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EUROPEAN COURT OF HUMAN RIGHTS

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

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ARTICLE 2

LIFE
Abduction and killing by security forces following a military operation, and effectiveness of the investigation: *violation*.

IPEK - Turkey (Nº 25760/94)
Judgment 17.2.2004 [Section II]

Facts: The facts were disputed between the parties. Having regard to the documentary evidence submitted by the parties and the taking of witness evidence by delegates of the Court, the Court established the facts as follows. A military operation was conducted on 18 May 1994 in the hamlet of Dahlezeri. Soldiers from the security forces set the houses in the hamlet on fire and subsequently chose at random six young men (among which were two of the applicant's sons) and took them away to a military establishment in Lice. Some of the men were released unharmed the next morning, but not the applicant's sons and a third person. The applicant filed several petitions to various judicial and administrative authorities to find out the whereabouts of his sons but was unable to obtain any information on them from any of these authorities.

Law: Article 2 (disappearance) – The applicant's sons were last seen in the hands of the security forces in an unidentified military establishment in Lice. Taking into account that no information has come to light concerning their whereabouts for almost nine and a half years, the Court was satisfied that they must be presumed dead. In cases like the present one, the burden of proof must be regarded as resting on the authorities, which had however not provided any explanation as to what occurred to the applicant's sons following their apprehension. The responsibility of the State for their death was therefore engaged.
Conclusion: violation (unanimously).

Article 2 (effective investigation) – This provision had also been breached under its procedural limb. The investigation had only commenced after the Court communicated the application to the Government, despite previous petitions by the applicant. The investigation was flawed and lacked due diligence and vigour. No steps had been taken to seek evidence from eyewitnesses or to seriously question the applicant on his complaints. It was striking that the authorities had not considered it necessary to visit the hamlet with a view to verifying the applicant's allegations. Finally, at a certain stage of the investigation, jurisdiction was transferred to the Lice Administrative Council, which the Court has on several occasions recalled cannot be regarded as an independent body.
Conclusion: violation (unanimously).

Article 3 – The applicant suffered, and continues to suffer, distress and anguish as a result of the disappearance of his two sons and of his inability to find out what happened to them (and his anguish must have been exacerbated by the destruction of his family home). The reaction of authorities vis-à-vis the family members of a "disappeared person" is an essential element when examining a complaint under this Article. The Court considered that the manner in which the authorities had dealt with the applicant's petitions constituted inhuman treatment contrary to Article 3. Despite the applicant's tireless endeavours to discover the fate of his sons, he never received any plausible explanation from the authorities nor was he ever informed of the outcome of the investigations.
Conclusion: violation (unanimously).

Article 5 – Although authorities are expected to conduct a prompt and effective investigation into an arguable claim that a person has been taken into custody and has not been seen since, in the present case they failed to do so (see Article 2 above). The detention of the applicant's sons was not logged in the relevant custody records nor was there any official trace of their subsequent whereabouts or fate. This represented a most serious failing enabling those responsible for an act of deprivation of liberty to conceal their involvement in a crime. Accordingly, the Court found that the applicants' sons had been held in unacknowledged detention in complete absence of the safeguards contained in Article 5.
Conclusion: violation (unanimously).

Article 1 of Protocol No. 1 – The security forces had deliberately destroyed the applicant's family home and possessions, which had constituted a grave and unjustified interference with the applicant's right to the peaceful enjoyment of his possessions.
Conclusion: violation (unanimously).

Article 13 – The applicant's complaints under Articles 2, 3, 5 and Article 1 of Protocol No. 1 were clearly arguable for the purposes of Article 13. As there had not been a thorough and effective investigation into the applicant's petitions, the Court concluded that no effective remedy had been available as regards these complaints.
Conclusion: violation (unanimously).

Article 38(1)(a) – The Government had fallen short of their obligation under this Article to furnish all the necessary facilities to the Court in its task of establishing the facts.

Article 41 – The Court awarded the applicant 58,400 euros for pecuniary and non-pecuniary damage (including 14,000 euros to be held for his sons' heirs). It also made an award in respect of costs and expenses.

LIFE
Shooting of two Roma fugitives by military police during attempted arrest, and effectiveness of the investigation: *violation*.

NACHOVA and others - Bulgaria (Nº 43577/98 and 43579/98)
Judgment 26.2.2004 [Section I]
(see Article 14, below).

LIFE
Use of toxic substance in mining : *admissible*.

SEFA TAŞKIN and others – Turkey (N° 46117/99)
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LIFE
Alleged inadequacy of State financing of medical treatment, putting the lives of patients at risk and causing them suffering: *communicated*.

PENTIACOVA and others – Moldova (Nº 14462/03)
Decision 17.2.2004 [Section IV]

Facts: The applicants suffer from chronic renal failure and require haemodialysis treatment. They receive such treatment in a State-financed hospital, which they claim has not since 1997

fully covered the cost of some of the devices/medication which are necessary for their treatment. They claim that their invalidity allowance is insufficient to pay for the medication which is not provided by the hospital and that, as a result, they have been forced to undergo the treatment with unbearable pain and suffering. Moreover, the number of sessions for some of the applicants has been reduced from three to two per week, which they allege has put their lives at risk. They also claim that insufficient State funding of their medical treatment has had a negative impact on their family lives. The applicants have not brought any proceedings in the domestic courts as, in their view, this would be futile. They maintain that they have no effective domestic remedy in respect of their complaints.
Communicated under Articles 2, 3, 8, 13 and 14.

ARTICLE 3

EXTRADITION
Extradition of a Cuban citizen to the United States, where he allegedly risks being placed in indefinite detention: *inadmissible*.

SARDINAS ALBO – Italy (Nº 56271/00)
Decision 8.1.2004 [Section I]
(see Article 5(3), below).

ARTICLE 5

Article 5(3)

LENGTH OF PRE-TRIAL DETENTION
Length of detention on remand (three years, two months and one day): *admissible*.

SARDINAS ALBO – Italy (Nº 56271/00)
Decision 8.1.2004 [Section I]

Facts: In August 1996, the applicant was arrested on charges of drug trafficking and placed by the investigating judge in detention on remand. The applicant challenged this order, but his detention on remand was confirmed by the District Court on the basis of strong evidence of guilt found against him and the serious risk of his re-offending. The applicant's detention awaiting trial lasted until October 1999, when the District Court sentenced him to 15 years' imprisonment. He lodged an appeal against the judgment but later withdrew it after concluding a plea bargain with the public prosecutor which reduced his sentence. Meanwhile, the Ministry of Justice had requested that the applicant be placed in detention with a view to his extradition to the United States, where he was sought for crimes related to drug trafficking. The Court of Appeal ruled in favour of extradition. The applicant appealed on points of law, challenging the assumption that he had acquired United States citizenship and invoking the risk of indefinite detention in the United States for Cuban nationals. The appeal was rejected and extradition was granted under suspension until the conclusion of the criminal proceedings against the applicant. Subsequently, the United States authorities made a new request for his extradition, this time in relation to a charge of falsification of documents. In the second set of extradition proceedings, in which the applicant appeared as a Cuban citizen who had obtained a permanent residence permit in the United States, extradition was again

granted. The applicant maintains that this second extradition order was never served on him. His appeal on points of law against the order was rejected.

Admissible under Article 5(3): The Government maintained that the applicant had not exhausted domestic remedies. Although the applicant had not lodged an appeal concerning the length of his pre-trial detention with the Court of Cassation, which is a remedy that in principle should be exhausted, that court had in previous cases refused to apply Article 5(3) of the Convention directly. Moreover, it had not been shown that, had the applicant brought an appeal before the Court of Cassation, that court would have taken into consideration the question of whether the national authorities had displayed diligence in the proceedings.

Inadmissible under Articles 3 and 5 (concerning the complaint relating to the decision to extradite): The Government maintained that domestic remedies had not been exhausted. The applicant could have challenged the decision to extradite him before the Regional Administrative Court after learning – in the course of the Strasbourg proceedings – that a second extradition order had been issued against him. That court had power to review the lawfulness of an extradition order and the applicant could have argued before it that the authorities had been inaccurate in determining his citizenship and immigration status in the United States and superficial in assessing the risk of him being placed in indefinite detention if extradited: non-exhaustion of domestic remedies.

ARTICLE 6

Article 6(1) [civil]

APPLICABILITY
Applicability of Article 6 to civil party to criminal proceedings: *Article 6 applicable*.

PEREZ – France (N° 47287/99)
Judgment 12.2.2004 [Grand Chamber]

Facts: The application concerned criminal proceedings for assault which the applicant, who was the victim, joined as a civil party. The court decided that there was no case to answer. The applicant appealed. The Indictment Division dealing with the case ruled that her appeal was inadmissible because she had missed the legal deadline. The Court of Cassation dismissed the applicant's appeal on points of law.

Law: Article 6(1) – *Applicability:* The Court adopted a new approach to the applicability of Article 6(1) to civil-party proceedings. If the making of a civil-party complaint amounts to the same thing as making a civil claim for indemnification, it is immaterial that the victim may have failed to lodge a formal claim for compensation. In French law, Article 6 is applicable to proceedings involving civil-party complaints even during the preliminary investigation stage taken on its own and even, where appropriate, if there are pending or potential proceedings in the civil courts. Where criminal proceedings are determinative only of a criminal charge, the decisive factor for the applicability of Article 6(1) is whether, from the moment when the applicant is joined as a civil party until the conclusion of the criminal proceedings, those proceedings affect the civil component. *A fortiori,* Article 6 must apply to proceedings relating both to the criminal charge and to the civil component of the case.

However, as the Convention does not confer any right to "private revenge" or to an *actio popularis*, the right to have third parties prosecuted or sentenced for a criminal offence cannot

have an independent existence for the purposes of the Convention. Nonetheless, except in those cases, civil-party complaints come within the scope of Article 6(1) of the Convention. Moreover, any waiver of the right to make a civil-party complaint, which is civil in nature, must be established in an unequivocal manner. In this case, the applicant lodged a civil-party complaint during the criminal investigation, exercised her right to claim reparation for the damage caused by the offence of which she was allegedly the victim, and did not waive that right. The proceedings therefore came within the scope of Article 6.
The complaint was dismissed on its merits.
Conclusion: no violation (unanimously).

PUBLIC HEARING
Liechtenstein's reservation concerning the right to a hearing and public pronouncement of judgment.

STECK-RISCH and others – Liechtenstein (Nº 63151/00)
Decision 12.2.2004 [Section III]

Facts: The applicants inherited two plots of land which had been designated by the municipality as non-building land. Their claim for compensation for a *de facto* expropriation was dismissed by the Government. The applicants then filed an appeal to the Administrative Court, presided by judge G., alleging, *inter alia*, that they had not had a hearing. The appeal was dismissed by the court, which recalled that there was no right to a public hearing in administrative proceedings. In their subsequent appeal to the Constitutional Court, the applicants alleged that the principle of equality of arms had been violated by the Administrative Court, given that during the proceedings the municipality had made new submissions which had not been served on them. In addition, when the applicants learned of the panel of five judges which would examine their case at the Constitutional Court, they filed a motion for bias, as one of the judges was a partner of G in a law firm. The Constitutional Court dismissed the complaint. Concerning the alleged lack of equality of arms, it found that whilst a procedural violation had taken place, no prejudice had resulted from it. As regards the allegation of bias, it did not find necessary the disqualification of a judge who was merely acquainted with a judge who had taken part in the impugned decision.

Admissible under Article 6 (1) as regards the alleged lack of impartiality of a Constitutional Court judge and the alleged violation of the principle of equality of arms.

Inadmissible under 6(1) (public hearing): Concerning the complaint of the lack of a hearing before the Administrative and Constitutional Courts and the lack of public pronouncement of their decisions, the reservation by Liechtenstein in respect of Article 6 came into play: the reservation excluded the holding of hearings and the public pronouncement of judgments in the proceedings in this case. Moreover, the reservation was not of a general character and was worded precisely to provide safeguards against an extensive interpretation of its application: incompatible *ratione materiae.*

REASONABLE TIME
Adequacy of measures taken to enforce an eviction order: *violation*.

CVIJETIĆ - Croatia (Nº 71549/01)
Judgment 27.2.2004 [Section I]

Facts: The applicant was the holder of a specially protected tenancy of a flat in Split. In 1994 she was forcibly thrown out of the flat by I., who moved in. The applicant successfully instituted proceedings against I. and in 1995 obtained a court order to have him evicted. As I.

did not comply with the order to vacate the flat, the applicant applied for the execution of the decision. Subsequently family B. moved into the flat. The eviction was adjourned several times, on one occasion due to the presence of war veterans obstructing the eviction and on another because of the failure of a physician to assist in the eviction of family B. Meanwhile, in 2000, the applicant bought the flat and became its owner. The court order was enforced in March 2002. The applicant complains about the length of the enforcement proceedings to regain possession of her flat, as well as of a violation of her right to respect for her home.

Law: Article 6(1) – It had taken around eight years for the applicant to regain possession of her flat, of which four years, four months and fifteen days were taken into consideration by the Court in examining the reasonableness of the length of the proceedings (the Convention having entered into force of in respect of Croatia in November 1997). Although the domestic authorities had not taken any legislative measures to postpone or prevent the execution of the judgment ordering eviction, the delays in carrying out execution were entirely attributable to them.
Conclusion: violation (unanimously).

Article 8 – The deficiencies of the legal system in overcoming obstruction of the execution of the judgment created or enabled a situation where the applicant was prevented from enjoying her home for a long period of time, in breach of the State's positive obligations under this Article.
Conclusion: violation (unanimously).

Article 41 – The Court awarded the applicant 10,000 euros under all heads of damage. It also made an award in respect of costs and expenses.

IMPARTIAL TRIBUNAL
Alleged lack of impartiality in composition of Constitutional Court: *admissible*.

STECK-RISCH and others/et autres – Liechtenstein (Nº 63151/00)
Decision 12.2.2004 [Section III]
(see above).

Article 6(1) [criminal]

IMPARTIAL TRIBUNAL
Judges dealing with appeal on points of law against conviction after having previously examined an appeal on points of law against the committal for trial: *no violation*.

D.P. - France (Nº 53971/00)
Judgment 10.2.2004 [Section II]

Facts : Following the institution of criminal proceedings against the applicant, the Indictment Division committed him for trial in the Assize Court. The applicant appealed on points of law against that decision. The Criminal Division of the Court of Cassation dismissed the appeal. The Assize Court sentenced the applicant to nineteen years' imprisonment and stripped him of certain rights. The applicant appealed on points of law, but the Criminal Division of the Court of Cassation dismissed the appeal. Two of the judges sitting in the Division had taken part in the examination of his previous appeal.

Law : Article 6(1) – Two of the judges of the Criminal Division of the Court of Cassation who had heard the applicant's appeal against his conviction by the Assize Court had earlier examined his appeal against his committal for trial before the same court. In assessing whether his fears as to the Division's lack of impartiality were objectively justified, the Court had to take into account the specific function and nature of the review undertaken by the Court of Cassation. The judges of that court were solely empowered to review the lawfulness and the reasoning of decisions by the courts below. The points in issue in the first appeal, against the committal for trial, had concerned the lawfulness of the investigation, whereas those in the second appeal had concerned the lawfulness of the conviction. Accordingly, the judges in question had never had to assess the merits of the charge against the applicant and had been called upon to examine different points of law in each appeal. Because of the difference between the issues before the Criminal Division in the two appeals, there had been no objective ground for fearing that it might be biased or prejudiced in its decision on the second appeal.
Conclusion : no violation (unanimously).

ARTICLE 8

PRIVATE LIFE
Use of toxic substance in mining : *admissible*.

SEFA TAŞKIN and others – Turkey (N° 46117/99)
Decision 29.1.2004 [Section III]

In 1994 the Ministry of the Environment approved the use of the technique of sodium-cyanide leaching to extract gold from a mine near İzmir. The applicants, who lived in the vicinity of the mine, applied to have that decision set aside on the ground that their health and safety would be at risk. In May 1997 the Supreme Administrative Court concluded, on the basis of expert assessments, that there were risks of environmental damage and harm to human lives and that the safety measures to which the company operating the mine had undertaken to conform were not sufficient to avert them. Consequently, in October 1997 the Administrative Court annulled the company's mining licence. The applicants asked the appropriate authorities to ensure that the court ruling was enforced. In October 1999 an expert report submitted at the Prime Minister's request concluded that the risks to human lives and the environment outlined in the Supreme Administrative Court's judgment had been reduced to an acceptable level. Having regard, in particular, to the report, the Prime Minister's Office concluded in April 2000 that mining should be allowed at the site. Later that year, the authorities authorised the continuation, on a provisional basis, of the use of cyanide for mining and extended the licences for operating the mine. In March 2002 the Cabinet decided that the gold mine could continue to operate. In the meantime, in September 2001, following an action for damages brought by the applicants, the Court of Cassation had held that the relevant ministers had not taken any steps to prevent mining from being carried out using the cyanide-leaching process, despite having been notified that the mining licence had been annulled. Subsequently, in October 2002, the Court of First Instance decided to award the applicants compensation for the damage resulting from the authorities' failings.

Admissible under Articles 2, 6 (right to a court), 8 and 13.

Inadmissible under Article 1 of Protocol No. 1.

FAMILY LIFE
Adequacy of measures taken to ensure enforcement of mother's access to her child: *violation*.

KOSMOPOULOU - Greece (N° 60457/00)
Judgment 5.2.2004 [Section I]

Facts: Following the breaking of her marital relationship in 1996, the applicant left her home and temporarily settled in England. Her daughter, who at the time was 9 years old, stayed with her husband. Some months later, the father was granted custody of the child. The Court of First Instance accorded the applicant interim visiting rights in mid-1997. As the child refused to stay with her mother, the applicant's visiting rights were provisionally suspended (to be, however, subsequently restored). Towards the end of 1997, upon request of the applicant to the public prosecutor, a psychiatric report was drawn up, which stated it was necessary for the child to be reunited with her mother on a regular basis. The report was sent to the public prosecutor, who took no further action. Early in 1998, the child again refused to stay with her mother. The subsequent actions/appeals by the applicant up to the Court of Cassation, in which she blamed her former husband for preventing contact with her daughter, were dismissed.

Law: Article 8 – The applicant's visiting rights were suspended shortly after they had been granted by the Court of First Instance, without hearing representations from her and at a moment which was crucial with a view to facilitating reunification of the child with the mother. Although it was not for the Court to evaluate how domestic courts had protected the child's interest, it was striking that no action had been taken following the recommendation in the psychiatric report that regular contact of the daughter with the applicant was advisable. This report had not been disclosed to the applicant at the time of its preparation (she only obtained a copy in 2002), despite the importance reiterated by the Court that parents should always be placed in a position enabling them to put forward all arguments in favour of obtaining contact with the child. Furthermore, a medical report by three psychologists in the early stages of the access proceedings had been elaborated without examining the applicant. It followed that the applicant had not enjoyed the appropriate procedural guarantees which would have enabled her to challenge effectively the suspension of her visiting rights. The Court was not satisfied that the procedural approach adopted by the domestic courts was reasonable in all the circumstances or provided them with sufficient material to reach a reasoned decision on the question of access to the applicant's daughter.
Conclusion: violation (unanimously).

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

ARTICLE 11

FREEDOM OF ASSOCIATION
Imposition of disciplinary sanction on a judge on account of his membership of the Freemasons : *violation*.

MAESTRI – Italy (N° 39748/98)
Judgment 17.2.2004 [Grand Chamber]

Facts : The applicant is a judge. Disciplinary proceedings were instituted against him on account of his membership of a Masonic lodge between 1981 etand marsMarch 1993. The national authorities imposed a disciplinary sanction on him in the form of a reprimand.

Law : Article 11 – There had been interference with the applicant's right to freedom of association. The sanction had had a basis in domestic law, namely Article 18 of a 1946 decree on the safeguards afforded to members of the State legal services, interpreted in the light of a 1982 law on the right of association and a directive issued on 22 March 1990 by the National Council of the Judiciary. Those instruments had been public and readily accessible to the applicant. Between the time when the applicant had joined the Freemasons and the adoption of the directive in 1990, Article 18 on its own had not contained sufficient information to satisfy the condition of foreseeability, and the enactment of the 1982 law had not enabled the applicant to foresee that a judge's membership of a legal Masonic lodge could give rise to a disciplinary issue. The National Council of the Judiciary had subsequently adopted its directive sur on the "incompatibility of judicial office with membership of the Freemasons, which had been primarily concerned with that issue. It was clear from an overall examination of the debate on 22 March 1990 that the National Council of the Judiciary had been questioning whether it was advisable for a judge to be a Freemason, but there had been no indication in the debate that membership of the Freemasons could constitute a disciplinary offence in every case. The wording of the directive of 22 March 1990 had therefore not been sufficiently clear to enable the applicant, despite the fact that he was a judge, to realise – even in the light of the debate prior to the adoption of the directive – that his membership of a Masonic lodge could lead to sanctions being imposed on him. Accordingly, the interference had not been foreseeable and had therefore not been "prescribed by law".
Conclusion : violation (eleven votes to six).

Article 41 – The Court awarded the requérantapplicant 10 000,000 euros for non-pecuniary damage and a specified sum for costs and expenses.

FREEDOM OF ASSOCIATION
Refusal to register an association characterising itself as an organisation of a national minority : *no violation*.

GORZELIK - Poland (N° 44158/98)
Judgment 17.2.2004 [Grand Chamber]

Facts : The applicants, together with other people, formed an association – the Union of People of Silesian Nationality – whose main aims were to awaken and strengthen the national consciousness of Silesians and to restore Silesian culture. They applied to the Regional Court for the association to be registered. The regional governor argued that there was no distinct Silesian nationality, that the Silesians were a local ethnic group and could not be regarded as a national minority and that recognising them as such would afford them rights and privileges to the detriment of other ethnic groups. In order to avoid this, he asked for the association's name to be changed so that it was no longer described as an "organisation of the Silesian national minority". The Regional Court allowed the application for registration but, on an appeal by the governor, the Court of Appeal set aside that decision and dismissed the application. It held that the Silesians were not a national minority and that the association could not legitimately describe itself as an "organisation of a national minority", a description that would grant it unwarranted rights – in particular, electoral privileges – which would place it at an advantage in relation to other ethnic organisations. The Supreme Court dismissed an appeal on points of law by the requérantapplicants.

Law : Article 11 – The interference with the applicants' right to freedom of association had had a basis in domestic law. As to the requirement of "foreseeability", the lack of an express definition of the concept of a "national minority" in domestic legislation did not mean that the Polish State had been in breach of its duty to frame the law in sufficiently precise terms. In such matters, it could be difficult to frame laws with a high degree of precision; indeed, it

could be undesirable to formulate rigid rules. The Polish State could therefore not be criticised for using only a general statutory categorisation of minorities and leaving interpretation and application of those notions to practice. Furthermore, the relevant domestic law did not grant the authorities unlimited and arbitrary powers of discretion. In short, the Polish legislation applicable in the present case had been formulated with sufficient precision to enable the applicants to regulate their conduct. The interference in question had been intended to prevent disorder and to protect the rights of others. As to whether it had been necessary in a democratic society, under Polish law the registration of the applicants' association as an "organisation of a national minority" had been capable by itself of granting it electoral privileges, subject only to voluntary action being taken to that end by the association and its members. The appropriate time for countering that risk, and thereby ensuring that the rights of other persons or entities participating in parliamentary elections would not be infringed, had been at the moment of the association's registration. The national authorities had therefore not overstepped their margin of appreciation in considering that there had been a pressing social need, at the moment of registration, to regulate the free choice of an association to call itself an "organisation of a national minority", in order to protect the existing democratic institutions and election procedures in Poland. As to whether the measure had been proportionate, the refusal to register the association as an "organisation of a national minority" had not been a comprehensive, unconditional one directed against the cultural and practical objectives that the association wished to pursue. The authorities had not prevented the applicants from forming an association to express and promote distinctive features of a minority but from creating a legal entity which, through registration under the legislation on associations and the description it had given itself in its memorandum of association, would inevitably have been able to claim a special electoral status. Given that the national authorities had been entitled to consider that the interference in question had met a "pressing social need", and given that the interference had not been disproportionate to the legitimate aims pursued, the refusal to register the association had been "necessary in a democratic society".
Conclusion : no violation (unanimously).

ARTICLE 14

DISCRIMINATION (Article 2)
Racist motives in shooting of two Roma fugitives by military police during attempted arrest: *violation*.

NACHOVA and others - Bulgaria (N^{os} 43577/98 and 43579/98)
Judgment 26.2.2004 [Section I]

Facts: Two men of Roma origin, relatives of the applicants, were conscripts serving compulsory military service in an army division dealing with the construction of apartments. They were in detention for repeated absences without leave when they escaped from the construction site where they were confined and took refuge in the house of the grandmother of one of them, situated in a Roma district of a village. Some days later, a military police unit was informed where they were hiding and dispatched four military police officers, under the command of G., to the village. They had instructions to arrest the fugitives using all the means and methods dictated by the circumstances. G. was armed with a handgun and a Kalashnikov automatic rifle. Having noticed the military vehicle in front of their house, the fugitives tried to escape. While running away they were shot by G. after he had given them a warning to stop. Both men died on their way to hospital. One neighbour claimed that several of the policemen had been shooting and that at one stage G. had pointed his gun at him in a brutal manner and had insulted him saying "You damn Gypsies". The military investigation report concluded that G. had acted in accordance with the regulations and had tried to save the

fugitives' lives by warning them to stop and not shooting at their vital organs. A sketch-map, which lacked relevant details and descriptions of the terrain/area, was appended to the report. The military prosecutor accepted the conclusions and closed the investigation. The applicants' subsequent appeals to the Armed Forces Prosecutor's Offices were dismissed.

Law: Article 2(2) (deprivation of life) – The legitimate aim of effecting the lawful arrest of the conscripts did not justify their shooting. They were serving short sentences for absences without leave from compulsory military service and had no record of violent offences. The military officers had been able to observe that the conscripts were unarmed and were not showing any signs of threatening behaviour. In such circumstances, the use of firearms was not "absolutely necessary" within the meaning of Article 2(2), despite the fact that relevant domestic regulations permitted the use of such arms for the arrest of every petty offender. The authorities had failed to plan and control the arrest operation, and had unnecessarily used excessive force.
Conclusion: violation (unanimously).

Article 2 (effective investigation) – There had also been a violation of Article 2 on account of the flawed investigation, which had not taken into consideration whether the use of force had been "absolutely necessary", as required under the Convention. Moreover, the preservation of evidence at the scene and the taking of relevant measurements, which could have served to clarify the sequence of events, had been neglected. Overall, the investigation suffered numerous omissions and cast serious doubts on the objectivity and impartiality of the investigators and prosecutors involved.
Conclusion: violation (unanimously).

Article 14 – When investigating violent incidents and deaths at the hands of State agents, the authorities have a duty to take all reasonable steps to unmask any racist motive and establish whether ethnic hatred may have played a role in the events. Even though during the arrest operation there had been racist verbal abuse by at least one of the military police officers, the authorities had not embarked on a thorough examination of the facts to uncover possible racist motives. There had been a procedural violation of Article 14. The authorities had not pursued lines of enquiry which were clearly warranted to establish whether there had been a discriminatory motivation during the events, and the Court therefore shifted the burden of proof to the Government for its examination of a possible substantive violation of Article 14. As the authorities had not offered any satisfactory explanation showing that the events had not been the result of a prohibited discriminatory attitude on the part of State agents, there had also been a substantive violation of Article 14, taken together with Article 2.
Conclusion: violation (unanimously).

Article 41 – The Court awarded the applicants 25,000 and 22,000 euros, respectively, on all heads of damage. It also made an award for costs.

ARTICLE 35

Article 35(1)

SIX MONTH PERIOD
Quashing of final judgment in supervisory review procedure: *inadmissible*.

SARDIN - Russia (Nº 69582/01)
Decision 12.2.2004 [Section I]

Facts: The applicant brought a civil action requesting the status of victim of nuclear tests, which was granted to him by the District Court. The final judgment in his favour was subsequently quashed in supervisory review proceedings by the Presidium of the Regional Court. In a new determination of the applicant's claim, the District Court dismissed his action.

Inadmissible: As there was no effective remedy against a ruling adopted by way of supervisory review at the time, the very act of quashing of the final judgment triggered the start for calculation of the six month period: out of time.

ARTICLE 1 OF PROTOCOL No. 1

PEACEFUL ENJOYMENT OF POSSESSIONS
Effect on the value of property of activities damaging to the environment.

SEFA TAŞKIN and others – Turkey (N° 46117/99)
Decision 29.1.2004 [Section III]
(see Article 8, below).

DEPRIVATION OF PROPERTY
Failure of authorities to build and deliver apartments which were due as compensation for expropriation orders: *admissible*.

KIRILOVA and others – Bulgaria (Nos 42908/98, 44038/98, 44816/98 and 7319/02)
Decision 5.2.2004 [Section I]

Facts: All the applicants were owners of houses with a yard in city centres. Their houses were expropriated in the public interest under relevant domestic legislation. In compensation, they were to be given apartments which their respective municipalities intended to construct. The applicants' houses were pulled down and in the meantime they were settled as tenants in municipally-owned apartments in the outskirts of their respective cities. The constructions of the buildings in which apartments had been offered to them were never started because of financial difficulties of the municipalities (or were never finished for the same reasons). The applicants filed different complaints to the municipal authorities and/or courts against non-fulfilment by the municipalities of their obligations towards them. The action by the second applicant reached the Supreme Court of Cassation, which held that the applicant had suffered damages because of the municipality's failure to build and deliver an apartment to him. The municipality has, however, appealed and the proceedings are pending (as are most of the

proceedings instituted by the other applicants). The applicants complain that they have not received the compensation to which they were entitled under domestic law, which represented a continuing breach of their property rights.

Admissible under Article 1 of Protocol 1 and Article 13. The Government's objection of non-exhaustion of domestic remedies was joined to the merits.

Other judgments delivered in February

Article 3

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

alleged ill-treatment of prisoner sentenced to death (forcible administration of drugs, handcuffing, beatings, electroshocks and "irradiation") – no violation.

Venkadajalasarma – Netherlands (Nº 58510/00)
Judgment 17.2.2004 [Section II]

Thampibillai – Netherlands (Nº 61350/00)
Judgment 17.2.2004 [Section II]

threatened expulsion of Tamil to Sri Lanka – no violation.

Article 5(3)

Kaya and Güven – Turkey (Nº 41540/98)
Judgment 17.2.2004 [Section II]

length of detention on remand – friendly settlement.

Article 6(1)

Vodárenská Akciová Společnost A.S. – Czech Republic (Nº 73577/01)
Judgment 24.2.2004 [Section II]

rejection of first constitutional complaint because a cassation appeal lodged at the same time was pending, and rejection of subsequent constitutional complaint as out of time, the cassation appeal not being taken into account – violation.

Yiarenios – Greece (Nº 64413/01)
Judgment 19.2.2004 [Section I]

failure of court to hear applicant prior to deciding not to award compensation for detention on remand, and failure to give reasons – violation.

Crochard and others – France (Nº 68255/01, Nº 68256/01, Nº 68257/01, Nº 68258/01, Nº 68259/01, Nº 68260/01 and Nº 68261/01)
Judgment 3.2.2004 [Section II]

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

Menher - France (Nº 60546/00)
Judgment 3.2.2004 [Section II]

non-communication of observations of the *avocat général* to an appellant represented in Court of Cassation proceedings by a lawyer not belonging to the Supreme Court Bar – violation.

Kranz – Poland (Nº 6214/02)
Judgment 17.2.2004 [Section IV]

Kaszubski – Poland (Nº 35577/97)
Judgment 24.2.2004 [Section IV]

Csepyová – Slovakia (Nº 67199/01)
Judgment 24.2.2004 [Section IV]

length of civil proceedings – violation.

Wintersberger – Austria (Nº 57448/00)
Judgment 5.2.2004 [Section III]

Skowroński – Poland (Nº 52595/99)
Judgment 17.2.2004 [Section IV]

length of civil proceedings – friendly settlement.

Moufflet - France (Nº 53988/00)
Judgment 3.2.2004 [Section II]

Morscher – Austria (Nº 54039/00)
Judgment 5.2.2004 [Section III]

Coudrier - France (Nº 51442/99)
Judgment 10.2.2004 [Section II]

Schluga – Austria (Nº 65665/01, Nº 71879/01 and Nº 72861/01)
Judgment 19.2.2004 [Section I]

length of administrative proceedings – violation.

Litoselitis – Greece (Nº 62771/00)
Judgment 5.2.2004 [Section I]

length of proceedings before the Audit Court – violation.

Weil - France (Nº 49843/99)
Judgment 5.2.2004 [Section I]

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

Dirnberger - Austria (Nº 39205/98)
Judgment 5.2.2004 [Section III]

length of criminal proceedings – violation.

Papathanasiou – Greece (Nº 62770/00)
Judgment 5.2.2004 [Section I]

length of criminal proceedings – no violation.

Article 6(1) and (3)(d)

Laukkanen and Manninen – Finland (Nº 50230/99)
Judgment 3.2.2004 [Section IV]

refusal to hear witnesses requested by accused and lack of oral hearing on appeal – no violation.

Morel - France (no. 2) (Nº 43284/98)
Judgment 12.2.2004 [Section III]

dismissal of appeal on points of law as a result of appellant's failure to surrender into custody prior to appeal hearing – violation; refusal of court to call witnesses requested by the accused – no violation.

Articles 6(1) and 8

Görgülü – Germany (Nº 74969/01)
Judgment 26.2.2004 [Section III]

refusal to grant custody to the father of a child born out of wedlock and given up by the mother for adoption and suspension of his right of access – violation; sufficiency of

involvement of father in custody and access proceedings and alleged unfairness of proceedings – no violation.

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

Jorge Nina Jorge and others – Portugal (Nº 52662/99)
Judgment 19.2.2004 [Section III]

length of administrative proceedings and lengthy delay in fixing and payment of final compensation for expropriation – violation.

Article 7

Puhk – Estonia (Nº 55103/00)
Judgment 10.2.2004 [Section IV]

retroactive application of criminal law – violation.

Article 8

Martin - United Kingdom (Nº 63608/00)
Judgment 19.2.2004 [Section III]

covert video surveillance of a tenant by a local authority – friendly settlement.

Articles 14+8

B.B. - United Kingdom (Nº 53760/00)
Judgment 10.2.2004 [Section IV]

difference in age of consent for homosexual and heterosexual acts – violation.

Article 1 of Protocol No. 1

Parisi and others – Italy (Nº 39884/98)
Judgment 5.2.2004 [Section I]

bankruptcy – excessive length of procedure on recovery of property by bankrupt's heirs – violation.

Suciu – Romania (Nº 49009/99)
Judgment 10.2.2004 [Section II]

refusal to award interest or take depreciation into account on annulment of contract for purchase of property – friendly settlement.

Relinquishment to the Grand Chamber (Article 30)

MAKARATZIS – Greece (Nº 50385/99)
[Section I]

The applicant, an unarmed civilian, was injured in an incident in which the police used potentially lethal force. He complains that his life was threatened by the police officers, that the investigation into the incident was deficient and that his compensation claim was not determined within a reasonable time.
The application was declared admissible on 18 October 2001 and a hearing on the merits was held on 3 April 2003.

BOSPHORUS AIRWAYS [BOSPHORUS HAVA YOLLARI TURIZM VE TICARET ANONIM SERKETI] – Ireland (Nº 45036/98)
[Section III]

The applicant company, a Turkish airline company, leased two aircraft from a Yugoslav airline company. The applicant company delivered one of the aircraft to an Irish maintenance company for overhaul and maintenance work. The Minister for Transport ordered that the aircraft be impounded pursuant to a domestic regulation implementing an EC Council Regulation which followed a United Nations' Resolution providing for sanctions against the Federal Republic of Yugoslavia. Following judicial review proceedings initiated by the applicant, the High Court quashed the Minister's decision. On the Minister's appeal, the Supreme Court referred a question to the European Court of Justice to determine whether the Council Regulation applied to the circumstances. The European Court of Justice found that the Council Regulation was applicable and consequently the Supreme Court allowed the Minister's appeal. The lease having by then expired and the sanctions against the Federal Republic of Yugoslavia having in the meantime ceased, the aircraft was given back directly to the Yugoslav airline company.
The application was declared admissible on 13 September 2001.

Judgments which have become final (Article 44)

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. 57 and 58):

GORAL - Poland (Nº 38654/97)
Judgment 30.10.2003 [Section III]

BELVEDERE ALBERGHIERA SRL – Italy (Nº 31524/96)
Judgment (just satisfaction) 30.10.2003
[Section II (former composition)]

SIKÓ - Hungary (Nº 53844/00)
Judgment 4.11.2003 [Section II]

CIBOREK - Poland (Nº 52037/99)
Judgment 4.11.2003 [Section IV]

KRONE VERLAG GmbH & CoKG - Austria (no. 2) (Nº 40284/98)
S.C. and V.P. - Italy (Nº 52985/99)
ANTONIO INDELICATO - Italy (Nº 34442/97)
PANTANO – Italy (Nº 60851/00)
GAMBERINI MONGENET - Italy (Nº 59635/00)
ISTITUTO NAZIONALE CASE srl - Italy (Nº 41479/98)
Judgments 6.11.2003 [Section I]

MEILUS - Lithuania (Nº 53161/99)
PERONI - Italy (Nº 44521/98)
Judgments 6.11.2003 [Section III]

BARTRE - France (Nº 70753/01)
MILITARU - Hungary (Nº 55539/00)
PARTI SOCIALISTE DE TURQUIE [STP] and others – Turkey (Nº 26482/95)
Judgments 12.11.2003 [Section II]

SCALERA – Italy (Nº 56924/00)
D'ALOE – Italy (Nº 61667/00)
PAPAZOGLOU and others – Greece (Nº 73840/01)
NAPIJALO - Croatia (Nº 66485/01)
SCHARSACH and NEWS VERLAGSGESELLSCHAFT – Austria (Nº 39394/98)
Judgments 13.11.2003 [Section I]

KATSAROS – Greece (Nº 51473/99)
Judgment (just satisfaction) 13.11.2003 [Section I]

RACHDAD – France (Nº 71846/01)
Judgment 13.11.2003 [Section III]

POPESCU – Romania (Nº 38360/97)
Judgment 25.11.2003 [Section II]

LUTZ – France (Nº 49531/99)
Judgment (revision) 25.11.2003 [Section II]

SOTO SANCHEZ - Spain (Nº 66990/01)
ŁOBARZEWSKI – Poland (Nº 77757/01)
WIERCISZEWSKA - Poland (Nº 41431/98)
LEWIS - United Kingdom (Nº 1303/02)
Judgments 25.11.2003 [Section IV]

HENAF - France (Nº 65436/01)
NICOLAI - Italy (Nº 62848/00)
PETRINI – Italy (Nº 63543/00)
Judgments 27.11.2003 [Section I]

SHAMSA – Poland (Nº 45355/99 and Nº 45357/99)
Judgment 27.11.2003 [Section III]

Statistical information[1]

Judgments deliveredpronounces	February	2004
Grand Chamber e	3	3
Section I	9(10)	19(23)
Section II	12(18)	19(25)
Section III	7	33(36)
Section IV	7	14
former Sections	0	2
Total	**38(45)**	**90(103)**

Judgments delivered in February 2004					
	Merits	Friendly Settlements	Struck out	Other	Total
Grand Chamber	3	0	0	0	3
Section I	9(10)	0	0	0	9(10)
Section II	10(16)	2	0	0	12(18)
Section III	5	2	0	0	7
Section IV	6	1	0	0	7
Total	**33(40)**	**5**	**0**	**0**	**38(45)**

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

Judgments delivered in 2004					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	3	0	0	0	3
former Section I	0	0	0	0	0
former Section II	1	0	0	1	2
former Section III	0	0	0	0	0
former Section IV	0	0	0	0	0
Section I	16(17)	3(6)	0	0	19(23)
Section II	16(22)	2	1	0	19(25)
Section III	30(33)	3	0	0	33(36)
Section IV	12	2	0	0	14
Total	**78(88)**	**10(13)**	**1**	**1**	**90(103)**

Decisions adopted		February	2004
I. Applications declared admissible			
Section I		3(6)	32(37)
Section II		5	9
Section III		18	25(26)
Section IV		11	23(25)
Total		**37(40)**	**89(97)**
II. Applications declared inadmissible			
Section I	- Chamber	17(19)	27(29)
	- Committee	509	854
Section II	- Chamber	4	12
	- Committee	195	559
Section III	- Chamber	6	11
	- Committee	207	352
Section IV	- Chamber	8	17
	- Committee	231	582
Total		**1177(1179)**	**2414(2416)**
III. Applications struck off			
Section I	- Chamber	2	8
	- Committee	5	6
Section II	- Chamber	1	6
	- Committee	3	13
Section III	- Chamber	1	13
	- Committee	2	6
Section IV	- Chamber	6	9
	- Committee	3	10
Total		**22**	**70**
Total number of decisions[1]		**1237(1242)**	**2574(2584)**

1. Not including partial decisions.

Applications communicated	February	2004
Section I	51(69)	76(94)
Section II	48(52)	58(81)
Section III	9	24
Section IV	14	19
Total number of applications communicated	**103(144)**	**177(218)**

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

Convention

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

Protocol No. 1

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

Protocol No. 2

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

Protocol No. 6

Article 1	:	Abolition of the death penalty

Protocol No. 7

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