke doubts as to the equivalence of the two versions, which could cause the applicant problems in her social and professional life, and, when the applicant and her husband were required to use their respective passports, could prevent their joint identification as belonging to the same family. Consequently, the phonetic transcription and grammatical alteration of the applicant's surname – to the detriment of its original spelling – amounted to an interference in the exercise of her right to respect for private and family life and was in accordance with the law.
The domestic authorities justified the interference on various grounds related to the necessity of protecting and promoting the official language. That assessment was not tainted by arbitrariness in such a specific and sensitive area, where those authorities were best placed to evaluate the real situation of the Latvian language within Latvia and to gauge the factors which might jeopardise it. Furthermore, in defining a language as its official language, a State undertook to guarantee to its citizens the right to use it without hindrance, by communicating and receiving information in that language. In the Court's opinion, the measures aimed at protecting a given language were to be examined primarily from that perspective. Thus, under the Convention, it could be concluded that the disputed regulations pursued at least one of the legitimate aims listed in paragraph 2 of Article 8, namely the "protection of the rights and freedoms of others".
As to the necessity of the interference in a democratic society, the States enjoyed a wide margin of appreciation with regard to the indication of foreign names and surnames in official documents. Admittedly, the system provided for by the Latvian rules differed from that which prevailed in the absolute majority of the Council of Europe's member States, in that it inevitably resulted in changes to the spelling of names of foreign origin. This did not necessarily offend the Convention in an area that was as closely tied in with each society's cultural and historical traditions. The applicant had experienced practical inconvenience as a result of the mandatory use of the spelling "*Mencena*" on an official document in Latvia, but the national authorities had taken measures to redress an inherent problem in the application of their specific legislation: they had confirmed the legal equivalence of the two versions of the surname, the original version of the surname was now to be inserted immediately after the main page of passports, which would make it possible to see the two spellings of the surname and verify their equivalence more rapidly, and the applicant was authorised to exchange her current passport for a new one which would comply with those new instructions. Although the inconvenience described by the applicant was not necessarily eliminated, it did not attain a sufficient level of gravity to amount to a disproportionate interference in her private and family life. The applicant had not been prevented from exercising her political, economic and social rights, taken as a whole, including the right to leave or return to the country, all of which were secured by Latvian law, and she had never been refused the right to enter or reside in a foreign country, alone or with her husband, on account of the difference in the two spellings of her surname.

FAMILY LIFE
Inheritance and gifts from close relative.

MERGER and CROS - France (N° 68864/01)
Judgment 22.12.2004 [Section I]
(seee Article 14, below).

HOME
Drafting of search warrants in general terms: *violation*.

VAN ROSSEM - Belgium (N° 41872/98)
Judgment 9.12.2004 [Section I]

Facts: The public prosecutor's service applied for the opening of an investigation into the applicant, whom it suspected of forging documents and making criminal use of them, misappropriation and dishonouring of cheques. The investigating judge issued warrants for searches to be carried out at various locations, and delegated his power of search, authorising criminal investigation officers to conduct immediate searches and seizure of any items and documents which they would consider of use to the investigation opened in respect of the applicant. The applicant was not present when the investigators searched his home and the premises of his commercial companies. No list was drawn up of the accounting records seized in the companies' offices. The trial judges sentenced the applicant to five years' imprisonment and ordered him to pay a fine. As part of an appeal on points of law against his conviction, the applicant repeated that the search warrants had been drawn up in terms that were too general. The Court of Cassation dismissed his appeal. It stated that a search warrant did not necessarily have to specify the objects to be searched for or seized, or to state the classification of the offence into which the investigation had been opened. The Court of Cassation held that the investigators in this case knew what they were to look for, since the searches had been conducted under the orders of the police superintendent who had carried out initial questioning of the applicant; in addition, the applicant had not complained that the documents seized had been used to charge him with new offences.

Law: Article 8 – The searches and seizures carried out at the applicant's home and at the premises of the companies which he headed amounted to an interference. Provided for by the law, they had a legal basis. They were to gather clues and evidence concerning the suspicion that the applicant had committed a criminal offence, and they pursued the legitimate aims of the prevention of disorder and crime. The key question was the necessity in a democratic society of multiple searches of the home, carried out by the police as part of a massive search and seizure operation, in the absence of the accused, on the basis of warrants formulated in broad terms which barely limited the scope of the investigations. While unavoidable imperatives could justify the fact that the investigating judge delegated his power of search to criminal investigation police, any such search warrant ought to contain a minimum number of indications which would limit the scope of the authority thus conferred on the investigators and make it subsequently possible to verify whether they had complied with the scope of the investigation authorised in this way. In particular, the judge ought to have indicated in the warrant the useful evidence for which the investigators were to search. The text of the search warrants contained no information about the investigation at issue and on the items to be seized, and thus conferred wide powers on the investigators. The applicant, who had been questioned previously, was the only person who had been informed of the "context" in which the searches were taking place, namely the opening of an investigation on charges of forging documents and making criminal use of them, misappropriation and dishonouring cheques. This would have enabled him to ensure that the searches were limited to seeking evidence of those offences and to complain of abuse, thus enabling him to monitor the scope of the searches and seizures carried out. However, the applicant had not been present at any of the searches. In addition, the only a partial inventory was drawn up of the seized items. In the absence of sufficient indications by the judge in the search warrants and given the applicant's absence from the premises being searched, no effective and comprehensive supervision of the scope of the searches had been possible, and the failure to produce an inventory listing each item seized had prevented the applicant from requesting the withdrawal of certain items *a posteriori*. In short, a fair balance of the interests involved had not been struck in this case.
Conclusion: violation (unanimous).

Article 41 – The Court made no award under this Article, since no request in respect of just satisfaction had been submitted within the time-limits allowed.

ARTICLE 9

FREEDOM OF RELIGION
State interference with the internal organisation of the Muslim community: *violation*.

SUPREME HOLY COUNCIL OF THE MUSLIM COMMUNITY - Bulgaria
(Nº 39023/97)
Judgment 16.12.2004 [Section I (former composition)]

Facts: The applicant organisation, the Holy Council of the Muslim Community of Bulgaria, is one of the rival factions which claims leadership of the Muslim community in the country. Since the late 1980s there have been changes in the leadership of this community. The changes in leadership were each time contested by the opposing group. The Court has already examined a dispute concerning such past events in *Hasan and Chaush v. Bulgaria [G.C.]* (no. 30985/96, ECHR 2000-XI). In 1995, the head of the applicant organisation, G., was reinstated as the officially recognised leader of the Muslim community in the country. Between 1996 and 1997, the ousted rival leader, H., made several attempts to restore his position, including an appeal to the Supreme Court, which was dismissed. In April 1997 a new government was formed and the authorities urged the two rival leaders to negotiate a unification. In September 1997, the rival factions signed an agreement to convene a national unification conference of all Muslim believers. G. subsequently complained that the conference was not being organised in accordance with the statute of the organisation and that political figures had used threats for the election of candidates to the assembly. He also alleged that the manner of participation of the Directorate of Religious Denominations in the preparation of the conference was unacceptable State interference. The conference, which G. did not attend, was addressed by the Directorate of Religious Denominations, which apparently blamed G. for having withdrawn from the unification process. The conference elected a new leadership which included H. The new leadership was registered by the Deputy Prime Minister. The judicial appeals by the applicant organisation to the Supreme Administrative Court against the decision of the Government to register the new leadership were rejected, as the court found that the decision to hold a unification conference had been taken freely by the two rival groups.

Law: Article 9: *Applicability* – Although religious freedom was primarily a matter of individual conscience, an ecclesiastical or religious body could also, as such, exercise on behalf of its adherents the rights guaranteed by this provision. Article 9 was thus applicable to the complaints.
Compliance – State authorities may be required to engage in mediation among leaders or groups in a divided religious community. However, they must discharge such a duty with caution as this is a particularly delicate area. The manner in which the relevant law was applied in Bulgaria, which basically required leaders to bring the community under a single State-approved leadership, was a highly significant factor in this case. The authorities had insisted on "unification", despite the fact that G. had decided to withdraw from the process. The results of the conference had resulted in the applicant organisation no longer being able to represent at least part of the religious community and manage its affairs and assets according to the will of that part of the community. There had thus been an interference with the applicant organisation's rights under this provision. The Court accepted that the authorities' concern was to restore legality and remedy the arbitrary removal of H. in 1995,

and thus that the interference pursued the legitimate aim of protecting public order and the rights and freedoms of others. As to the necessity of the interference, as the relevant law and practice, as well as the authorities' actions in 1997, had the effect of compelling the divided community to have a single leadership against the will of one of the two rival leaderships, the authorities had gone beyond their margin of appreciation. It followed that the interference had not been necessary in a democratic society.
Conclusion: violation (unanimously).

Article 13 – The Supreme Administrative Court had examined the applicant's complaint in the light of the applicable legal regime. It could not be considered that Article 13 required the provision of a remedy to challenge that regime.
Conclusion: no violation (unanimously).

Article 41 – The Court awarded the applicant organisation 5,000 euros in respect of non-pecuniary damage. It also made an award in respect of costs and expenses.

ARTICLE 10

FREEDOM OF EXPRESSION
Disproportionate nature of sanctions imposed on journalists for defamation of a public official: *violation*.

CUMPĂNĂ and MAZĂRE - Romania (N° 33348/96)
Judgment 17.12.2004 [Grand Chamber]

Facts: The applicants, a journalist and the editor of a local newspaper, had written an article about the management of the local city council's finances, accusing a council official and the deputy mayor of certain criminal offences and depicting them in a cartoon as rejoicing in their misdeeds. The article attributed a series of illegal acts to these public figures, accusing them by name of fraud, corrupting subordinates and accepting bribes, and portrayed them with a bag full of money, congratulating themselves on having misappropriated public funds. The official in question lodged a criminal complaint alleging insult and defamation. The journalists were found guilty of having disparaged her honour, dignity and public image. The criminal court considered that both the written allegations and the insinuations made through the cartoon that the two had committed criminal offences were not based on established facts and instead constituted false accusations. During the proceedings, the applicants, despite being duly summoned, did not attend the hearings or file defence submissions. As well as being ordered to pay damages to the claimant, the applicants were sentenced to seven months' immediate imprisonment, disqualified from exercising certain civil rights for a specified period and prohibited from working as journalists for one year. The Procurator-General applied to have the conviction quashed, submitting that even if the applicants had committed a criminal offence, there was no evidence that they were incompetent to continue practising their profession. The applicants did not serve their prison sentence as they were granted a presidential pardon, which also waived the penalty of disqualification from exercising civil rights. They continued to practise their profession after their conviction had become final and binding. One of them was elected mayor of the city council to which the article had related.

Law: Article 10 – *Scope of the Grand Chamber's jurisdiction*: The Government argued that the scope of the case should be limited to the complaint by the applicant who had signed the request for referral to the Grand Chamber. However, any case which the Court had accepted for referral necessarily embraced all aspects of the application as declared admissible by the Chamber. Furthermore, although the referral request in the present case had been signed by

the first applicant alone, the second applicant had later expressly joined the request, thereby indicating, albeit retrospectively, his intention to pursue the complaint.

Respect for journalists' freedom of expression and protection of the reputation of others: The interference had been prescribed by law and had pursued the legitimate aim of protecting the rights of others, namely the reputation of a city-council official who had become a judge by the time of the publication of the article in question. The subject of the article – the management of public funds by certain local elected representatives and public officials – had been of interest to readers from the local community, who had been entitled to receive such information. The role of investigative journalists was to inform and alert the public about such undesirable phenomena in society as soon as the relevant information came into their possession; the means by which they obtained their sources fell within the scope of the freedom of investigation inherent in the practice of their profession. The article had contained assertions referring to the council official by name and conveying the message, in virulent terms, that she had been involved in fraudulent dealings. It had alleged specific conduct on her part (signing illegal contracts and accepting bribes), and the applicants' statements had given readers the impression that the person in question had behaved in a dishonest and self-interested manner, and were likely to lead them to believe that the "fraud" of which she and the former deputy mayor were accused and the bribes they had allegedly accepted were established and uncontroversial facts.

While the press had a duty to alert the public where it was informed about presumed misappropriation on the part of local elected representatives and public officials, the fact of directly accusing specified individuals by mentioning their names and positions placed journalists under an obligation to provide a sufficient factual basis, particularly in the case of accusations so serious as to render the person in question criminally liable. In the present case the national courts had found that the applicants' allegations against the council official had presented a distorted view of reality and had not been based on actual facts. Before reaching that conclusion, the courts had given the applicants the opportunity to substantiate their allegations, but the applicants had displayed a clear lack of interest in their trial, neither attending the hearings, despite having been duly summoned, nor stating any grounds for their appeal, nor adducing any evidence to substantiate their allegations or provide a sufficient factual basis for them, thereby depriving the national courts of the possibility of making an informed assessment of whether they had overstepped the limits of acceptable criticism. The applicants had not even indicated that their article had been based on an official report, which moreover was not confidential. In any event, nothing was said in the report, or even suggested, as to the alleged dishonesty of the persons referred to in the article or as to their having accepted bribes. In short, the grounds that the courts had relied on to justify the applicants' conviction for insult and defamation had been relevant and sufficient, and the conviction had met a "pressing social need".

The sanctions imposed on the applicants had been very severe. Although the Contracting States were permitted, or even obliged, by their positive obligations under Article 8 of the Convention to regulate the exercise of freedom of expression so as to ensure adequate protection by law of individuals' reputations, they should not do so in a manner that unduly deterred the media from fulfilling their role of alerting the public to apparent or suspected misuse of public power. Investigative journalists were liable to be inhibited from reporting on matters of public interest if they ran the risk, as one of the standard sanctions imposable for unjustified attacks on the reputation of private individuals, of being sentenced to prison or to a prohibition on the exercise of their profession. The chilling effect that the fear of such sanctions posed on the exercise of journalists' freedom of expression was likewise a factor to be taken into account in assessing the proportionality, and thus the justification, of the sanctions imposed.

In the circumstances of the present case – a classic case of defamation of an individual in the context of a debate on a matter of legitimate public interest – there had been no justification for the imposition of a prison sentence. Such a sanction, by its very nature, inevitably had a chilling effect, and the fact that the applicants had not served the sentence did not alter that

conclusion, seeing that the individual pardons they had received were measures subject to the discretionary power of the President of Romania; furthermore, while such an act of clemency was designed to dispense convicted persons from having to serve their sentence, it did not expunge their conviction. Furthermore, the prison sentence imposed on the applicants had been accompanied by an order disqualifying them from exercising certain civil rights. Although the applicants had not suffered the practical consequences of that secondary penalty, which had been waived as a result of the presidential pardon, such a disqualification – which in Romanian law was automatically applicable to anyone serving a prison sentence, regardless of the offence for which it was imposed as the main penalty, and was not subject to review by the courts as to its necessity – had been particularly inappropriate in the present case and had not been justified by the nature of the offences for which the applicants had been held criminally liable. Furthermore, the order prohibiting the applicants from working as journalists for one year, which, moreover, had not been remitted, was a prior restraint and as such could be justified only in exceptional circumstances. Although the sanction in question had not had any significant practical consequences for the applicants, it had been particularly severe and could not in any circumstances have been justified by the mere risk of their reoffending. By prohibiting the applicants from working as journalists as a preventive measure of general scope, albeit subject to a time-limit, the domestic courts had contravened the principle that the press must be able to perform the role of a public watchdog in a democratic society. Although the interference with the applicants' right to freedom of expression might have been justified by the concern to restore the balance between the various competing interests at stake (the right to impart ideas and facts and the protection of the reputation of representatives of the public authorities), the criminal sanction and the accompanying prohibitions imposed on them had been manifestly disproportionate in their nature and severity to the legitimate aim pursued.
Conclusion: violation (unanimously).

Article 41 – The Court considered that the respondent State did not have to reimburse the damages which the applicants had had to pay the victim of their offences of defamation and insult, since its finding of a violation was based on the fact that their conviction could have been regarded as "necessary in a democratic society" to restore the balance between the various competing interests at stake if the sanctions imposed (the prison sentence and the orders disqualifying them from exercising certain rights and practising their profession) had not been manifestly disproportionate.

FREEDOM OF EXPRESSION
Conviction of producers of television programmes for defamation of a senior police officer: *no violation*.

PEDERSEN and BAADSGAARD - Denmark (Nº 49017/99)
Judgment 17.12.2004 [Grand Chamber]

Facts: The applicants produced two television programmes in 1990/1991 concerning the 1982 conviction of X. for murder. X. had been released from prison shortly before the first programme after serving almost eight years of a twelve-year sentence and had applied for his case to be reopened. In the television programmes, the conduct of the police investigation was strongly criticised. The second applicant interviewed a witness who maintained that she had told the police at the time that she had seen X. and his son at a particular place. After the interview, the commentator named the Chief Superintendent in charge of the investigation in the context of a series of rhetorical questions. A photograph of the officer was also shown. X. was subsequently granted a re-trial and acquitted. The applicants were then charged with defamation. On appeal, the High Court convicted them. It imposed a fine and ordered them to pay compensation. The Supreme Court upheld the convictions and increased the award of compensation.

Law: Article 6(1) – Making an overall assessment of the complexity of the case, the conduct of all concerned and the total length of the proceedings (over 5 years 9 months), the Court concluded that this did not go beyond what might be considered reasonable in the particular case.
Conclusion: no violation (unanimously).

Article 10 – The applicants were not convicted for alerting the public to supposed failings in the criminal investigation or for criticising the conduct of the police or individual officers, all of which were legitimate matters of public interest, but on the much narrower ground of having made a specific allegation against a named individual. The domestic courts found that the statements had to be understood as containing factual allegations and that the applicants had the requisite intention; they found that the applicants, by formulating their questions as they did, had made the serious accusation that the Chief Superintendent had committed a criminal offence by suppressing evidence. The Court agreed that the applicants had taken a stand on the truth of the witness's statement and had presented matters in such a way as to give the impression that evidence had been suppressed. The applicants did not limit themselves to referring to the evidence and to making value judgments about the conduct of the police but made, albeit it indirectly, an allegation of fact susceptible of proof. They had never endeavoured to provide any justification for the allegation and its veracity had never been proved. Special grounds are required before the media can be dispensed from their obligation to verify factual statements that are defamatory of a private individual, and the Court therefore had to examine whether the applicants had acted in good faith and complied with that obligation. It was relevant that the allegation was made at peak viewing time on a national TV station and the Court also had to take into account the seriousness of the accusation, which not only prejudiced public confidence in the Chief Superintendent but also disregarded his right to be presumed innocent. The police enquiries against X. had involved more than 4,000 pages of reports and thirty witnesses had testified, yet the applicants had relied on one witness, without checking a discrepancy in her evidence. Even assuming the applicants' programmes and the evidence of that witness were instrumental in the reopening of the proceedings, there was no support for the applicants' theory about the suppression of evidence. In assessing the necessity of the interference, it was also important that the domestic courts had weighed the relevant considerations in the light of the Court's case-law. The Court saw no cause to depart from the Supreme Court's finding that the applicants lacked a sufficient factual basis for their allegation. Moreover, the fines imposed and the order to pay compensation were not excessive or such as to have a chilling effect. Consequently, the conviction of the applicants and the sentences imposed were not disproportionate.
Conclusion: no violation (9 votes to 8).

ARTICLE 14

DISCRIMINATION (Article 8)
Discrimination in law against children of adulterous relationships with regard to gifts : *violation*.

MERGER and CROS - France (N° 68864/01)
Judgment 22.12.2004 [Section I]

Facts: The first applicant was illegitimate. Her father, who also had four legitimate children, made *inter vivos* and testamentary gifts of movable property to her. Following his death, the four legitimate children challenged the provision he had made for the first applicant. Relying on the domestic law then applicable, the *tribunal de grande instance* found that, as an

illegitimate child whose father had been married to a woman other than her mother when she was conceived, the first applicant was entitled to a smaller share of the estate than the legitimate children. Applying the statutory rules, which restricted the share in the estate of a child born of an adulterous relationship and its capacity to receive gifts from its parent, it held that the first applicant was entitled to only 10% of the net estate and set aside the gifts from her father. The Court of Appeal upheld that judgment in so far as it refused to grant the first applicant the same rights as legitimate children to inherit or to receive *inter vivos* gifts. The applicants – the mother and her daughter – appealed to the Court of Cassation complaining of the restrictions on the rights of illegitimate children conceived when one of their parents was bound by marriage to another person to inherit or to receive gifts. The Court of Cassation dismissed their appeal in May 2000. Subsequently new legislation was passed modernising the law of succession and repealing the provisions discriminating against children of "adulterous relationships".

Law: Article 8, taken together with Article 14 – *Restrictions on the rights of children of adulterous relationships to receive gifts from their parents*: The first applicant's parents had been living together for three years when she was born. She and her parents therefore clearly formed a "family" within the meaning of Article 8 at that time. Questions of inheritance and voluntary dispositions between near relatives appeared to be intimately connected with "family life", which included social, moral and cultural relations, such as interests of a material kind, and the distribution of the estate represented a feature of family life that could not be disregarded. In short, Article 8 was applicable. Nevertheless, it was not a requirement of that provision that a general right to receive voluntary dispositions or a share in the estate should be recognised.
The restrictions which the French Civil Code placed on the first applicant's capacity to receive gifts from her father were not of themselves in conflict with the Convention. It was the distinction made in that connection between the first applicant – an illegitimate child conceived when her father was bound by marriage to another person – and the legitimate children which raised an issue under Article 14 of the Convention, taken together with Article 8. In the case before the Court, owing to her position as on illegitimate child conceived when her father was bound by marriage to another person, the first applicant was statutorily disqualified from receiving more than half of the reserved portion of the estate she would have received had she been legitimate. Likewise, for the same reason, all the gifts had been artificially deemed to form part of the estate and, after calculations had been performed, the first applicant had been required to pay each of the other heirs – the legitimate children – a sum of money, with the result that all she in fact had received was half her share. The Court did not find any ground on which to justify such a difference in treatment based on birth out of wedlock.
Conclusion: violation (unanimously).

Article 1 of Protocol No. 1, taken together with Article 14 of the Convention – *Inheritance rights*: The issue of discrimination under the statutory provisions against children of adulterous relationships in the division of the estate being identical to that which had arisen in the case of *Mazurek* v. *France* (ECHR 2000-II), the Court found a violation. The applicants also complained of a violation of Article 8, taken together with Article 14, but the Court did not consider it necessary to examine this complaint since the arguments advanced were the same as those it had examined under Article 1 of Protocol No. 1, taken together with Article 14 of the Convention, in respect of which it had found a violation.

Article 1 of Protocol No. 1, taken together with Article 14 – the *inter vivos* and testamentary gifts to the applicants were set aside retrospectively in the proceedings concerning the winding up of the estate. Although Article 1 of Protocol No. 1 enshrined the right of everyone to the peaceful enjoyment of "his" possessions, it only applied to a person's existing possessions and did not guarantee the right to acquire possessions *inter vivos* or through

voluntary disposition. Neither of the two Articles relied on was applicable in the case before the Court.
Conclusion: no violation (unanimously).

Article 41 – On account of the discriminatory treatment, the first applicant had sustained pecuniary damage in an amount equal to the difference between the sum she had actually received and the share in her father's estate she would have received had she been a "legitimate" child. The total revised amount came to € 611 845, which the Court awarded. It awarded the same amount for non-pecuniary damage as it had done in the case of *Mazurek*.

DISCRIMINATION (Article 1 of Protocol No. 1)
Discrimination in law against children of adulterous relationships with regard to inheritance : *violation*.

MERGER and CROS - France (N° 68864/01)
Judgment 22.12.2004 [Section I]
(see above).

ARTICLE 35

ADMISSIBILITY
Late raising of inadmissibility: *estoppel*.

MASCOLO - Italy (N° 68792/01)
Judgment 16.12.2004 [Section III]
(see Article 41, below).

ARTICLE 41

JUST SATISFACTION
Legislation suspending expulsion of tenants, resulting in delay in recovery of possession.

MASCOLO - Italy (N° 68792/01)
Judgment 16.12.2004 [Section III]

The application concerned the fact that a property-owner had been unable to recover possession of his flat for a long period on account of a lack of police assistance. The applicant had been obliged to wait about seven years and seven months from the date of a bailiff's first eviction attempt before he could recover possession. The Court concluded that there had been a violation of Article 1 of Protocol No. 1 to the Convention and of Article 6(1) [reasonable time] of the Convention (see, in particular, the judgments in *Immobiliare Saffi v. Italy*, of 28 July 1999, ECHR 1999-V; *Edoardo Palumbo v. Italy*, of 30 November 2000), after rejecting, for estoppel, the preliminary objection on non-exhaustion of domestic remedies, which relied on Article 1591 of the Civil Code.

With regard to the application of Article 41 of the Convention, the Government considered that they could not be held responsible before the Court for the financial consequences suffered by the applicant on account of the violation that had been found, since the applicant

would have been able to recover the losses sustained on account of the late recovery of his flat on the basis of Article 1591 of the Civil Code. Under that provision, tenants were subject to a general obligation to compensate landlords for any loss caused by late return of housing.
Extract (pecuniary damage): "…The Court notes that the applicant was able to apply to the civil courts within the meaning of Article 1591 of the Civil Code, by applying for compensation from his former tenant, with a view to obtaining reimbursement of losses caused by the latter through the failure to restore the property in good time. In the instant case, those losses resulted from the unlawful behaviour of the tenant, who, quite apart from the question of the State's cooperation in enforcing the eviction notice, had a duty to restore the flat to its owner. The violation of the applicant's right to peaceful enjoyment of his possessions is primarily the result of the tenant's unlawful behaviour. The State's violation of Article 6 of the Convention, as found by the Court, is procedural in nature and occurred subsequent to the tenant's behaviour. Consequently, the Court notes that Italian domestic legislation contains provisions for making good the financial consequences of the violation, and considers that it appropriate to dismiss the request for just satisfaction in so far as it concerns pecuniary damage…"
The Court considered that the applicant had sustained certain non-pecuniary damage and, ruling on an equitable basis, made him an award under that head.

JUST SATISFACTION
Discrimination in succession.

MERGER and CROS - France (N° 68864/01)
Judgment 22.12.2004 [Section I]
(see Article 14, above).

ARTICLE 1 OF PROTOCOL No. 1

POSSESSIONS
Annulment of gift and will in favour of applicant at time of distribution of estate: *Article 1 of Protocol No. 1 not applicable*.

MERGER and CROS - France (N° 68864/01)
Judgment 22.12.2004 [Section I]
(see above).

ARTICLE 3 OF PROTOCOL No. 7

COMPENSATION
Denial of the right to compensation for non-pecuniary damage despite wrongful conviction: *communicated*.

MATVEYEV and MATVEYEVA - Russia (Nº 26601/02)
Decision 14.12.2004 [Section I]

The applicants, a married couple, organised short-wave radio broadcasting from their home. In 1981 their broadcasting equipment was seized and their licence was revoked. The first applicant was convicted that same year by the District Court on account of forgery of a stamp and sentenced to two years' imprisonment. In 1999, the Regional Court reversed the

conviction of the first applicant as there was no indication that a crime had been committed. Following his wrongful conviction, the applicant instituted proceedings to obtain pecuniary as well as non-pecuniary damages. His claim for pecuniary damage was awarded but the one for non-pecuniary damage was dismissed, given that at the time when the wrongful sentence had been delivered there was no provision in domestic law to obtain such damages.
Communicated under Article 3 of Protocol No. 7.

Other judgments delivered in December

Articles 3, 5(3) and 6(1)

Kaptan - Turkey (Nº 46749/99)
Judgment 22.12.2004 [Section III]

alleged ill-treatment in custody, length of detention on remand and length of criminal proceedings – friendly settlement.

Articles 3, 5(1), 5(3), 5(4) and 13

Talat Tepe - Turkey (Nº 31247/96)
Judgment 21.12.2004 [Section II]

alleged ill-treatment in custody and alleged absence of reasonable suspicion justifying detention – no violation; failure to bring detainee promptly before a judge, absence of review of lawfulness of detention and lack of effective remedy in respect of allegations of ill-treatment – violation.

Article 5(1), (3) and (5)

Bojilov - Bulgaria (Nº 45114/98)
Judgment 22.12.2004 [Section I]

role of investigator and prosecutor in ordering detention; length of detention on remand; delay in release from detention – violation; alleged unlawfulness of detention – no violation.

Articles 5(1), (3), (4) and (5), 6(1) and 13

Mitev - Bulgaria (Nº 40063/98)
Judgment 22.12.2004 [Section I]

role of investigator and prosecutor in ordering detention; length of detention on remand; delay in release from detention, length of time taken to examine appeals against detention; absence of right to compensation; length of criminal proceedings; lack of effective remedy in respect of complaint about length of proceedings – violation.

Articles 5(3) and 6(1)

Iliev - Bulgaria (Nº 48870/99)
Judgment 22.12.2004 [Section I]

length of detention on remand and length of criminal proceedings – violation.

Article 6(1)

Kilián - Czech Republic (Nº 48309/99)
Judgment 7.12.2004 [Section II]

exclusion of court review of administrative decisions of procedural nature – violation.

Blommen - Belgium (Nº 47265/99)
Judgment 22.12.2004 [Section I]

refusal of legal aid for a cassation appeal in divorce proceedings – striking out.

Dragičević - Croatia (Nº 11814/02)
Zovanović - Croatia (Nº 12877/02)
Judgments 9.12.2004 [Section I]

legislation staying all proceedings relating to claims for damages in respect of terrorist acts – violation.

Lalić - Croatia (Nº 9514/02)
Dodoš - Croatia (Nº 9720/02)
Judgments 9.12.2004 [Section I]

Bačić - Croatia (Nº 3742/02)
Boca - Croatia (Nº 9504/02)
Divjak - Croatia (Nº 9520/02)
Surla - Croatia (Nº 9704/02)
Miščević - Croatia (Nº 15312/02)
Judgments 16.12.2004 [Section I]

Badovinac - Croatia (Nº 9761/02)
Judgment 22.12.2004 [Section I]

legislation staying all proceedings relating to claims for damages in respect of terrorist acts – friendly settlement.

Nesme - France (Nº 72783/01)
Judgment 14.12.2004 [Section II]

time-limit for unrepresented appellants in Court of Cassation proceedings to submit pleadings, absence of opportunity to make oral submissions and alleged failure to communicate observations of *avocat général* to unrepresented appellant in Court of Cassation proceedings – no violation; non-disclosure in Court of Cassation proceedings of report of the *conseiller rapporteur*, and presence of *avocat général* during deliberations – violation.

Pause - France (Nº 61092/00)
Judgment 14.12.2004 [Section II]

absence of opportunity for unrepresented appellants to make oral submissions to the Court of Cassation – no violation; failure to communicate observations of *avocat général* to unrepresented appellant in Court of Cassation proceedings – violation.

Lebègue - France (Nº 57742/00)
Judgment 22.12.2004 [Section III]

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

Cossec - France (Nº 69678/01)
Judgment 14.12.2004 [Section II]

presence of *avocat général* during deliberations of Court of Cassation in civil proceedings – violation.

Młynarczyk - Poland (Nº 51768/99)
Judgment 14.12.2004 [Section II]

Škodáková - Czech Republic (Nº 71551/01)
Judgment 21.12.2004 [Section II]

Wojtkiewicz - Poland (Nº 45211/99)
Zarjewska - Poland (Nº 48114/99)
Dánczak - Poland (Nº 57468/00)
Judgments 21.12.2004 [Section IV]

Centrum Stavebního Inženýrství - Czech Republic (Nº 65189/01)
Judgment 21.12.2004 [Section II]

length of civil proceedings – violation.

Bečvář and Bečvářová - Czech Republic (Nº 58358/00)
Judgment 14.12.2004 [Section II]

length of proceedings relating to claim for damages following restitution of property to original owners – violation.

Yaroslavtsev - Russia (Nº 42138/02)
Judgment 2.12.2004 [Section I]

length of proceedings relating to registration of a car – violation.

Karellis - Greece (Nº 6706/02)
Judgment 2.12.2004 [Section I]

Ormanci and others - Turkey (Nº 43647/98)
Judgment 21.12.2004 [Section II]

length of administrative proceedings – violation.

Stoeterij Zangersheide - Belgium (Nº 47295/99)
Judgment 22.12.2004 [Section I]

length of administrative proceedings, in particular before the *Conseil d'Etat* – violation.

Rega - France (Nº 55704/00)
Judgment 9.12.2004 [Section III]

length of proceedings concerning tax penalties – violation.

Moreira Barbosa - Portugal (Nº 65681/01)
Judgment 21.12.2004 [Section II]

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

Hannak - Austria (Nº 70883/01)
Judgment 22.12.2004 [Section III]

length of criminal proceedings – violation.

Geniteau - France (Nº 49572/99)
Judgment 7.12.2004 [Section II]

presence of *avocat général* during deliberations of Court of Cassation concerning appeal by civil party to criminal proceedings – violation.

Gökdere and Gül - Turkey (Nº 49655/99)
Judgment 9.12.2004 [Section III]

Vural - Turkey (Nº 56007/00)
Judgment 21.12.2004 [Section II]

Şehmus Aydin - Turkey (Nº 40297/98)
Metin Yilmaz - Turkey (Nº 45733/99)
Judgments 22.12.2004 [Section III]

independence and impartiality of State Security Court – violation.

Articles 6(1) and 10

Elden - Turkey (Nº 40985/98)
Judgment 9.12.2004 [Section III]

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

Article 6(1) and Article 1 of Protocol No. 1

Capellini - Italy (Nº 64009/00)
Judgment 16.12.2004 [Section III]

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.

Dubenko - Ukraine (Nº 74221/01)
Derkach and Palek - Ukraine (Nº 34297/02 and Nº 39574/02)
Judgments 21.12.2004 [Section II]

prolonged non-enforcement of court decisions; delays by authorities in payment of sums awarded by court – violation.

Androne - Romania (Nº 54062/00)
Judgment 22.12.2004 [Section III]

reopening of proceedings which had ended with a final and binding judgment ordering return of property previously nationalised, following lodging of a request out of time, and consequent deprivation of property – violation.

Article 10

Busuioc - Moldova (Nº 61513/00)
Judgment 21.12.2004 [Section IV (former composition)]

conviction of journalist for defamation of civil servants – violation/no violation.

Just satisfaction

Radovanovic - Austria (Nº 42703/98)
Judgment 16.12.2004 [Section I]

Referral to the Grand Chamber

Article 43(2)

The following case has been referred to the Grand Chamber in accordance with Article 43(2) of the Convention:

BLECIC - Croatia (Nº 59532/00)
Judgment 29.7.2004 [Section I]

The case concerns the termination of a special protected tenancy of a flat on account of the tenant's absence during the armed conflict in Croatia.

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 Note No. 67):

Storck - France (Nº 73804/00)
Subiali - France (Nº 65372/01)
Maugee - France (Nº 65902/01)
Paterová - Czech Republic (Nº 76250/01)
Judgments 14.9.2004 [Section II]

Marszał - Poland (Nº 63391/00)
Ţîmbal - Moldova (Nº 22970/02)
Judgments 14.9.2004 [Section IV]

Hélène Maignant - France (Nº 54618/00)
Judgment 21.9.2004 [Section II]

Stoicescu - Romania (Nº 31551/96)
Judgment (revision) 21.9.2004 [Section II]

Fojcik - Poland (Nº 57670/00)
Kusiak - Poland (Nº 50424/99)
Janas - Poland (Nº 61454/00)
Schirmer - Poland (Nº 68880/01)
Santambrogio - Italy (Nº 61945/00)
Judgments 21.9.2004 [Section IV]

Osmanov and Yuseinov - Bulgaria (Nº 54178/00 and Nº 59901/00)
Racheva - Bulgaria (Nº 47877/99)
Judgments 23.9.2004 [Section I]

Marschner - France (Nº 51360/99)
Tamás Kovács - Hungary (Nº 67660/01)
Watt - France (Nº 71377/01)
Renovit Építőipari Kft - Hungary (Nº 65058/01)
Mátyás - Hungary (Nº 66020/01)
Kellner - Hungary (Nº 73413/01)
Sabou and Pircalab - Romania (Nº 46572/99)
Judgments 28.9.2004 [Section II]

Mancheva - Bulgaria (Nº 39609/98)
Pramov - Bulgaria (Nº 42986/98)
Zaprianov - Bulgaria (Nº 41171/98)
Nikolova - Bulgaria (no. 2) (Nº 40896/98)
Kuibishev - Bulgaria (Nº 39271/98)
Krastanov - Bulgaria (Nº 50222/99)
Judgments 30.9.2004 [Section I]

Article 44(2)(c)

On 15 December 2004 the Panel of the Grand Chamber rejected requests for referrral of the following judgments, which have consequently become final:

HARAN - Turkey (Nº 25754/94)
Judgment (striking out) 26.3.2002 [Section IV]

GENNADIY NAUMENKO - Ukraine (Nº 42023/98)
Judgment 10.2.2004 [Section II]

ZYNGER - Poland (Nº 66096/01)
LISŁAWSKA - Poland (Nº 37761/97)
Judgments 13.7.2004 [Section IV]

PLA and PUNCERNAU - Andorra (N° 69498/01)
Judgment 13.7.2004 [Section IV]
[see Information Note Nº 66]

PATRIANAKOS - Greece (Nº 19449/02)
Judgment 15.7.2004 [Section I]
[see Information Note Nº 66]

WRÓBEL - Poland (Nº 46002/99)
Judgment 20.7.2004 [Section IV]

I.R.S. - Turkey (Nº 26338/95)
Judgment 20.7.2004 [Section II]

K. - Italy (N° 38805/97)
Judgment 20.7.2004 [Section II]
[see Information Note Nº 66]

NIKITIN - Russia (Nº 50178/99)
Judgment 20.7.2004 [Section II]
[see Information Note Nº 66]

BUFFALO C. s.r.l. - Italy (Nº 38746/97)
Judgment (just satisfaction) 22.7.2004 [Section I]

ROMASHOV - Ukraine (Nº 67534/01)
PFLEGER - Czech Republic (Nº 27.7.2004)
Judgments 27.7.2004 [Section II]

IKINCISOY - Turkey (Nº 26144/95)
Judgment 27.7.2004 [Section IV]

Statistical information[1]

Judgments delivered	December	2004
Grand Chamber	3	15(16)
Section I	23	198(207)
Section II	14(15)	195(221)
Section III	11	140(164)
Section IV	5	167(205)
former Sections	0	3
Total	**56(57)**	**718(816)**

Judgments delivered in December 2004					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	3	0	0	0	3
Section I	12	9	1	1	23
Section II	13(14)	1	0	0	14(15)
Section III	9	2	0	0	11
Section IV	5	0	0	0	5
Total	**42(43)**	**12**	**1**	**1**	**56(57)**

Judgments delivered in 2004					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	14(15)	0	0	1	15(16)
former Section I	0	0	0	0	0
former Section II	1	0	0	2	3
former Section III	0	0	0	0	0
former Section IV	0	0	0	0	0
Section I	156(161)	33(37)	3	6	198(207)
Section II	177(203)	11	2	5	195(221)
Section III	130(154)	8	1	1	140(164)
Section IV	148(181)	16(21)	2	1	167(205)
Total	**626(715)**	**68(77)**	**8**	**16**	**718(816)**

1. The statistical information is provisional. A judgment or decision may concern more than one application: the number of applications is given in brackets.
2. The statistics concerning Section judgments do not take into account the recomposition of the Sections on 1 November 2004. The heading “former Sections” refers to Sections in their composition prior to 1 November 2001.

Decisions adopted		December	2004
I. Applications declared admissible			
Grand Chamber		0	1
Section I		24(25)	252(262)
Section II		10	185(201)
Section III		12	167(189)
Section IV		6	152(189)
Total		**52(53)**	**757(842)**
II. Applications declared inadmissible			
Grand Chamber		0	1
Section I	- Chamber	10	120(122)
	- Committee	411	6034
Section II	- Chamber	4	93(95)
	- Committee	345	5401
Section III	- Chamber	9(12)	79(81)
	- Committee	225	3656
Section IV	- Chamber	7	95(111)
	- Committee	295	4301
Total		**1306(1309)**	**19780(19802)**
III. Applications struck off			
Section I	- Chamber	6	85
	- Committee	3	68
Section II	- Chamber	0	52
	- Committee	2	63
Section III	- Chamber	5	142
	- Committee	3	45
Section IV	- Chamber	0	35
	- Committee	1	57
Total		**20**	**547**
Total number of decisions[1]		**1378(1382)**	**21084(21191)**

1. Not including partial decisions.

Applications communicated	December	2004
Section I	43	634(647)
Section II	65	530(555)
Section III	17	891
Section IV	15	301
Total number of applications communicated	**140**	**2356(2394)**

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