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EUROPEAN COURT OF HUMAN RIGHTS

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The applicants, who are Algerian nationals, arrived at Vienna airport on a flight from Tunisia, and presented themselves to the airport and border police on 4 November 1996. They requested asylum claiming that they had fled Algeria for fear of political persecution, and that if they were returned to Tunisia they risked deportation to Algeria. The police, having regard to the fact that the applicants did not present any passports and did not arrive directly from the state where they feared persecution, refused them entry into Austria. The applicants were offered lodging in a special transit zone of the airport equipped with beds and where food was provided. They refused this and stayed in the regular transit zone of the airport. The authorities dismissed the request for asylum on 7 November 1996, noting that the applicants had come from Tunisia where they were safe from persecution. Pending their deportation to Tunisia, the applicants remained in the transit zone of the airport until 13 December 1996, when the Austrian authorities let them enter on humanitarian grounds. The applicants subsequently complained to the authorities that their stay in the transit zone and the attempts to deport them had been unlawful as they should have been allowed to enter Austria as asylum seekers who had come from a country where they feared persecution. They also complained that their stay in the transit zone was contrary to Articles 5(1) and 5(4) of the Convention, submitting that their situation following their rejection at the border control had amounted to an unlawful deprivation of liberty which they were unable to challenge effectively as the Austrian authorities had refused to acknowledge their stay in the transit zone as deprivation of liberty. They also complained that they had no possibility to obtain compensation.

*Inadmissible* under Article 5(1) – This case had to be differentiated from *Amuur v. France*, where the applicants had been detained for twenty days in the transit zone of Orly airport and where the Court had found such confinement contrary to Article 5, for a number of reasons. Firstly, the authorities in the instant case had considered the applicants' asylum request within three days. The applicants had nevertheless decided to stay. Moreover, after having been refused entry to Austria and having declined an offer to lodge in a specially arranged zone, the applicants had been left to their own devices. They had been able to organise their daily life, correspond and enter into contact with third persons without interference from the authorities. Whilst they were in the transit zone they came into contact with a humanitarian organisation which provided them social and legal assistance. Hence, the Court could not follow the argument that their situation was in fact comparable with or equivalent to the situation of detained persons. Accordingly, it could not be said that during their stay in the transit zone of the airport the applicants had been "deprived of their liberty" within the meaning of this provision. Finally, the Court recalled the right of Contracting States under international law to control aliens' entry into and residence in their territory, provided that this right was exercised in accordance with the provisions of the Convention: *manifestly ill-founded*.

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**P.D. – France** (N° 54730/00)
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*Facts*: The applicant appealed on points of law against an appeal-court judgment upholding his conviction and requested a copy of the judgment so that he could lodge his appeal within the time-limit. In the meantime he filed provisional pleadings in the registry of the Court of Appeal, explaining that he was unable to submit pleadings on the merits within the ten-day time-limit provided for in the Code of Criminal Procedure as he had not received a copy of the judgment. He subsequently received the copy and filed his pleadings on the merits a few days later. The Court of Cassation found that it had received the applicant's pleadings out of time and that no exemption had been granted by the president of the criminal division. After observing that the judgment appealed against contained no procedural defect, it dismissed the applicant's appeal. The applicant complained that he had not been provided with the submissions of the advocate-general and had been unable to reply to them because he had not been informed of the date of the hearing in the Court of Cassation.

*Law*: Article 6(1) – The criminal division of the Court of Cassation had confined itself to declaring the applicant's pleadings inadmissible, under Article 585-1 of the Code of Criminal Procedure, on the ground that he had failed to request an extension of the time-limit for filing pleadings with that court. Consequently, the Court of Cassation had not addressed the merits of the case, but, before dismissing the appeal, had merely ensured that there was no procedural defect in the judgment appealed against. In the circumstances, the submission of a memorandum for the deliberations, in response to the oral submissions of the advocate-general, would have made no difference to the outcome of the proceedings in the Court of Cassation. Accordingly, the Court considered that, as it had found in the case of *Stepinska v. France* (no. 1814/02, 15 June 2004), the legal approach followed in the present case could not be called into question. In short, having regard to the specific circumstances of the case, the applicant could not argue

that his inability to attend the hearing in the Court of Cassation, because he had not been informed of the date, and to "defend himself" by submitting a memorandum for the deliberations, entailed a breach of Article 6(1). Such a right, were it to have been recognised, would have had no meaningful or substantive effects.
*Conclusion*: no violation (unanimously).

## ARTICLE 8

**PRIVATE LIFE**
Confiscation of passport and refusal to return it throughout long trial of applicant who lived and worked with his family in another country: *violation.*

**İLETMİŞ - Turkey** (N° 29871/96)
Judgment 6.12.2005 [Section II]

*Facts*: The applicant is a Turkish national who, in 1975, enrolled at a university in Germany. He married a Turkish national there in 1979 and became a social worker. The couple had two children, born in 1981 and 1986, who attended school in Germany, where they were living. In 1984 a judicial investigation was opened in Turkey in respect of the applicant, who was accused of acts contrary to the national interest committed abroad. The applicant was arrested in February 1992 while on a trip to Turkey to visit his family and was held in police custody for seven days. His passport was confiscated and even after he had been released his passport was not returned to him. Following the applicant's arrest in Turkey, his wife and children left Germany to join him. In April 1992 the applicant was charged with separatist activities against the State and committed for trial in the Assize Court. During the proceedings he applied several times to recover his passport, but his requests were denied. The applicant received no explanations for the refusal and he was not barred from leaving the country by an order of an Assize Court. The applicant complained of the excessive length of the proceedings against him and of his inability to return to Germany. The proceedings were constantly adjourned pending receipt of information from the German authorities concerning the applicant's involvement in the acts he stood accused of. There being no evidence against him, the Assize Court eventually acquitted the applicant in July 1999. He was issued with a passport and was able to return to Germany with his wife and children.

*Law*: Article 6(1) – The Court considered that the criminal proceedings against the applicant, having lasted for about 15 years, had failed to satisfy the "reasonable time" requirement.
*Conclusion*: violation (unanimously).

Article 8 – The confiscation of the applicant's passport and the administrative authorities' refusal to return it, over a number of years, had constituted interference with the exercise of his right to respect for his private life, since sufficiently strong personal ties were likely to be seriously affected by that measure. The applicant had been living in Germany for 17 years. He had moved there at the age of 22 to attend university. He had married in Germany and his two children had been born there. The family had been living in that country and the applicant and his wife had found employment there as social workers. The confiscation of the applicant's passport in 1992, at the time of his arrest, had been in accordance with the law and had pursued at least one of the "legitimate aims" referred to in Article 8, namely "protection of national security" and/or "prevention of disorder or crime". As to whether the interference had been necessary in a democratic society, the longer the proceedings continued without any progress being made and without any evidence against the applicant being forthcoming, the weaker the interest in pursuing the legitimate aim became. Moreover, the more time went by, the more the applicant's enjoyment of his freedom of movement, which in the present case was one aspect of his right to respect for his private life, should have prevailed over the requirements of national security or the prevention of a criminal offence. During the 15 years of proceedings in which the applicant had been prevented from leaving the country, there had never been any evidence in the case file to suggest that there was a danger to national security or a risk of a criminal offence being committed. The absence of such a risk was moreover confirmed by the

fact that the Assize Court had never given an order barring the applicant from leaving the country. In addition, the administrative authorities, for their part, had never stated the grounds for the measure of prohibition. In an age when freedom of movement, especially across borders, was regarded as essential for the full development of private life, especially for people like the applicant with family, occupational and economic ties in more than one country, denial of that freedom by the State without any good reason constituted a serious failure on its part to fulfil its obligations to persons under its jurisdiction. The fact that "freedom of movement" was guaranteed as such under Article 2 of Protocol no. 4, which had been signed but not ratified by Turkey, had no bearing on that finding since a single fact might entail a breach of more than one provision of the Convention and the Protocols. Accordingly, maintaining the prohibition on leaving Turkish territory no longer satisfied a "pressing social need".
*Conclusion:* Violation (unanimously).

Article 41 – The Court made an award in respect of the pecuniary and non-pecuniary damage sustained and for costs and expenses.

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**PRIVATE LIFE**
Persons who were strip-searched prior to visiting their relative in prison: ***admissible.***

**WAINWRIGHT - United Kingdom** (Nº 12350/04)
Decision 13.12.2005 [Section IV]

The first applicant is a mother. Her son, who suffers from mental impairment, is the second applicant. When visiting their relative in prison they were informed that they would be strip-searched, and that if they refused they would be denied their visit to their relative. Prior to their visit, the prison Governor had ordered that all persons who visited their relative were to be strip-searched as there were suspicions that he was involved in the supply and use of drugs within the prison. The search of the first applicant took place when it was dark outside and made her believe that she could be seen by outside people. At the end of the search she was effectively naked and her sexual organs and anus were visually examined, which left her shaking and visibly distressed. The second applicant had also been left entirely naked at the end of his search, and one of the officers had looked all around his naked body, lifted up his penis and pulled back the foreskin. He too was left shaking and upset. The applicants were asked to sign a consent form after the searches had taken place. A Professor of Psychiatry who subsequently examined the applicants considered that the searches had had negative effects on the applicants. The first applicant's depression was made worse and she would apparently become more vulnerable to future traumatic events. The second applicant was suffering post-traumatic stress disorder and a depressive illness, and had experienced his strip-search experience as a threat to his physical integrity. The applicants brought a civil claim against the Home Office arguing that the searches had constituted a trespass to the person. The trial judge held that their strip-searching had been an invasion of their privacy and awarded them damages. The judgment was nevertheless set aside in appeal proceedings. The House of Lords found that the prison officers had acted in good faith and that there had been no more than "sloppiness" in the failures to comply with the rules.
*Admissible* under Articles 3, 8 and 13.

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**PRIVATE LIFE**
Denial of access to medical records, including the right to make photocopies of them, to eight women of Romani ethnic origin who suspected having been sterilised against their will: *communicated*.

**K.H. and Others - Slovakia** (Nº 32881/04)
[Section IV]

The applicants are eight women of Romani ethnic origin who were treated at gynaecological and obstetrics departments in two hospitals during their pregnancies and deliveries. Despite continuous attempts to conceive none of the applicants has become pregnant since their last stay at hospital when they delivered via caesarean section. The applicants suspect that they may have become infertile due to sterilisation performed on them during their caesarean delivery in the hospitals concerned. With a view to understanding the reasons for their infertility and possible treatment, they attempted to gain access to their medical records in the respective hospitals. However, the applicants' authorised representative was not allowed to consult or photocopy the medical records. The applicants unsuccessfully complained to the health authorities about the denial of access to their medical files, and subsequently instituted civil proceedings against the hospitals, claiming that the medical records be released and that they be allowed to photocopy them. The courts allowed the applicants to consult their medical records and make hand-written excerpts thereof, but maintained that the applicants were not entitled to make photocopies of their medical files. The applicants complained to the Constitutional Court, alleging that by preventing them from photocopying the files they had been placed at a disadvantage *vis-à-vis* the State in the preparation of their civil claim for compensation against the medical institutions concerned or the State authorities liable for their actions. They held that this represented a breach of the principle of equality of arms under Article 6(1) of the Convention. They also complained that the denial of full access to their files was a breach of their private and family lives as well as discriminatory. The Constitutional Court rejected the complaint. Following the entry into force of new legislation one of the applicants was given full access to her files and discovered that she had been sterilised when undergoing a caesarean section. Other applicants were subsequently also given full access to their records. However, four applicants have not yet been able to access their medical records under the new legislation.
*Communicated* under Articles 6, 8, 13 and 14, and a question on the victim status of the applicants.

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**FAMILY LIFE**
Insufficient efforts seeking to reunite child and parent with sole custody under foreign law: *violation*.

**KARADŽIĆ - Croatia** (Nº 35030/04)
Judgment 15.12.2005 [Section I]

*Facts*: The applicant, a national of Bosnia and Herzegovina, lives in Germany, where she has sole custody of her son, born out of wedlock in 1995. The father of the child, Ž.P., moved to Croatia in 1999, whereas the applicant continued living with their son in Germany. On a visit to Croatia in 2000, Ž.P. prevented the applicant from taking their son back to Germany. She managed to take him back the following year but shortly thereafter Ž.P. took him back to Croatia. In the meantime, a German district court issued a decision confirming that Ž.P.'s decision to keep the child in Croatia had been "wrongful" within the meaning of the 1980 Hague Convention on the Civil Aspects of International Child Abduction. At the applicant's request, the German Chief Federal Prosecutor contacted the Croatian Ministry of Health and Social Welfare. Five months later, in October 2001, the local welfare centre in Croatia instituted proceedings for the child's return to Germany. In May 2003 a Croatian municipal court ordered that the child be returned to his mother but attempts to enforce the decision proved unsuccessful as the child could not be located. The court requested the police authorities to provide information on the whereabouts of the child and his father on three occasions and imposed sanctions on Ž.P. for failing to comply with the court order. In September 2004, when three police officers, a court bailiff and the applicant's lawyer went to Ž.P.'s home, he refused to hand over the child and used force in fleeing the premises, taking his son with him. He was subsequently taken into custody but managed to escape after being transferred to a hospital. At a hearing in February 2005 the municipal court terminated the enforcement proceedings, having been

informed by the applicant's lawyer that the child had been returned to his mother. The applicant, however, submitted that she had known nothing of that hearing and that her son had not been returned to her.

*Law*: Article 8 – The Court found that the Croatian authorities had taken insufficient action to facilitate the execution of the order issued by the domestic court in May 2003 and that there were substantial periods of delay for which the Government had not produced any convincing explanation. In particular, the Court noted that the police had not shown the necessary diligence in locating Ž.P. and had allowed him to escape their custody. Furthermore, the only sanction used against Ž.P. had been the imposition of a fine and a detention order, neither of which appeared to have been enforced. The passage of time and the change of circumstances engendered irreparable consequences on the relationship between a child and parent living apart, and imposed an obligation on the authorities to act swiftly. The authorities had failed however to make adequate and effective efforts to reunite the applicant with her son.
*Conclusion*: violation (unanimously).

Article 41 – The Court awarded the applicant EUR 10,000 in respect of non-pecuniary damage and a certain amount for costs and expenses.

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**FAMILY LIFE**
Obligation on applicant to return her child to Israel under terms of Hague Convention: *inadmissible*.

**ESKINAZI and CHELOUCHE - Turkey** (N° 14600/05)
Decision 6.12.2005 [Section II]

The first applicant, who is married, visited Turkey with her daughter, then 4 years old, initially for a short stay, but later decided to remain there with her daughter despite the disapproval of the girl's father. She then filed a petition for divorce. She was provisionally granted custody of her daughter, which she had previously shared with her husband. The husband, who was living in Israel, in turn filed a petition for divorce in the Tel Aviv rabbinical court. Observing that the child was habitually resident in Israel with her mother who, although being a Turkish national, had been resident in that country, the rabbinical court ordered the mother to return the child to Israel, failing which her action would be classified as a "wrongful removal of a child" under the Hague Convention of 1980 on the Civil Aspects of International Child Abduction. Proceedings were initiated under that Convention in order to secure the child's return to Israel. They resulted in an order of the Turkish courts that the child be returned pursuant to the provisions of the Hague Convention. The father brought an action for enforcement. The interim measure indicated by the Strasbourg Court under Rule 39 of its Rules of Court resulted in execution of the order being stayed. The husband of the first applicant, who was also the father of the second, was authorised to intervene in the proceedings before the Court.

*Inadmissible* under Article 8 – The refusal of the applicant, who shared custody with her husband, to return her child to Israel, in breach of the husband's rights, fell within the scope of the Hague Convention, even though the father had initially consented to a ten-day stay in Turkey. The Court, moreover, had no reason to question the domestic authorities' findings of fact and confirmed that, at the time of the order for the child's return, the child had been in a situation of "wrongful removal" within the meaning of the Hague Convention. The decisions of the Turkish courts, which had considered that the child's return to Israel would not expose her to physical or psychological harm or place her in an intolerable situation and/or one incompatible with her fundamental rights and freedoms, had not been arbitrary. There was nothing to suggest that the procedure followed in that connection had not been fair or had not enabled the mother to play a sufficient role in protecting her interests. Consideration still had to be given to Article 20 of the Hague Convention, which provided that the return of the child might be refused "if [that] would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms". The first applicant, the child's mother, had complained that she would suffer because of discriminatory procedures and religious considerations if, the impugned measure having been executed, she and her daughter then became subject to rabbinical justice in Israel in connection with the divorce and other related matters. The Court examined those arguments under the head of Article 6(1),

which, in the present case, required it to ensure that the applicants would not risk being subjected to "a flagrant denial of justice" in Israel, a State not party to the Convention.

*Inadmissible* under Article 6(1) – At the time when the Turkish authorities had been required to secure the child's return, they had had no cause to find any "substantial grounds for believing" that there was a risk of a "flagrant" denial of justice in Israel, as feared by the mother, without going into the details of a broad debate on the specific features of the Israeli judicial system. The authorities had not been bound by any treaty obligation of Turkey to address such a broad issue before authorising the child's return. Secondly, the Court could not see any reason to question the sincerity of the father's statement at the hearing that he hoped the proceedings would be dispassionate and that he had no intention of obstructing them. Lastly, there was nothing to suggest that any proceedings in Israel would lead to a hasty decision without an appropriate examination of all the mother's claims. Moreover, in the last instance she would be entitled to take her case to the Israeli Supreme Court, which could review decisions of the rabbinical courts to prevent any flagrant breach of the law. Accordingly, the Court was not persuaded that the Turkish authorities had had sufficient elements before them to suggest that any shortcomings in the proceedings that the applicants might face in Israel would constitute a "flagrant denial of justice". Moreover, whilst it was true that the outcome of such proceedings would not be subject to subsequent review at the European level, the Court was nevertheless reassured by the object and scope of Israel's obligations towards the countries of which the applicants were nationals under other human rights protection instruments in force in that State: *manifestly ill-founded*.

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**HOME**
Remedy to secure redress within three months for applicants who are being hindered from returning to their homes and properties in northern Cyprus.

**XENIDES-ARESTIS - Turkey** (N° 46347/99)
Judgment 22.12.2005 [Section III]
(see below Article 46).

## ARTICLE 9

**MANIFEST RELIGION OR BELIEF**
Indication in declaration of income that part of the tax payable is to be allocated to the religious institutions: *communicated.*

**SPAMPINATO - Italy** (N° 23123/04)
[Section III]

On the income-tax return he filed in 2004 the applicant opted to allocate eight thousandths of his income tax to the State. The relevant legislation provides that eight thousandths of one's income tax must be allocated to the State, to the Catholic church, or to one of the institutions representing the other five religions authorised to receive that contribution. Taxpayers are required to indicate their choice as to the allocation of that portion of their income tax when they fill in their tax return. If no option is indicated, the corresponding sum is paid to the State, the Catholic church and the institutions representing the other five religions, in proportion to the choices made for such purpose by all taxpayers. The applicant complained that he had been obliged to indicate his religious beliefs on his tax return.
*Communicated* under Articles 9 and 14.

## ARTICLE 10

**FREEDOM OF EXPRESSION**
Refusal to renew a registration certificate entitling a company which published a magazine to preferential tax and postal rates: *inadmissible*.

***VÉRITÉS SANTÉ PRATIQUE*** **SARL - France** (N° 74766/01)
Decision 1.12.2005 [Section I]

The applicant company publishes the health magazine *Vérités Santé Pratique*, which first appeared in 1997 and is distributed to subscribers. It adopts a critical approach to health matters and informs its readers on alternative types of treatment. The applicant company was registered until 1999 with the CPPAP (joint publications and press agency commission) and was thereby entitled to certain advantages under a special regime specific to the press including preferential postal rates and tax relief. Its application for the renewal of its registration met with a refusal by the CPPAP, which considered that the magazine did not fulfil a general interest as required by the regulations governing the special regime. The applicant company requested the CPPAP to reconsider its decision, but it maintained its refusal, adding that certain information published by the magazine was potentially harmful to public health and did not comply with relevant legislation. The company appealed to the *Conseil d'Etat*, which annulled the first decision of the CPPAP for lack of reasoning, but upheld the second in its entirety, finding that the magazine disseminated unverified medical information which discredited the conventional treatment given to patients with serious illnesses such as cancer or hypertension. According to the Government, the applicant company has since been continuing its publications under a new title and on the Internet.

*Inadmissible* under Article 10: The issuance of a registration certificate entitling its holder to tax rebates and preferential postal rates was not a right that this Article guaranteed *per se*, but, in the present case, the impugned decisions could be regarded as directed against the applicant's opinions on medical matters. Moreover, the withdrawal of the pecuniary advantage in issue had influenced the choice of medium for future publication (at least until the appearance of a new magazine) and had therefore restricted the applicant's freedom to choose its means of expression. The complaint thus fell within the ambit of Article 10 and the non-renewal of the certificate amounted to interference by a public authority with the applicant's right to freedom of expression. That interference had been prescribed by law and pursued the legitimate aim of "protecting public health", and indeed that of protecting the rights of others. As to its necessity, it was necessary to weigh the protection of public health against the protection of the applicant's freedom of expression. The applicant company could not be denied the protection available to the press under Article 10, as it was in the general interest to authorise small non-mainstream groups to contribute to public debate on issues such as health. Moreover, the impact of the impugned publication, in view of its low circulation, had been limited. However, the fact that the applicant company had been able to continue publishing under a different title and in a different medium reduced the effects of the interference. Above all, Article 10 did not guarantee unlimited freedom of expression and the public-health grounds submitted by the public authorities to justify the interference were pertinent and sufficient. There was thus a reasonable relationship of proportionality between the applicant company's freedom of expression and the legitimate aim pursued: *manifestly ill-founded*.

*Inadmissible* under Article 14 for non-exhaustion of internal remedies, as the applicant company had not raised the argument of discrimination in the *Conseil d'Etat*.

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**FREEDOM OF EXPRESSION**
Television company ordered to hand over to the police unedited footage involving suspected paedophile: *inadmissible*.

**NORDISK FILM & TV A/S - Denmark** (N° 40485/02)
Decision 8.12.2005 [Section I]

*Facts*: In the course of producing a television programme investigating paedophilia a journalist employed by the applicant company, JB, went undercover, posing as a member of "The Paedophile Association". In the course of his year long membership JB was befriended by two other members, "Mogens" and "Per", who made incriminating statements regarding paedophilia in Denmark and India. "Mogens" recommended a specific hotel, run by a Danish paedophile in India, at which "Mogens" had had sex with Indian boys in the past. JB visited the hotel in India and interviewed an Indian boy about his knowledge of "Mogens". Also, in front of the hotel, a young Indian boy was offering sexual services. JB made numerous notes and camera recordings, most of them hidden. Before the programme was to be broadcast the Paedophile Association and its members who had been recorded by the hidden camera were contacted by the applicant company and given assurance that they would remain anonymous, when the documentary was shown. The association unsuccessfully sought an injunction to prevent the broadcast of the programme.
The day after the broadcast of the programme, "Mogens" was arrested and charged with sexual offences. The police had taken an interest in him already before the broadcast and could therefore identify him. Their request that he be detained on remand was refused by the city court, which found no specific reason to believe that "Mogens" would impede the investigation, notably because the information leading to the charges against him on the whole appeared from the programme. Thus, "Mogens" was released on the same day. During their further investigation, which also included "Per", the police requested that the un-shown portions of the recordings made by JB be disclosed. JB, and the editor and head of the applicant company's documentary unit, refused the request, following which the prosecutor requested a court order compelling the applicant company to hand over the un-shown footage. The city court refused to grant the request, having regard to the need of the media to be able to protect their sources and considering that the raw material had little or no evidential value, as it essentially covered the same matter as the broadcast footage. The decision was upheld on appeal. Having been granted leave to appeal, the public prosecution brought the case before the Supreme Court which found against the applicant company, so that the latter was compelled to hand over limited specified unedited footage and notes which related solely to "Mogens" and his activities in Denmark and India, including the recordings made outside the Indian hotel of the Indian boy. However, the recordings and notes were exempted from the order whenever the handover would entail a risk of revealing the identity of any of three named persons, namely the victim, the police officer and the hotel manager's mother. The remainder of the unedited footage was to remain protected, including the un-shown material relating to "Per" and the meetings of the Paedophile Association. The police eventually decided to discontinue its investigation against "Mogens".

*Law*: The protection of journalistic sources is one of the cornerstones of freedom of the press. Limitations on the confidentiality of journalistic sources call for the most careful scrutiny and cannot be compatible with Article 10 unless justified by an overriding requirement in the public interest. In the present case however, when JB had been working undercover, the persons talking to him had been unaware that he was a journalist. Also, owing to the use of a hidden camera, the participants had been unaware that they were being recorded. Both measures had been used in relation to "Mogens" and the Indian boy. The majority of the persons participating in the programme had not of their free will been assisting the press in informing the public about matters of public interest or matters concerning others, on the contrary. Nor had they consented to being filmed or recorded. Consequently, those participants could not be regarded as sources of journalistic information in the traditional sense. Against this background the applicant company had not been ordered to disclose its journalistic source of information but rather to hand over part of its own research-material. While Article 10 might be applicable in such a situation and while a compulsory hand-over of research material might have a chilling effect on the exercise of journalistic freedom of expression, this matter could only be properly addressed in the circumstances of a given case. The Court was not convinced that the degree of protection under Article 10 to be applied in a situation

like the one at hand could reach the same level as that afforded to journalists, when it comes to their right to keep their sources confidential. That protection is two-fold, relating not only to the journalist, but also and in particular to the source who volunteers to assist the press in informing the public about matters of public interest.
The Supreme Court's decision to compel the applicant company to hand over the unedited footage in which "Mogens" or the Indian boy had participated, and JB's notes which had related thereto, had constituted an interference within the meaning of Article 10 which was "prescribed by law" and had pursued the "legitimate aims" of preventing disorder or crime and protecting the rights of others. As to the question whether that interference had been "necessary in a democratic society" the Court noted *inter alia* the Supreme Court's finding that the identity of the journalistic sources in the traditional sense, namely – the victim, the police officer and the hotel manager's mother – should remain protected. Moreover, the Supreme Court had acknowledged that the content of the programme were topics of serious public interest. The non-edited recordings and the notes made by the journalist JB could assist the investigation and production of evidence in the case against "Mogens", whose identity had already been known to the police. Having balanced the various conflicting interests, the Supreme Court had ordered that the applicant company hand over only a limited part of the unedited footage, namely those recordings in which Mogens or the Indian boy had participated, and JB's notes which related thereto. As regards the remainder of the unedited footage and notes, including the un-shown material relating to "Per" and the meetings of the Paedophile Association, the Supreme Court had found for the applicant company. In these circumstances the order to compel the applicant company to hand over the limited unedited footage in which "Mogens" or the Indian boy had participated, and JB's notes relating thereto had not been disproportionate to the legitimate aim pursued, and that the reasons given in justification of those measures had been relevant and sufficient. *Manifestly ill-founded*.

## ARTICLE 14

**DISCRIMINATION**
Racial discrimination flowing from applicant's refused re-entry into the Republic of Kabardino-Balkaria on the basis of an instruction not to admit anyone of Chechen ethnic origin: *violation*.

**TIMISHEV - Russia** (N° 55762/00 and 55974/00)
Judgment 13.12.2005 [Section II]
(see below Article 2 of Protocol No. 4).

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**DISCRIMINATION (Article 3)**
Physical and verbal abuse of two Roma gypsies during police custody alleged to have been racially motivated, and effectiveness of the investigation: *no violation/violation.*

**BEKOS and KOUTROPOULOS - Greece** (N° 15250/02)
Judgment 13.12.2005 [Section IV]

*Facts*: The applicants, who are ethnic Romas, were arrested by the police when attempting to break into a kiosk. The first applicant complains that he was repeatedly hit on the back with a truncheon, slapped and punched, both at the moment of detention and when being interviewed at the police station. The second applicant maintains that he was also abused physically and verbally throughout his interrogation. The Government dispute these facts. The day after their release, a forensic doctor issued a medical certificate stating that the applicants had "moderate bodily injuries caused in the past twenty-four hours by a heavy blunt instrument". The applicants have produced to the Court pictures taken on the day of their release showing their injuries. As a result of publicity which the incident received in the media, the Ministry of Public Order launched an administrative inquiry. The inquiry found that the officers who had arrested the applicants had acted "lawfully and appropriately", whilst two others had treated them with "particular cruelty during their detention". The report recommended the temporary suspension from service of these

two officers, but this never took place. The applicants subsequently instituted criminal proceedings against the police officers. An official inquiry into the incident was ordered, and one of the police officers was committed for trial on account of physical abuse during the interrogation. The Court of Appeal concluded there was no evidence implicating the accused officer in any abuse and found him not guilty. The applicants, who had joined the proceedings as civil parties, were precluded under domestic law from appealing against this decision.

*Law*: Article 3 (as regards the ill-treatment) – Where an individual has been taken into police custody in good health but found to be injured at the time of release, it was incumbent on the State concerned to provide a plausible explanation for those injuries. In the present case, the domestic authorities had failed to do so. The Court concluded that the serious physical harm suffered by the applicants at the hands of the police, as well as the feelings of fear, anguish and inferiority which the impugned treatment had produced in them, must have caused them suffering of sufficient severity for the acts of the police to be categorised as inhuman and degrading treatment within the meaning of Article 3.
*Conclusion*: violation (unanimously).

Article 3 (as regards the effectiveness of the investigation) – On several occasions, during both the administrative inquiry and the ensuing judicial proceedings, it had been acknowledged that the applicants were ill-treated while in custody. However, no police officer was ever punished, either within the criminal proceedings or the internal police disciplinary procedure for ill-treating the applicants. The fine of less than 59 euros imposed on one of the police officers was imposed not on the grounds of his own ill-treatment of the applicants but for his failure to prevent the occurrence of ill-treatment by his subordinates. None of the officers involved in the incident were at any time suspended from service, despite the recommendation of the report on the findings of the administrative inquiry. The investigation did not appear to have produced any tangible results, and, therefore, the applicants received no redress for their complaints. Having regard to the lack of an effective investigation into the credible allegation made by the applicants that they had been ill-treated while in custody, the Court held that there had been a violation of Article 3.
*Conclusion*: violation (unanimously).

Article 14 taken in conjunction with Article 3 (as regards State liability for ill-treatment based on discrimination) – The Court considered that, while the police officers' conduct during the applicants' detention called for serious criticism, that behaviour was of itself an insufficient basis for concluding that the treatment inflicted on the applicants by the police was racially motivated. The Court therefore found that there had been no violation of Article 14 taken together with Article 3 concerning the allegation that racist attitudes played a role in the applicants' treatment by the police.
*Conclusion*: no violation (unanimously).

Article 14 taken in conjunction with Article 3 (as regards the investigation into racist motives) – When investigating violent incidents, State authorities had the additional duty to take all reasonable steps to unmask any racist motive and to establish whether or not ethnic hatred or prejudice might have played a role in the events. Admittedly, proving racial motivation will often be extremely difficult in practice. The authorities had to do what was reasonable in the circumstances to collect and secure the evidence, explore all practical means of discovering the truth and deliver fully-reasoned, impartial and objective decisions, without omitting suspicious facts that might indicate racist motives. In the instant case, the authorities investigating the alleged ill-treatment of the applicants had before them the sworn testimonies of the first applicant that, in addition to being the victims of serious assaults, they had been subjected to racial abuse by the police who were responsible for the ill-treatment. In addition, they had before them the joint open letter of the Greek Helsinki Monitor and the Greek Minority Rights Group referring to some 30 oral testimonies concerning similar incidents of ill-treatment of members of the Roma community. The Court considered that those statements, when combined with the reports of international organisations on alleged discrimination by the police in Greece against Roma and similar groups, including physical abuse and the excessive use of force, called for verification. In the present case, despite the plausible information available to the authorities that the alleged assaults had been racially motivated, there was no evidence that they carried out any examination into the question. In particular, nothing was done to verify

the statements of the first applicant that they had been racially verbally abused or the other statements referred to in the open letter alleging similar ill-treatment of Roma; nor did any inquiries appear to have been made as to whether one of the police officers concerned had previously been involved in similar incidents or whether he had ever been accused in the past of displaying anti-Roma sentiment; nor, further, did any investigation appear to have been conducted into how the other officers of the Mesolonghi police station were carrying out their duties when dealing with ethnic minority groups. Moreover, even though the Greek Helsinki Monitor gave evidence before the trial court in the applicants' case and that the possible racial motives for the incident could not therefore have escaped the attention of the court, no specific regard appeared to have been paid to that question. The Court therefore found a violation of Article 14 taken together with Article 3 in that the authorities failed in their duty to take all possible steps to investigate whether or not discrimination might have played a role in the events at issue.
*Conclusion*: violation (unanimously).

Article 41 – The Court awarded each applicant EUR 10,000 in respect of non-pecuniary damage.

## ARTICLE 46

**EXECUTION OF A JUDGMENT**
Remedy to secure redress within three months for applicants who are being hindered from returning to their homes and properties in northern Cyprus.

**XENIDES-ARESTIS - Turkey** (N° 46347/99)
Judgment 22.12.2005 [Section III]

*Facts*: The applicant, a Cypriot national of Greek-Cypriot origin, owns half a share in a plot of land in Famagusta (northern Cyprus). One of the houses on the land was her home, where she lived with her husband and children, and the rest of the property was either used by members of the family or rented out. She also owns part of a plot of land with an orchard. The applicant has been prevented from living in her home or using her property since 1974, as a result of the continuing division of Cyprus since the conduct of military operations in northern Cyprus by Turkey that year.
In 2003 the "Parliament of the Turkish Republic of Northern Cyprus" enacted the "Law on Compensation for Immovable Properties Located within the Boundaries of the Turkish Republic of Northern Cyprus". A commission was set up with a mandate to deal with compensation claims. The UN plan for the reunification of Cyprus ("the Annan Plan") was put to the vote in Cyprus in 2004 but as it was rejected in the Greek-Cypriot referendum it did not enter into force.

Article 8 – This applicant's situation differed from that of the applicant in *Loizidou v. Turkey* (*Reports of Judgments and Decisions* 1996-VI) since, unlike Mrs Loizidou, this applicant had actually lived in Famagusta. Since 1974 she had been unable to gain access to, to use and enjoy her home. The Court concluded, as it had also found in *Cyprus v. Turkey* (ECHR 2001-IV), that the complete denial of the right of the applicant, a Greek-Cypriot displaced person, to respect for her home in northern Cyprus constituted a continuing violation of Article 8.
*Conclusion*: violation (six votes to one).

Article 1 of Protocol No. 1 – The Turkish Government continued to exercise overall military control over northern Cyprus and the fact that the Greek-Cypriots had rejected "the Annan Plan" did not have the legal consequence of bringing to an end the continuing violation of the rights of displaced persons. The applicant had still to be regarded as the legal owner of her land. The Court therefore found no reason to depart from the conclusions which it had reached in previous cases, in particular the case *Loizidou v. Turkey*. As a consequence of the fact that the applicant had been refused access to the land since 1974, she effectively had lost all control over, as well as all possibilities to use and enjoy her property. The continuous denial of access therefore had to be regarded as an interference with her rights under Article 1 of Protocol No. 1. It had not been explained how the need to resettle displaced Turkish Cypriot refugees

in the years following the Turkish intervention in 1974 could justify the complete negation of the applicant's property rights in the form of a total and continuous denial of access and a purported expropriation without compensation. Nor could the fact that property rights were the subject of inter-communal talks involving both communities in Cyprus provide a justification for this situation under the Convention. Accordingly, there had been and continues to be a violation of Article 1 of Protocol No. 1 by virtue of the fact that the applicant was and is being denied access to, control, use and enjoyment of her property and any compensation for the interference with her property rights.
*Conclusion*: violation (six votes to one).

Article 14 – In line with the Court's judgment in *Cyprus v. Turkey*, in the circumstances of the case, the applicant's complaints under Article 14 amounted in effect to the same complaints, albeit seen from a different angle, as those considered in relation to Article 8 of the Convention and Article 1 of Protocol No. 1. Since it had already found violations of those articles, the Court found it unnecessary to examine whether there had been a violation of Article 14 taken in conjunction with Article 8 and Article 1 of Protocol No. 1 by virtue of the alleged discriminatory treatment of Greek Cypriots not residing in northern Cyprus as regards their rights to the peaceful enjoyment of their possessions.
*Conclusion*: not necessary to examine the complaint under Article 14 (unanimously).

Article 46 – It was inherent in the Court's findings that the violation of the applicant's rights under Article 8 and Article 1 of Protocol No. 1 originated in a widespread problem affecting large numbers of people, i.e. the unjustified hindrance on the applicant's "respect for her home" and "peaceful enjoyment of her possessions" which was enforced as a matter of policy or practice in the "Turkish Republic of Northern Cyprus". Moreover, the Court could not ignore the fact that there were already approximately 1,400 property cases pending before the Court brought primarily by Greek-Cypriots against Turkey.
*Conclusion* (unanimous): Turkey should introduce a remedy, within three months, which secures, in respect of the Convention violations identified in the judgment, genuinely effective redress for the applicant as well as in relation to all similar applications pending before the Court, in accordance with the principles for the protection of the rights laid down in Article 8 and Article 1 of Protocol No. 1. Such a remedy should be available within three months and redress should occur three months after that. Pending the implementation of general measures, the Court adjourned its consideration of all similar applications.

Article 41 – As far as any pecuniary or non-pecuniary damage was concerned, the just satisfaction question was not ready for decision. The applicant was awarded costs and expenses.

## ARTICLE 1 OF PROTOCOL No. 1

**POSSESSIONS**
Expulsion of Sudeten Germans from their homeland after the end of the Second World War, and confiscation of their property without compensation: *inadmissible.*

**BERGAUER and 89 Others - Czech Republic** (Nº 17120/04)
Decision 13.12.2005 [Section II]

The applicants are 90 persons of German ethnic origin. They or their ancestors were residing in former Czechoslovakia, in the area termed by the applicants "Sudetenland". At the end of the Second World War the territory was annexed to Germany and the applicants were ordered to leave their property and move to the remaining territory of Czechoslovakia. The applicants were collectively made German nationals without their consent. They submit that after the war they or their predecessors were victims of severe and unjustified ill-treatment. Moreover, on the basis of a number of Presidential Decrees adopted in 1945 their property was confiscated without compensation by the authorities of the former Czechoslovakia. As they had lost their Czech citizenship they claim to have been unable to seek restitution of their property or financial compensation before the national courts.

*Inadmissible* under Article 1 of Protocol No.1 – The expropriation of the applicants' or their predecessors' property occurred long before the entry into force of the Convention with respect to the Czech Republic. Moreover, a deprivation of property or other rights *in rem* is in principle an instantaneous act and does not produce a continuing situation of the "deprivation of a right". Therefore, the applicants had no "existing possessions" within the meaning of this Article when the Convention entered into force with respect to the Czech Republic. Neither could this provision be interpreted as creating any general obligation for a Contracting State to restore property which had been expropriated before such a State had ratified the Convention. Hence, the Czech Republic did not have any general obligation to restore the property confiscated under the Presidential Decrees to the owners. Moreover, under the applicable legislation the applicants had neither a right nor a claim amounting to a legitimate expectation to obtain such restitution and, therefore, they had no "possession" within the meaning of this Article: *incompatible ratione materiae*.

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**PEACEFUL ENJOYMENT OF POSSESSIONS**
Remedy to secure redress within three months for applicants who are being hindered from returning to their homes and properties in northern Cyprus.

**XENIDES-ARESTIS - Turkey** (N° 46347/99)
Judgment 22.12.2005 [Section III]
(see Article 46 above).

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**POSITIVE OBLIGATIONS**
Legal uncertainty concerning a possession of the applicant whose return he requested after it had been nationalised and sold to a third party by the State: *violation.*

**PĂDURARU - Romania** (N° 63252/00)
Judgment 1.12.2005 [Section III]

*Facts*: The applicant's father owned a property in Bucharest divided into two buildings, A and B, containing three and two flats respectively, which was nationalised by the State in 1950. In February 1996 the applicant applied for the return of the property under Law no. 112/1995 on the legal rules governing nationalised residential property. In October 1996 the commission responsible for the implementation of the Law decided that properties nationalised before 1989 whose former owners had made an application for the return of property under that Law, or had brought an action for recovery of possession in the courts, were only to be sold to the tenants after the legal status of the property had been clarified. In early 1997 the city council sold the two flats in block B and the adjoining land to the tenants. In March 1997 the applicant brought an action for recovery of possession of the property. In a final judgment of April 1997 the court found that the whole of the property claimed by the applicant had been nationalised in breach of the legislation then in force, held that the applicant had remained the rightful owner and ordered the building to be returned to the applicant, including the flats previously sold by the State. A few days later the city council sold one of the three flats in block A and the adjoining land to the former tenants. In execution of the April 1997 judgment, the city council ordered the return of the entire property. However, the transfer of possession of the parts that had been sold to former tenants required the prior annulment of the deeds of conveyance. In March 1999 a court held that the flats had been validly sold, since there was no evidence of any bad faith on the part of the purchasers, and any bad faith on the part of the city council had no bearing on the matter. The appeals lodged by the applicant against that judgment were dismissed. The applicant was then no longer legally entitled to recover the building but could only claim damages. The applicant complained that he had not received any compensation for the sale of his flats to third parties, which had been upheld by a judicial decision.

*Law*: Article 1 of Protocol No. 1 – As to the flat that had been sold after the judicial decision ordering the return of the building: whilst the judgment of 10 April 1997 had retroactively recognised the applicant's right of property and had ordered the State to return the building to him, the State had sold the flat. It was

not therefore merely a sale of someone else's property, but a sale that had taken place in flagrant breach of a judicial decision in the applicant's favour. It had not been established with certainty whether or not the judgment of 10 April 1997 had become final by the date of the sale, but the State, in its capacity as guarantor of public policy, had a moral obligation to set an example and should have ensured that the authorities responsible for the protection of public policy complied with that obligation. By selling the disputed flat that it had been ordered to return to the applicant, without expressing the slightest opposition to the judgment, for example by lodging an appeal, the State had shown disregard for judicial decisions. Moreover, under the law as it stood, the applicant no longer had any remedies whereby he could recover possession of the flat. In short, there had been interference with the applicant's peaceful enjoyment of his possession. Following the sale of the property, the applicant had no longer been able to take possession of it or to sell, bequeath, donate or otherwise alienate the property. The situation had thus resulted in a deprivation of the applicant's property. The interference moreover had no basis in law, as when the sale took place the State had no document of title to the flat, whereas property could only legally be sold on the basis of a document proving title.
As to the flats sold before the applicant had brought his action for recovery of possession of the property, the applicant had a pecuniary interest sufficiently established in domestic law to secure the return of the flats, which were a "possession". The State had failed to fulfil its positive obligation to take timely and consistent action to address the question of general interest raised by the restitution or sale of property that had been transferred to State ownership under nationalisation decrees. The lack of consistency in the legislation and the discrepancies in the case-law of the Supreme Court, particularly concerning nationalised real property, were capable of creating a general lack of legal certainty and security. The general legal uncertainty thus created had had repercussions in the specific case of the applicant, who had been unable to recover possession of the whole of his property, even though the State had been ordered in a final judgment to return it to him. Consequently, the State had not fulfilled its obligation to uphold the applicant's right to the effective enjoyment of his possessions, and had thus failed to strike a "fair balance" between the requirements of the public interest and the need to protect the applicant's right to the peaceful enjoyment of his possessions.
*Conclusion*: violation (unanimously).

Article 41 – The Court considered that the question of the application of Article 41 was not ready for decision and should accordingly be reserved in its entirety.

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**DEPRIVATION OF PROPERTY**
Nationalised property the title to which was restored retrospectively to the applicant, sold by the State to third parties: *violation.*

**PĂDURARU - Romania** (N° 63252/00)
Judgment 1.12.2005 [Section III]
(see above).

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**CONTROL OF THE USE OF PROPERTY**
Constraints for nearby properties arising from the listing of a historic building: *inadmissible*.

**SCEA FERME DE FRESNOY - France** (N° 61093/00)
Decision 1.12.2005 [Section I]

The applicant company runs a farm comprising various buildings for agricultural use, including two particularly old constructions listed by the authorities as historical monuments because of their public-interest value as examples of cultural heritage. The applicant envisaged erecting other agricultural facilities in the vicinity of those that had been listed and applied for building and demolition permits. Refusals to grant the permits were annulled by a court, with the exception of two decisions that were not challenged by the applicant. Some of the permits carried conditions relating to the preservation of the aesthetic appearance of the area around the listed buildings. Development in the vicinity of the two listed

buildings was restricted as a result of the listing. Alleging that the listing of the buildings had prevented it from developing its agricultural infrastructures, the applicant company sought compensation but was unsuccessful. The court pointed out that only two units of the farm buildings had been listed, representing 4% of the total building surface area, and that the applicant had complained not of a loss arising merely from the presence of the two listed buildings but of a loss caused by development restrictions in the surrounding area, that is to say a loss which was not provided for by law. Whilst the Planning Code did provide for the protection of the area within view of a listed building (any demolition or construction around a listed building remaining subject to the prior approval of the French national-heritage architect), the "easement pertaining to development in the vicinity of a listed building" did not give rise to any compensation. The court also observed that a permit had been granted to erect a storage building, subject to approval of the plan by the French national-heritage architect.

*Inadmissible* under Article 1 of Protocol No. 1 – There had been interference with the applicant's right to the peaceful enjoyment of its possessions in the vicinity of the listed buildings. The easement on the surrounding land had not deprived the applicant of its property but had subjected the use of that land to certain constraints, such as the requirement of prior authorisation in respect of any new construction or demolition. The interference therefore constituted a measure controlling the property's use. The purpose of the listing process, which was provided for by law, was to preserve historic buildings which had "a public-interest value in relation to the history of art, in view of the scarcity and authenticity of [their] architecture". The impugned interference thus had the purpose of preserving the quality of the environment around protected national-heritage buildings, by regulating construction or other work carried out in the vicinity. That was a legitimate aim in terms of the protection of the country's cultural heritage. The restriction of the applicant's right to the peaceful enjoyment of its possessions could not be criticised *per se*, having regard in particular to the legitimate aim and to the authorised margin of appreciation, as the applicant was simply required to obtain the approval of the French national-heritage architect whenever it wished to carry out construction, demolition or alteration work in the vicinity of the listed buildings. In addition, out of six applications for building or demolition permits in respect of constructions located within view of the listed buildings, only two had given rise to refusals, and even those had not been tested before the courts. Where the planning permission remained conditional, the conditions in question had not been particularly onerous. Moreover, there had been various contacts with the competent authorities and on-site meetings with a view to reconciling the operational and site-related constraints, but the applicant company had not accepted any of the solutions proposed. In short, the interference had not resulted in placing an excessive burden on the applicant such that the impugned measure was disproportionate to the legitimate aim pursued: *manifestly ill-founded*.

*Inadmissible* under Article 14 in conjunction with Article 1 of Protocol No. 1 – The applicant had contended that the Act of 31 December 1913 created an unjustified discrimination between the owners of listed buildings, who were entitled to compensation, and those of neighbouring properties who were not so entitled. However, the two situations were different. Owners of listed buildings were not in the same position as owners of neighbouring properties. The former were subject to the encumbrances or obligations arising from the listing of their property, whilst the latter, whose property was not listed, were subject only to easements restricting the use of their property. Under the applicable legislation, which thus made a justified distinction, the two situations entailed neither the same rights nor the same obligations. The simple fact that the applicant company found itself in both situations simultaneously could not in itself justify the application of any special regime or treatment: *manifestly ill-founded*.

## ARTICLE 2 OF PROTOCOL No. 1

**RIGHT TO EDUCATION**
Elementary schooling interrupted after the children's Chechen father had been considered no longer resident in the Republic of Kabardino-Balkaria: *violation*.

**TIMISHEV - Russia** (N° 55762/00 and 55974/00)
Judgment 13.12.2005 [Section II]
(see Article 2 of Protocol No. 4 below).

## ARTICLE 2 OF PROTOCOL No. 4

### Article 2(1)

**FREEDOM OF MOVEMENT**
Applicant refused re-entry into the Republic of Kabardino-Balkaria on the basis of an instruction not to admit anyone of Chechen ethnic origin: *violation*.

**TIMISHEV - Russia** (N° 55762/00 and 55974/00)
Judgment 13.12.2005 [Section II]

The applicant is a Russian national of Chechen ethnic origin, who was born in the Chechen Republic. Since 1996 he has been living in Nalchik, in the Kabardino-Balkaria Republic of Russia, as a forced migrant. In 1999 he and his driver were travelling by car from Nazran, in the Ingushetia Republic of Russia, to Nalchik. According to the applicant, their car was stopped at a checkpoint on the administrative border between Ingushetia and Kabardino-Balkaria. Officers from the Kabardino-Balkaria State Inspectorate for Road Safety refused him entry, referring to an oral instruction from the Republic's Ministry of the Interior not to admit anyone of Chechen ethnic origin. According to the Russian Government, the applicant attempted to jump the queue of cars waiting to pass through the checkpoint and then left, after being refused priority treatment.
The applicant complained to a court about the actions of the police officers and claimed compensation for non-pecuniary damage. His claim was dismissed and he appealed unsuccessfully. Having complained to the Russian Prosecutor General, he was informed that, following an inquiry, the prosecutor's office had ordered the Ministry of the Interior of Kabardino-Balkaria to rectify the police officers' actions – which had been in violation of Article 27 of the Russian Constitution – and to take measures to avoid similar violations in the future. The Minister of the Interior of the Kabardino-Balkaria Republic nevertheless informed the Prosecutor General's Office that the order could not be implemented as the courts had found that no violation had occurred. The Minister also provided a summary of the findings of an internal inquiry, which stated that the officer who had stopped the applicant had received oral instructions not to allow people of Chechen ethnic origin travelling by private cars from the Chechen Republic to enter the Kabardino-Balkaria Republic and that the instructions had come from his shift commander, who claimed to have received the same instruction from the deputy head of the public safety police of the Ministry of the Interior.
In September 2000 the applicant's nine-year-old son and seven-year-old daughter were refused admission to their school in Nalchik – which they had attended from September 1998 to May 2000 – because the applicant could not produce his migrant's card, a local document confirming his residence in Nalchik and his status as a forced migrant from Chechnya. The applicant had had to give in his migrant's card in exchange for compensation, received in December 1999, for property he had lost in the Chechen Republic. The headmaster agreed to admit the children informally, but advised the applicant that the

children would be immediately suspended if the education department discovered the arrangement. The applicant complained unsuccessfully about the refusal to admit his children to the school.

Article 2 of Protocol No. 4 – The applicant's version of events having been corroborated by independent inquiries carried out by the prosecution and police authorities, the Court found that the traffic police at the Urukh checkpoint had prevented the applicant from crossing the administrative border between two Russian regions, Ingushetia and Kabardino-Balkaria. There had therefore been a restriction on the applicant's right to liberty of movement within Russian territory, within the meaning of Article 2(1) of Protocol No. 4. The inquiries carried out by the prosecutor's office and by the Kabardino-Balkaria Ministry of the Interior had established that the restriction at issue had been imposed by an oral order from the deputy head of the public safety police of the Kabardino-Balkaria Ministry of the Interior. It appeared that the order had not been properly formalised or recorded in some other traceable way, enabling the Court to carry out an assessment of its contents, scope and legal basis. In any event, in the opinion of the federal prosecutor's office, the order had amounted to a violation of the constitutional right to liberty of movement enshrined in Article 27 of the Russian Constitution. The Court likewise found that the restriction on the applicant's liberty of movement had not been in accordance with the law.
*Conclusion:* violation (unanimously).

Article 14 – The Kabardino-Balkarian senior police officer had ordered traffic police officers not to admit "Chechens". As a person's ethnic origin is not listed anywhere in Russian identity documents, the order barred the passage not only of anyone of Chechen ethnicity, but also those who were merely perceived as belonging to that ethnic group. It had not been claimed that representatives of other ethnic groups were subject to similar restrictions. In the Court's view, that represented a clear inequality of treatment regarding the right to liberty of movement on account of one's ethnic origin. A differential treatment of people in relevant, similar situations, without an objective and reasonable justification, constituted discrimination. Discrimination on account of one's actual or perceived ethnicity was a form of racial discrimination. Racial discrimination was a particularly invidious kind of discrimination and, in view of its perilous consequences, required special vigilance and a vigorous reaction on the part of the authorities which had to use all available means to combat racism, thereby reinforcing democracy's vision of a society in which diversity was not perceived as a threat but as a source of enrichment.
Once the applicant had shown that there had been a difference in treatment, it was for the Government to show that the difference in treatment could be justified. The Government did not offer any justification for the difference in treatment between people of Chechen and non-Chechen ethnic origin in the enjoyment of their right to liberty of movement. In any event, the Court considered that no difference in treatment which was based exclusively or to a decisive extent on a person's ethnic origin was capable of being objectively justified in a contemporary democratic society built on the principles of pluralism and respect for different cultures. In conclusion, since the applicant's right to liberty of movement had been restricted solely on the ground of his ethnic origin, that difference in treatment constituted racial discrimination within the meaning of Article 14.
*Conclusion*: violation of Article 14 taken in conjunction with Article 2 of Protocol No. 4 (unanimously).

Article 2 of Protocol No. 1– The applicant's children had been refused admission to the school which they had attended for the previous two years. The Government had not contested the submission that the true reason for the refusal had been that the applicant had surrendered his migrant's card and had thereby forfeited his registration as a resident in the town of Nalchik. The Government had confirmed however that Russian law did not allow children's right to education to be made conditional on the registration of their parents' residence. The applicant's children were therefore denied the right to education provided for by domestic law.
*Conclusion*: violation (unanimously).

Article 41– The Court awarded the applicant EUR 5,000 euros for non-pecuniary damage and a certain amount for costs and expenses.

## ARTICLE 4 OF PROTOCOL No. 7

**NE BIS IN IDEM**
Sufficiently close connection between the applicant's conviction of traffic offences and the withdrawal of his driving licence for 18 months: *inadmissible.*

**NILSSON - Sweden** (N° 73661/01)
Decision 13.12.2005 [Section II]

*Facts*: In November 1998 the applicant was apprehended by the police *inter alia* on suspicion of aggravated drunken driving and driving without a driving licence. In December 1998 he obtained a licence. In May 1999 a county administrative board informed him that it was considering whether to withdraw his licence in accordance with the Driving Licence Act on the ground of his suspected offences in November 1998. In June 1999 a district court convicted the applicant of the aforementioned offences and imposed on him a suspended sentence together with 50 hours' community service. In July 1999 the county administrative board notified the applicant that, in light of the court judgment which had gained legal force, it was intending to take a definite decision on the withdrawal of his driving licence, and invited him to submit comments. In August 1999 the board withdrew his licence for 18 months, referring to his conviction. The applicant appealed, arguing *inter alia* that the withdrawal constituted double jeopardy. A county administrative court considered a number of decisions from the Convention institutions' case-law and concluded that no clear precedent existed that could invalidate the Swedish system on the withdrawal of driving licences. Bearing in mind the damaging consequences a finding of incompatibility would have for road safety, the court found no reasons for setting aside the licence withdrawal. The applicant's further appeals were dismissed by an administrative court of appeal and by the Supreme Administrative Court.

*Law*: The aim of Article 4 of Protocol No. 7 is to prohibit the repetition of criminal proceedings that have been concluded by a final decision. A first issue to be determined was whether the proceedings relating to the withdrawal of the applicant's driving licence could be considered as "criminal" for the purposes of this provision. This notion must be interpreted in the light of the general principles concerning the corresponding words "criminal charge" and "penalty" respectively in Articles 6 and 7 of the Convention. Although the relevant offences had occurred in November 1998, it was not until August 1999 that the County Administrative Board had withdrawn the applicant's driving licence. Therefore, prevention and deterrence for the protection of the safety of road users could not have been the only purposes of the measure; retribution must also have been a major consideration. The withdrawal of the licence had been a direct and foreseeable consequence of the applicant's conviction. The Court therefore agreed with the conclusion reached by the Supreme Administrative Court that, although under Swedish law the withdrawal of a driving licence had traditionally been regarded as an administrative measure designed to protect road safety, the withdrawal on the ground of the criminal conviction, as in the present case, constituted a "criminal" matter for the purpose of Article 4 of Protocol No. 7. Moreover, in the view of the Court, the mere severity of the measure – the suspension of a driving licence for 18 months – regardless of the context of the applicant's criminal conviction, was so significant that it could ordinarily be viewed as a criminal sanction. However, the Court was unable to agree with the applicant that the decision to withdraw his driving licence amounted to new criminal proceedings being brought against him. While the different sanctions were imposed by two different authorities in different proceedings, there was nevertheless a sufficiently close connection between them, in substance and in time, to consider the withdrawal to be part of the sanctions under Swedish law for the offences of aggravated drunken driving and unlawful driving. The withdrawal therefore did not imply that the applicant was tried or punished again for an offence for which he had already been finally convicted: *Manifestly ill-founded*.

## Other judgments delivered in December

**Popov - Bulgaria** (Nº 48137/99), 1.12.2005 [Section I]
**Wróblewski - Poland** (Nº 52077/99), 1.12.2005 [Section III]
**Skachedubova - Russia** (Nº 55885/00), 1.12.2005 [Section I]
**Tuquabo-Tekle and others - Netherlands** (Nº 60665/00), 1.12.2005 [Section III]
**Smarygin - Russia** (Nº 73203/01), 1.12.2005 [Section I]
**Ilişescu and Chiforec- Romania** (Nº 77364/01), 1.12.2005 [Section III]
**Topp - Denmark** (Nº 25907/02), 1.12.2005 [Section I]
**Skorobogatova - Russia** (Nº 33914/02), 1.12.2005 [Section I]
**Tsantiris - Greece** (Nº 42320/02), 1.12.2005 [Section I]
**Subašić - Croatia** (Nº 18322/03), 1.12.2005 [Section I]
**SC Maşinexportimport Industrial Group SA - Romania** (Nº 22687/03), 1.12.2005 [Section III]
**Ağaoğlu - Turkey** (Nº 27310/95), 6.12.2005 [Section IV]
**Döleneken -Turkey** (Nº 31132/96), 6.12.2005 [Section II]
**Salvatore - Italy** (Nº 42285/98), 6.12.2005 [Section IV]
**Fikret Şahin - Turkey** (Nº 42605/98), 6.12.2005 [Section II]
**Wasilewski - Poland** (Nº 63905/00), 6.12.2005 [Section IV]
**Mikulová - Slovakia** (Nº 64001/00), 6.12.2005 [Section IV]
**Hornáček - Slovakia** (Nº 65575/01), 6.12.2005 [Section IV]
**Serrilli - Italy** (Nº 77822/01), 6.12.2005 [Section IV]
**Korga - Hungary** (Nº 4825/02), 6.12.2005 [Section II]
**Kárpáti - Hungary** (Nº 13318/02), 6.12.2005 [Section II]
**Capone - Italy** (Nº 20236/02), 6.12.2005 [Section IV]
**Drozdowski - Poland** (Nº 20841/02), 6.12.2005 [Section IV]
**Ielo - Italy** (Nº 23053/02), 6.12.2005 [Section IV]
**Maillard - France** (Nº 35009/02), 6.12.2005 [Section II]
**Mehmet Kaya - Turkey** (Nº 36150/02), 6.12.2005 [Section II]
**Kosarevskaya - Ukraine** (Nº 29459/03, Nº 4935/04 and Nº 26996/04), 6.12.2005 [Section II]
**Popov - Moldova (no. 2)** (Nº 19960/04), 6.12.2005 [Section IV]
**Tóth, Magyar and Tóthné - Hungary** (Nº 35701/04), 6.12.2005 [Section II]
**Kanlibaş - Turkey** (Nº 32444/96), 8.12.2005 [Section III]
**Giuso-Gallisay - Italy** (Nº 58858/00), 8.12.2005 [Section III]
**Federici - Italy (nº. 2)** (Nº 66327/01 and Nº 66556/01), 8.12.2005 [Section III]
**Frateschi - Italy** (Nº 68008/01), 8.12.2005 [Section III]
**Quattrini - Italy** (Nº 68189/01), 8.12.2005 [Section III]
**Dumanovski - the Former Yugoslav Republic of Macedonia** (Nº 13898/02), 8.12.2005 [Section III]
**Renieri and others - Greece** (Nº 14165/03), 8.12.2005 [Section I]
**Gili and others - Greece** (Nº 14173/03), 8.12.2005 [Section I]
**Giakoumeli and others - Greece** (Nº 15689/03), 8.12.2005 [Section I]
**Iliopoulou - Greece** (Nº 19010/03), 8.12.2005 [Section I]
**Cuccaro Granatelli - Italy** (Nº 19830/03), 8.12.2005 [Section III]
**Dimitrakopoulou - Greece** (Nº 23025/03), 8.12.2005 [Section I]
**Georgopoulos - Greece** (Nº 25324/03), 8.12.2005 [Section I]
**Mikryukov - Russia** (Nº 7363/04), 8.12.2005 [Section I]
**T. and others - Finland** (Nº 27744/95), 13.12.2005 [Section IV]
**Wirtschafts-Trend Zeitschriftenverlagsgeselschaft M.B.H. (nº 3) - Austria** (Nº 66298/01 and Nº 15653/02), 13.12.2005 [Section IV]
**Ruoho - Finland** (Nº 66899/01), 13.12.2005 [Section IV]
**Mlynář - Czech Republic** (Nº 70861/01), 13.12.2005 [Section II]
**Gartukayev - Russia** (Nº 71933/01), 13.12.2005 [Section II]
**Piskunov - Ukraine** (Nº 5497/02), 13.12.2005 [Section II]

**Cruz da Silva Coelho - Portugal** (Nº 9388/02), 13.12.2005 [Section II]
**Ryzhenkov and Zaytsev- Ukraine** (Nº 1805/03 and Nº 6717/03), 13.12.2005 [Section II]
**Garkusha - Ukraine** (Nº 4629/03), 13.12.2005 [Section II]
**Zemanová – Czech Republic** (Nº 6019/03), 13.12.2005 [Section II]
**Khanenko - Ukraine** (Nº 10174/02), 13.12.2005 [Section II]
**Anatskiy - Ukraine** (Nº 10558/03), 13.12.2005 [Section II]
**Antonovskiy - Ukraine** (Nº 22597/02), 13.12.2005 [Section II]
**Verkeyenko - Ukraine** (Nº 22766/02), 13.12.2005 [Section II]
**Zolotukhin - Ukraine** (Nº 11421/03), 13.12.2005 [Section II]
**Kosareva - Ukraine** (Nº 17304/03), 13.12.2005 [Section II]
**Semenov - Ukraine** (Nº 25463/03), 13.12.2005 [Section II]
**Miroshnichenko and Grabovskaya - Ukraine** (Nº 32551/03 & N° 33687/03), 13.12.2005 [Section II]
**Solovyeva - Ukraine** (Nº 32547/03), 13.12.2005 [Section II]
**Kotlyarov - Ukraine** (Nº 43593/02), 13.12.2005 [Section II]
**Thon - Czech Republic** (Nº 14044/04), 13.12.2005 [Section II]
**Ushachov - Ukraine** (Nº 44221/04), 13.12.2005 [Section II]
**Vujčik - Slovakia** (Nº 67036/01), 13.12.2005 [Section IV]
**Kozłowski - Poland** (Nº 31575/03), 13.12.2005 [Section IV]
**Gábriška - Slovakia** (Nº 3661/04), 13.12.2005 [Section IV]
**Di Cola - Italy** (Nº 44897/98), 15.12.2005 [Section III]
**Georgiev - Bulgaria** (Nº 47823/99), 15.12.2005 [Section I]
**Hurter - Switzerland** (Nº 53146/99), 15.12.2005 [Section III]
**Vanyan - Russia** (Nº 53203/99), 15.12.2005 [Section I]
**Scozzari and others - Italy** (Nº 67790/01), 15.12.2005 [Section III]
**Epple - Germany** (Nº 77909/01), 15.12.2005 [Section III]
**Trijonis - Lithuania** (Nº 2333/02), 15.12.2005 [Section III]
**Giacobbe and others - Italy** (Nº 16041/02), 15.12.2005 [Section III]
**Kucherenko - Ukraine** (Nº 27347/02), 15.12.2005 [Section III]
**Zaugolnova - Russia** (Nº 1144/03), 15.12.2005 [Section I]
**Barry - Ireland** (Nº 18273/04), 15.12.2005 [Section III]
**Tusashvili - Russia** (Nº 20496/04), 15.12.2005 [Section I]
**Dindar - Turkey** (Nº 32456/96), 20.12.2005 [Section II]
**Korkmaz - Turkey (n° 1)** (Nº 40987/98), 20.12.2005 [Section II]
**Korkmaz - Turkey (n° 2)** (Nº 42589/98), 20.12.2005 [Section II]
**Korkmaz Turkey (n° 3)** (Nº 42590/98), 20.12.2005 [Section II]
**Özer and others - Turkey** (Nº 42708/98), 20.112.2005 [Section II]
**Çetin - Turkey** (Nº 42779/98), 20.12.2005 [Section II]
**Mahsun Tekin - Turkey** (Nº 52899/99), 20.12.2005 [Section II]
**Wisse - France** (Nº 71611/01), 20.12.2005 [Section II]
**Relais du Min sarl - France** (Nº 77655/01), 20.12.2005 [Section II]
**Nagy - Hungary** (Nº 6437/02), 20.12.2005 [Section II]
**Majercsik - Hungary** (Nº 13323/02), 20.12.2005 [Section II]
**Magalhães Pereira - Portugal** (n°. 2) (Nº 15996/02), 20.12.2005 [Section II]
**Marion - France** (Nº 30408/02), 20.12.2005 [Section II]
**Vigovskiyy - Ukraine** (Nº 42318/02), 20.12.2005 [Section II]
**Oleynik and Baybarza - Ukraine** (Nº 5384/03), 20.12.2005 [Section II]
**Bezugly - Ukraine** (Nº 19603/03), 20.12.2005 [Section II]
**Guillemot - France** (Nº 21922/03), 20.12.2005 [Section II]
**A.D. - Turkey** (Nº 29986/96), 22.12.2005 [Section III]
**İ.B. - Turkey** (Nº 30497/96), 22.12.2005 [Section III]
**H.E. - Turkey** (Nº 30498/96), 22.12.2005 [Section III]
**Pütün - Turkey** (Nº 31734/96), 22.12.2005 [Section III]
**Işik - Turkey** (Nº 35064/97), 22.12.2005 [Section III]
**Aydoğan- Turkey** (Nº 40530/98), 22.12.2005 [Section III]

**Ali Riza Doğan - Turkey** (Nº 50165/99), 22.12.2005 [Section III]
**Paturel - France** (Nº 54968/00), 22.12.2005 [Section I]
**Yilmaz and Durç - Turkey** (Nº 57172/00), 22.12.2005 [Section III]
**Velcea - Romania** (Nº 60957/00), 22.12.2005 [Section III]
**Aslan - Turkey** (Nº 63183/00), 22.12.2005 [Section III]
**Çamlibel - Turkey** (Nº 64609/01), 22.12.2005 [Section III]
**Bulduş - Turkey** (Nº 64741/01), 22.12.2005 [Section III]
**Ahmet Turan Demir - Turkey** (Nº 72071/01), 22.12.2005 [Section III]
**Şimşek - Turkey** (Nº 72520/01), 22.12.2005 [Section III]
**Atanasovic and others - the Former Yugoslav Republic of Macedonia** (Nº 13886/02), 22.12.2005 [Section III]
**Tendik and others v. Turkey** (Nº 23188/02), 22.12.2005 [Section III]
**Iera Moni Profitou Iliou Thiras - Greece** (Nº 32259/02), 22.12.2005 [Section I]
**Ayçoban and others - Turkey** (Nº 42208/02, Nº 43491/02 and Nº 43495/02), 22.12.2005 [Section III]
**Çiçekler - Turkey** (Nº 14899/03), 22.12.2005 [Section III (former)]
**Balyemez - Turkey** (Nº 32495/03), 22.12.2005 [Section III (former)]
**Rybakov - Russia** (Nº 14983/04), 22.12.2005 [Section I]

## 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. 77 and 78):

**Mezotur-Tiszazugi Vizgazdalkodasi Tarsulat - Hungary** (Nº 5503/02)
Judgment 26.7.2005 [Section II]

**Dost and others - Turkey** (Nº 45712/99)
Judgments 26.7.2005 [Section IV]

**Gurepka - Ukraine** (Nº 61406/00)
**Pavlyulynets - Ukraine** (Nº 70767/01)
**Volf - Czech Republic** (Nº 70847/01)
**Sacaleanu - Romania** (Nº 73970/01)
**Kepenekli oglu and Canpolat - Turkey** (Nº 35363/02)
**Gouzovskiy - Ukraine** (Nº 41125/02)
**Salov - Ukraine** (Nº 65518/01)
Judgments 6.9.2005 [Section II]

**Hamiyet Kaplan and others - Turkey** (Nº 36749/97)
**Han - Turkey** (Nº 50997/99)
**Acar - Turkey** (Nº 52133/99)
**Ernekal - Turkey** (Nº 52159/99)
**Vrabel and Durica - Czech Republic** (Nº 65291/01)
**M.B. - France** (Nº 65935/01)
**Gosselin - France** (Nº 66224/01)
**Hasan Taskin - Turkey** (Nº 71913/01)
**Ivanova - Ukraine** (Nº 74104/01)
**Lyutykh - Ukraine** (Nº 22972/02)
**I.A. - Turkey** (N° 42571/98)
Judgments 13.9.2005 [Section II]

**Lehtinen - Finland** (Nº 34147/96)
**Skrobol - Poland** (Nº 44165/98)
**H.N. - Poland** (Nº 77710/01)
**B. and L. - United Kingdom** (N° 36536/02)
Judgments 13.9.2005 [Section IV]

**Dundar - Turkey** (Nº 26972/95)
**Dizman – Turkey** (Nº 27309/95)
**Ozgen and others - Turkey** (Nº 38607/97)
**Temirkan - Turkey** (Nº 41990/98)
**Ertas Aydin and others - Turkey** (Nº 43672/98)
**Bulga and others - Turkey** (Nº 43974/98)
**Derilgen and others - Turkey** (Nº 44713/98)
**Akat - Turkey** (Nº 45050/98)
**Frik - Turkey** (Nº 45443/99)
**Yesilgoz - Turkey** (Nº 45454/99)
**Sevgin and Ince - Turkey** (Nº 46262/99)

**Coruh - Turkey** (Nº 47574/99)
**Baltas - Turkey** (Nº 50988/99)
**Ali Abbas Ozturk - Turkey** (Nº 52695/99)
**Veysel Turhan - Turkey** (Nº 53648/00)
**Aytan - Turkey** (Nº 54275/00)
**Akar and Becet - Turkey** (Nº 55954/00)
**Sahmo - Turkey** (Nº 57919/00)
**Trykhlib - Ukraine** (Nº 58312/00)
**Karayigit - Turkey** (Nº 63181/00)
**Cevdet and Hatice Yilmaz - Turkey** (Nº 88/02)
**Drobotyuk - Ukraine** (Nº 22219/02)
**Gavrilenko - Ukraine** (Nº 24596/02)
**Nemeth - Czech Republic** (Nº 35888/02)
**Polonets - Ukraine** (Nº 39496/02)
Judgments 20.9.2005 [Section II]

**Mavroudis - Greece** (Nº 72081/01)
**Vasyagin - Russia** (Nº 75475/01)
**Sokolov - Russia** (Nº 3734/02)
**Sigalas - Greece** (Nº 19754/02)
**Marinovic - Croatia** (Nº 24951/02)
Judgments 22.9.2005 [Section I]

**Hüseyin Erturk - Turkey** (Nº 54672/00)
**Kalay - Turkey** (Nº 16779/02)
**Uysal and others - Turkey** (Nº 13101/03)
Judgments 22.9.2005 [Section III]

**Asli Güneş - Turkey** (Nº 53916/00)
**Pillmann - Czech Republic** (Nº 15333/02)
**"Iza" Ltd and Makrakhidze - Georgia** (Nº 28537/02)
**Tetourová - Czech Republic** (Nº 29054/03)
Judgments 27.9.2005 [Section II]

**Petri Sallinen and others - Finland** (Nº 50882/99)
**Sona Simkova - Slovakia** (Nº 77706/01)
**Adriana Simkova - Slovakia** (Nº 77708/01)
Judgments 27.9.2005 [Section IV]

**Ioannidou-Mouzaka - Greece** (Nº 75898/01)
**Athanasiou - Greece** (Nº 77198/01)
**Kurti - Greece** (Nº 2507/02)
**Reynbakh - Russia** (Nº 23405/03)
**Nikopoulou - Greece** (Nº 32168/03)
Judgments 29.9.2005 [Section I]

**Leo Zappia - Italy** (Nº 77744/01)
**Tudorache - Romania** (Nº 78048/01)
**Tacea - Romania** (Nº 746/02)
**Mihai-Iulian Popescu - Romania** (Nº 2911/02)
**Strungariu - Romania** (Nº 23878/02)
**Van Houten - Netherlands** (Nº 25149/03)
Judgments 29.9.2005 [Section III]

## Statistical information[1]

| Judgments delivered | December | 2005 |
|---|---|---|
| Grand Chamber | 1 | 12(16) |
| Section I | 22 | 294(304) |
| Section II | 47(50) | 377(392) |
| Section III | 37(40) | 194(205) |
| Section IV | 18(19) | 196(247) |
| former Sections | 3 | 32(34) |
| **Total** | **128(135)** | **1105(1198)** |

| Judgments delivered in December 2005 | | | | | |
|---|---|---|---|---|---|
| | Merits | Friendly settlements | Struck out | Other | Total |
| Grand Chamber | 1 | 0 | 0 | 0 | 1 |
| Section I | 21 | 1 | 0 | 0 | 22 |
| Section II | 46(49) | 1 | 0 | 0 | 47(50) |
| Section III | 33(36) | 3 | 1 | 0 | 37(40) |
| Section IV | 18(19) | 0 | 0 | 0 | 18(19) |
| former Section I | 0 | 0 | 0 | 0 | 0 |
| former Section II | 0 | 0 | 0 | 0 | 0 |
| former Section III | 3 | 0 | 0 | 0 | 3 |
| former Section IV | 0 | 0 | 0 | 0 | 0 |
| **Total** | **122(129)** | **5** | **1** | **0** | **128(135)** |

| Judgments delivered in 2005 | | | | | |
|---|---|---|---|---|---|
| | Merits | Friendly settlements | Struck out | Other | Total |
| Grand Chamber | 11(15) | 0 | 0 | 1 | 12(16) |
| former Section I | 5 | 0 | 0 | 1 | 6 |
| former Section II | 7(8) | 1(2) | 0 | 0 | 8(10) |
| former Section III | 14 | 0 | 3 | 1 | 18 |
| former Section IV | 0 | 0 | 0 | 0 | 0 |
| Section I | 284(294) | 7 | 2 | 1 | 294(304) |
| Section II | 358(372) | 13(14) | 5 | 1 | 377(392) |
| Section III | 173(184) | 12 | 5 | 4 | 194(205) |
| Section IV | 188(239) | 4 | 3 | 1 | 196(247) |
| **Total** | **1040(1131)** | **37(39)** | **18** | **10** | **1105(1198)** |

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

| Decisions adopted | | December | 2005 |
|---|---|---|---|
| **I. Applications declared admissible** | | | |
| Grand Chamber | | 0 | 1(2) |
| Section I | | 18(20) | 300(307) |
| Section II | | 24(25) | 335(350) |
| Section III* | | 23(25) | 205(214) |
| Section IV | | 10 | 159(163) |
| **Total** | | **75(80)** | **1000(1036)** |
| | | | |
| **II. Applications declared inadmissible** | | | |
| Grand Chamber | | 0 | 1(3) |
| Section I | - Chamber | 6 | 72(73) |
| | - Committee | 705 | 6811 |
| Section II | - Chamber | 8 | 105(106) |
| | - Committee | 333 | 5968 |
| Section III* | - Chamber | 7 | 151 |
| | - Committee | 303 | 5284 |
| Section IV | - Chamber | 18 | 164(167) |
| | - Committee | 697 | 8297 |
| **Total** | | **2077** | **26853(26860)** |
| | | | |
| **III. Applications struck off** | | | |
| Section I | - Chamber | 5 | 64 |
| | - Committee | 11 | 67 |
| Section II | - Chamber | 7 | 128 |
| | - Committee | 5 | 110 |
| Section III* | - Chamber | 24 | 68(91) |
| | - Committee | 8 | 121 |
| Section IV | - Chamber | 1 | 52(53) |
| | - Committee | 10 | 118 |
| **Total** | | **71** | **728(752)** |
| **Total number of decisions**[1] | | **2223(2228)** | **28581(28648)** |

1. Not including partial decisions.

| Applications communicated | December | 2005 |
|---|---|---|
| Section I | 38 | 614 |
| Section II | 130 | 1039 |
| Section III | 60 | 575 |
| Section IV | 107 | 614 |
| **Total number of applications communicated**[1] | **335** | **2842** |

1. Including decisions taken in its former composition.

**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. 4**

| | |
|---|---|
| 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 |