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LIFE
Death at police station and effectiveness of the investigation: *inadmissible.*

FONSECA MENDES - Spain (N° 43991/02)
Decision 1.2.2005 [Section IV]

As part of an investigation into drug trafficking, two police officers attempted to arrest the applicant's brother; he escaped and ran off. He was eventually detained and taken to a police station where he collapsed in a semi-conscious state before reaching the cells. Medical treatment was rapidly administered but he died. A judicial investigation was opened to establish how and why death had occurred. The applicant, sister to the deceased, lodged a criminal complaint against the two police officers, alleging murder, together with an application to join the proceedings as a civil party. The officers were questioned, as were persons who had witnessed the arrest and the dead man's final moments. Two autopsies were carried out, a third forensic specialist drew up a report and a toxicological analysis was conducted. Other investigations and tests were conducted with a view to obtaining probative evidence. The investigation ended with a ruling that there was no case to answer: the evidence indicted that death had not resulted from blows to the applicant but had been the result of natural causes. The applicant appealed unsuccessfully.

Inadmissible under Article 2: In this case, a conclusion that death was linked to the actions of State employees or their failure to react was based more on hypothesis or speculation than reliable evidence.
As to the effectiveness of the domestic investigation into the circumstances of the death, an investigation had immediately been opened and the investigating judge had visited the locations concerned. The investigation involved two autopsies, a medical report by a third forensic specialist, a toxicological analysis, questioning of persons who had witnessed the events preceding death, inspection of the sites and examination of various relevant documents. The three forensic specialists had appeared before the court and had answered questions posed by the applicant. In reaching their decisions, the courts had given a full and logical explanation, on the basis of all the probative evidence and especially the forensic medical reports, for preferring the theory of death from natural causes and for considering that the contrary evidence did not undermine their findings. The applicant had been able to participate effectively in the investigation before and after joining the proceedings as a civil party: manifestly ill-founded.

Article 2(2)

USE OF FORCE
Killing of civilians in Chechen war: *violation.*

KHASHIYEV and AKAYEVA - Russia (Nº 57942 and Nº 57945/00)
Judgment 24.2.2005 [Section I – (former composition)]

Facts: Each applicant was a resident of Grozny up to the time of the military operations there towards the end of 1999. With the outbreak of hostilities, the applicants took the decision to leave their home and move to Ingushetia. In each case, they entrusted their homes to relatives (the first applicant's brother and sister as well as the latter's two adult sons, the second

applicant's brother), who remained in the city. At the end of January 2000, the applicants learned of the deaths of their relatives. They returned to Grozny and found the bodies lying in the yard of a house and in a nearby garage. All bodies bore multiple gunshot and stab wounds. There was also bruising and, in some cases, broken bones and mutilation. The applicants brought the bodies back to Ingushetia for burial. On a subsequent trip to Grozny, the second applicant visited the scene of the killings and found spent machine gun cartridges and her brother's hat. In a nearby house she saw five bodies, all of which bore gunshot wounds. Having learned that a sixth victim had survived, the second applicant managed to trace her in Ingushetia and was told that the victims had been shot at by Russian troops. A criminal investigation, opened in May 2000, was suspended and reopened several times, but those responsible were never identified. In 2003 a civil court in Ingushetia ordered the Ministry of Defense to pay damages to Mr Khashiyev in relation to the killing of his relatives by unidentified military personnel.

Law: Article 2 *(obligation to protect the right to life)* – The Court first noted that, in reply to its request, the Government had submitted only about two-thirds of the criminal investigation file. It was inherent in proceedings related to cases of this nature that in certain instances solely the respondent Government had access to information capable of corroborating or refuting the applicant's allegations. A failure on the Government's part to submit such information without a satisfactory explanation could give rise to the drawing of inferences as to the well-founded character of such allegations.
On the basis of the material in its possession the Court found it established that the applicants' relatives had been killed by military personnel. No other plausible explanation as to the circumstances of the deaths had been forthcoming, nor had any justification been relied on in respect of the use of lethal force by the State agents.
Conclusion: violation (unanimously).

Article 2 *(obligation to conduct an effective investigation)* – An investigation into the killings of the applicants' relatives had been opened only after a considerable delay and had been flawed. In particular, the investigation did not seem to have pursued the possible involvement of a certain military unit directly mentioned by several witnesses. The Court was not persuaded that an appeal against the outcome of the investigation would have been able to remedy its defects, even if the applicants had been properly informed of the proceedings and had been involved in it. The applicants must therefore be regarded as having complied with the requirement to exhaust the relevant criminal-law remedies. In sum, the authorities had failed to carry out an effective criminal investigation into the circumstances surrounding the deaths of the applicants' relatives.
Conclusion: violation (unanimously).

Article 3 *(obligation to protect from torture)* – The Court was unable to find that beyond all reasonable doubt the applicants' relatives had been subjected to treatment contrary to Article 3.
Conclusion: no violation (unanimously).

Article 3 *(obligation to conduct an effective investigation)* – The Court found that there had been no thorough and effective investigation into credible allegations of torture.
Conclusion: violation (unanimously).

Article 13 – The applicants' complaints were clearly “arguable” for the purposes of Article 13. They should accordingly have been able to avail themselves of effective and practical remedies capable of leading to the identification and punishment of those responsible and to an award of compensation, for the purposes of Article 13. In the present cases the criminal investigation had been ineffective in that it lacked sufficient objectivity and thoroughness, and the effectiveness of any other remedy, including the civil remedies, had been consequently undermined.
Conclusion: violation (5 votes to 2).

Article 41 – The Court awarded EUR 15,000 to the first applicant and EUR 20,000 to the second applicant in respect of non-pecuniary damage. It also made an award for costs and expenses.

USE OF FORCE
Bombing of convoy by Russian military jets during Chechen war, with loss of civilian life: *violation*.

ISAYEVA, YUSUPOVA and BAZAYEVA - Russia (Nos. 57947-49/00)
Judgment 24.2.2005 [Section I – (former composition)]

Facts: The three applicants were part of a large convoy of vehicles that was trying to travel from Grozny to Ingushetia in October 1999, at a time of intense military operations in Chechnya. The road was blocked by the Russian military at the border between Chechnya and Ingushetia. After several hours it was announced that no passage would be permitted that day. The large convoy began to turn around. Shortly afterwards, two Russian military aircraft flew over the column and dropped bombs. The vehicle carrying the first applicant and her relatives stopped. Her two children and her daughter-in-law were the first to get out and were killed by a bomb blast. The first applicant was injured and lost consciousness. The second applicant was wounded in the same attack and witnessed the death of the first applicant's relatives. While the applicants maintained that they had seen only civilians in the convoy, the Government asserted that the two aircraft had been flying reconnaissance when they had been attacked by large calibre infantry firearms fired from a truck in the convoy. The pilots were then granted authorisation to attack, destroying the truck and several other vehicles.

Law: Article 2 *(obligation to protect the right to life)* – It was undisputed that the applicants had been subjected to an aerial missile attack, during which the first applicant's two children had been killed and the first and the second applicants wounded. While the Court's ability to assess the legitimacy of the attack had been hampered by the Government's failure to submit a copy of the complete investigation file, the materials submitted nevertheless allowed certain conclusions to be drawn as to whether the operation had been planned and conducted in such a way as to avoid or minimise, to the greatest extent possible, damage to civilians.
The Government had claimed that the aim of the operation had been to protect persons from unlawful violence within the meaning of Article 2 § 2 (a) of the Convention. Given the context of the conflict in Chechnya at the relevant time, the Court assumed that the military had reasonably considered that there had been an attack or a risk of attack, and that the air strike had been a legitimate response to that attack.
The applicants and other witnesses to the attack had testified that they had been aware in advance of the "humanitarian corridor" to Ingushetia for Grozny residents on 29 October 1999, and that there had been numerous civilian cars and thousands of people on the road. They also referred to an order from a senior military officer at the roadblock telling them to return to Grozny and to his giving them assurances as to their safety. The result of that order had been a traffic jam several kilometres long. This should have been known to the authorities who were planning military operations anywhere near the Rostov-Baku highway on that day and should have alerted them to the need for extreme caution as regards the use of lethal force. Yet it did not appear that those responsible for planning and controlling the operation, or the pilots themselves, had been aware of this. This had placed the civilians on the road, including the applicants, at a very high risk of being perceived as suitable targets by the military pilots. Each of the twelve missiles had created several thousand pieces of shrapnel and its impact radius had exceeded 300 metres. Anyone who had been at that time on that stretch of road would have been in mortal danger. The Government had failed to invoke the provisions of domestic legislation at any level governing the use of force by its agents in such situations, and this was also directly relevant to the proportionality of the response to the alleged attack. It followed that, even assuming that the military had been pursuing a legitimate

aim, the operation had not been planned and executed with the requisite care for the lives of the civilians.
Conclusion: violation (unanimously).

Article 2 *(obligation to conduct an effective investigation)* – A criminal investigation had been opened only with considerable delay and the Court noted a number of serious and unexplained failures to act once the investigation had commenced. It did not appear, for example, that an operations record book, mission reports and other relevant documents produced immediately before or after the incident had been requested or reviewed. There appeared to have been no efforts to establish the identity and rank of the senior officer at the relevant military roadblock who had ordered the refugees to return to Grozny and allegedly promised them safety on the route, and to question him. No efforts had been made to collect information about the declaration of the "safe passage" for 29 October 1999, or to identify someone among the military or civil authorities who would have been responsible for the safety of the exit. The investigation had not taken sufficient steps to identify other victims and possible witnesses of the attack. There had also been a considerable delay before the applicants were questioned and granted victim status in the proceedings. The authorities had therefore failed to carry out an effective investigation.
Conclusion: violation (unanimously).

Article 3 – No separate issue.

Article 1 of Protocol No. 1 – Mrs Bazayeva had been subjected to an aerial attack, which had resulted in destruction of her family's vehicles and household items. This had constituted grave and unjustified interference with her peaceful enjoyment of her possessions.
Conclusion: violation (unanimously).

Article 13 – The applicants' complaints were clearly "arguable" for the purposes of Article 13. They should accordingly have been able to avail themselves of effective and practical remedies capable of leading to the identification and punishment of those responsible and to an award of compensation. In the present cases the criminal investigation had been ineffective in that it had lacked sufficient objectivity and thoroughness, and the effectiveness of any other remedy, including the civil remedies, had been consequently undermined.
Conclusion: violation (unanimously).

Article 41 – The Court awarded EUR 12,000 to the third applicant in respect of pecuniary damage. It further awarded EUR 25,000 to the first applicant, EUR 15,000 to the second applicant and EUR 5,000 to the third applicant in respect of non-pecuniary damage. It also made an award in respect of costs and expenses.

USE OF FORCE
Civilian casualties in air attack on convoy: *violation.*

ISAYEVA - Russia (Nº 57950/00)
Judgment 24.2.2005 [Section I – (former composition)]

Facts: The applicant was previously a resident of the village of Katyr-Yurt in Chechnya. Following the take-over of Grozny by Russian forces in February 2000, a significant group of Chechen fighters entered her village. At that time, the population of the village had swelled to some 25,000 persons, including many who were displaced from other parts of the country. Chechen fighters arrived without any warning and the villagers were forced to take shelter from the heavy Russian bombardment that commenced shortly afterwards. When the shelling ceased the next day, the applicant and her family, along with other villagers, tried to flee. As their vehicles left the village, they were attacked from the air. The applicant's son was fatally wounded. Three other persons travelling in the same vehicle were also wounded. The

applicant also lost three young nieces in the attack, and her nephew was left disabled as a result of his injuries. She lost her house, her possessions and her car. A criminal investigation, opened in 2000, confirmed the applicant's version of events. The investigation was closed in 2002, as the actions of the military were found to have been legitimate in the circumstances, as a large group of illegal fighters had occupied the village and refused to surrender.

Law: Article 2 *(obligation to protect the right to life)* – The Court accepted that the situation that existed in Chechnya at the relevant time called for exceptional measures by the State. The undisputed presence of a very large group of armed fighters in Katyr-Yurt and their active resistance might have justified use of lethal force by the State agents, thus bringing the situation within paragraph 2 of Article 2. A balance nevertheless had to be struck between the aim pursued and the means employed to achieve it. Although the Court's ability to make an assessment had been hampered by the fact that the Government had not disclosed most of the documents related to the military action, it was able to conclude that the military operation in Katyr-Yurt, aimed at either disarmament or destruction of the fighters, had not been spontaneous. The use of heavy free-falling high-explosion aviation bombs with a damage radius exceeding 1,000 metres in a populated area, outside wartime and without prior evacuation of the civilians, was impossible to reconcile with the degree of caution expected from a law-enforcement body in a democratic society. As no martial law and no state of emergency had been declared in Chechnya, and no derogation has been entered under Article 15 of the Convention the operation therefore had to be judged against a normal legal background. Even when faced with a situation where, as the Government had submitted, the villagers had been held hostage by a large group of fighters, the primary aim of the operation should have been to protect lives from unlawful violence. The use of indiscriminate weapons stood in flagrant contrast with this aim and could not be considered compatible with the standard of care prerequisite to an operation of this kind involving the use of lethal force by State agents.
While the documents reviewed by the Court confirmed that some information about a safe passage had been conveyed to the population, there was not a single reference anywhere to indicate that such a passage had been observed. The Government's failure to invoke the provisions of any domestic legislation governing the use of force by State agents in such situations was, in the circumstances, also directly relevant to the Court's considerations with regard to the proportionality of the response to the attack. To sum up, accepting that the military operation had pursued a legitimate aim, the Court did not find that it had been planned and executed with the requisite care for the lives of the civilian population.
Conclusion: violation (unanimously).

Article 2 *(obligation to conduct an effective investigation)* – An investigation had been opened only upon communication of the complaint to the respondent Government in September 2000. The Court observed several serious flaws in the part of the investigation file submitted to it, such as the lack of reliable information about the declaration of the “safe passage” for civilians. No persons had been identified among the military or civil authorities as responsible for the declaration of the corridor and for the safety of those using it. No clarification had been provided on the absence of coordination between the announcements of a “safe exit” and the apparent lack of consideration given to this by the military in planning and executing their mission.
Information about the decision by which the proceedings had been closed and the decisions to grant victim status quashed had not been communicated to the applicant and other victims directly, as the domestic relevant legislation prescribed. The Court thus did not accept that the applicant had been properly informed of the proceedings and could have challenged its results. The authorities had therefore failed to carry out an effective investigation into the circumstances of the military operation.
Conclusion: violation (unanimously).

Article 13 – The applicant's complaint was clearly "arguable" for the purposes of Article 13. She should accordingly have been able to avail herself of effective and practical remedies capable of leading to the identification and punishment of those responsible and to an award of compensation, for the purposes of Article 13. Nevertheless, the criminal investigation had been ineffective in that it had lacked sufficient objectivity and thoroughness, and the effectiveness of any other remedy, including the civil remedies, had been consequently undermined.
Conclusion: violation (6 votes to 1).

Article 41 – The Court awarded the applicant EUR 18,710 in respect of pecuniary damages and EUR 25,000 in respect of non-pecuniary damages. It also made an award for costs and expenses.

ARTICLE 3

TORTURE
Civilians in Chechen war – treatment contrary to Article 3 not established beyond reasonable doubt: *no violation.*

KHASHIYEV and AKAYEVA - Russia (Nº 57942 and Nº 57945/00)
Judgment 24.2.2005 [Section I – (former composition)]
(see Article 2, above).

TORTURE
Failure to conduct an effective investigation into credible allegations of torture: *violation.*

KHASHIYEV and AKAYEVA - Russia (Nº 57942 and Nº 57945/00)
Judgment 24.2.2005 [Section I – (former composition)]
(see Article 2, above).

INHUMAN OR DEGRADING TREATMENT
Extradition to the Republic of Uzbekistan in spite of provisional measure indicated by the Court under Rule 39 of its Rules of Procedure: *no violation*.

MAMATKULOV and ASKAROV - Turkey (Nº 46827/99 and Nº 46951/99)
Judgment 4.2.2005 [Grand Chamber]
(see Article 34, below).

INHUMAN OR DEGRADING TREATMENT
Medical assistance allegedly denied to person in detention on remand suffering from spinal cord dysfunction: *communicated.*

SARBAN - Moldova (Nº 3456/05)
[Section IV]

The applicant suffers from *myelopathy* (*mielopatie*), a spinal cord dysfunction in his neck region which limits his mobility and appears to be life-threatening if proper conditions are not maintained. He has been detained on remand since November 2004. He alleges that he has been repeatedly denied access to medical assistance, including by his family doctor. His detention has been prolonged on several occasions, allegedly in the absence of relevant and sufficient reasons. The District Court President Judge who ordered and prolonged his

detention and rejected his *habeas corpus* request was allegedly not an "investigating judge" within the meaning of domestic law and could not order his release. Nor could the applicant obtain an effective review of his detention.

Communicated under Articles 3, 5(3), 5(4) and 8 of the Convention. Priority afforded under Rule 41.

ARTICLE 4

POSITIVE OBLIGATION
Foreign minor forced by private individuals to work without payment and rest: *admissible*.

SILIADIN - France (N° 73316/01)
Decision 1.2.2005 [Section II]

The applicant is a Togolese national who was aged under sixteen years when she arrived in France. Contrary to what had been arranged, she was obliged to work as a maid without pay, to take charge of household chores and to care for three, and subsequently four, children from 7 a.m. until 10 p.m. every day without respite. In the absence of a residence or work permit, her passport having been taken from her, and with no resources, the applicant endured this exploitative situation for three years, during which time the couple who were using her in this way held out the promise of rapid regularisation of her immigration status. Alerted by a neighbour, the Committee against Modern Slavery eventually lodged a complaint about the applicant's situation with the prosecution service. Criminal proceedings were brought against the couple. At the close of the proceedings, which the applicant had joined as a civil party, the couple were convicted of taking advantage of the applicant's vulnerability and dependency in order to obtain unpaid services from her. The applicant received EUR 15,245 in compensation for non-pecuniary damage. An industrial tribunal awarded her sums of money in respect of salary arrears and paid leave which she had not been granted. The applicant complained of the absence of a domestic protection machinery that would both act as a deterrent and impose punitive measures.

Admissible under Article 4: The respondent Government submitted that the applicant had lost her "victim" status on account of the judicial decisions in her favour and the regularisation of her administrative position in France. This question was joined to the merits.

ARTICLE 5

Article 5(3)

JUDGE OR OTHER OFFICER EXERCISING JUDICIAL POWER

District Court President ordering and prolonging the applicant's detention on remand, though allegedly not an "investigating judge" within the meaning of domestic law: *communicated.*

SARBAN - Moldova (N° 3456/05)
[Section IV]
(see Article 3, above).

ARTICLE 6

Article 6(1) [civil]

RIGHT TO A COURT
Award of welfare payments not enforced for lack of public funds: *violation.*

POZNAKHIRINA - Russia (N° 25964/02)
Judgment 24.2.2005 [Section I]

Facts: The applicant brought proceedings against the Chief Department of Finance of the Voronezh Region to claim welfare payments to which she was entitled in respect of her child. In 2000, after the Town Court had awarded the applicant a certain amount, an enforcement order was issued and sent to the bailiff service. The bailiff eventually terminated the execution proceedings, as the debtor had no sufficient funds. The District Court granted the applicant's request to resume enforcement proceedings, having dismissed the bailiff's argument that an action against the Administration of the Voronezh Region was necessary to secure execution of the judgment. The sum awarded has not been paid to the applicant.

Law: Article 6(1) – The Court noted that the judgment in the applicant's favour had remained unenforced in its entirety for almost five years. By failing for such a substantial period of time to take the necessary measures to comply with the final judicial decisions in the present case, the Russian authorities had deprived the provisions of Article 6 § 1 of their useful effect.
Conclusion: violation (unanimously).

Article 1 Protocol No. 1 – By failing to comply with the judgment in the applicant's favour the national authorities had prevented the applicant from receiving her award. The Government had not advanced any justification for this interference and the lack of funds could not justify such an omission.
Conclusion: violation (unanimously).

Article 41 – The Court awarded the applicant RUR 3,132 in respect of pecuniary damage (interest).

FAIR HEARING
Lack of legal aid in defamation proceedings: *violation.*

STEEL and MORRIS - United Kingdom (N° 68416/01)
Judgment 15.2.2005 [Section IV]

Facts: The applicants were associated with a small organisation called London Greenpeace (unconnected with Greenpeace International). The organisation launched an anti-McDonald's campaign in the mid-1980s. A six-page fact sheet was produced and distributed as part of that campaign. The fact sheet contained allegations against McDonald's stating, for instance, that it was responsible for starvation in the Third World or for the eviction of small farmers from their land or of tribal people from their rainforest territories. A number of allegations were related to the lack of nutritional qualities of McDonald's food, and the health risks involved in consuming it. Finally, other allegations referred to the abusive targeting of children in their advertising, the cruel practices in the rearing and slaughter of the animals used to produce the food or the unsatisfactory working conditions in the corporation. McDonald's brought proceedings against the applicants claiming damages for libel. The applicants denied publication of the fact sheet or that the meanings in it were defamatory. They applied for legal aid but were refused it since legal aid is not available for defamation proceedings in the

United Kingdom. They represented themselves throughout the trial, although they received some help from barristers and solicitors acting *pro bono.* (It was the longest trial – 313 court days – in English legal history.) At one stage of the trial the applicants were unable to pay for the daily transcripts of the proceedings. They eventually obtained copies with some delay, using donations from the public. During the trial, one of the applicants signed an affidavit related to another set of proceedings in which he mentioned that the libel action had arisen from the "leaflets we had produced". Despite the applicant's objection that his solicitor had by mistake omitted to include the words "allegedly produced", the trial judge admitted the affidavit as evidence. On the basis of the affidavit, McDonald's were permitted to amend their statement at a late stage in the trial. The applicants were held liable for publication of the fact sheet, which was found to include several statements that were untrue and others which were not justified. The judge made an award for damages in favour of McDonald's. In the appeal proceedings before the Court of Appeal some of the contentious allegations were considered comment and others as being justified. The damages award was in consequence reduced. Leave to appeal to the House of Lords was refused.

Law: Article 6(1) – *Lack of legal aid*: The question whether the provision of legal aid was necessary for a fair hearing had to be determined on the basis of the particular facts and circumstances of each case and depended *inter alia* on the importance of what was at stake for the applicants in the proceedings, the complexity of the relevant law and procedure and the applicants' capacity to represent themselves effectively. In terms of what had been at stake for the applicants, although defamation proceedings were not, in this context, comparable to, for instance, proceedings raising important family-law issues, the financial consequences had been potentially severe. As regards the complexity of the proceedings, the trial at first instance had lasted 313 court days, preceded by 28 interlocutory applications. The appeal hearing had lasted 23 days. The factual case which the applicants had had to prove had been highly complex, involving 40,000 pages of documentary evidence and 130 oral witnesses. Nor was the case straightforward legally. Extensive legal and procedural issues had to be resolved before the trial judge was in a position to decide the main issue. Against this background, it was necessary to assess the extent to which the applicants were able to bring an effective defence despite the absence of legal aid. The applicants appeared to have been articulate and resourceful and they had succeeded in proving the truth of a number of the statements complained of. They had moreover received some help on the legal and procedural aspects of the case from barristers and solicitors acting *pro bono*: their initial pleadings were drafted by lawyers. For the bulk of the proceedings, however, including all the hearings to determine the truth of the statements in the leaflet, they had acted alone. In an action of this complexity neither the sporadic help given by the volunteer lawyers nor the extensive judicial assistance and latitude granted to the applicants as litigants in person, was any substitute for competent and sustained representation by an experienced lawyer familiar with the case and with the law of libel. The very length of the proceedings was, to a certain extent, a testament to the applicants' lack of skill and experience.
In conclusion, the denial of legal aid to the applicants had deprived them of the opportunity to present their case effectively before the court and contributed to an unacceptable inequality of arms with McDonald's.
Conclusion: violation (unanimously).

Article 6 – *Other complaints*: In view of its above finding the Court did not consider it necessary to examine separately the additional complaints directed at a number of specific rulings made by the judges in the proceedings.

Article 10 – The central issue which fell to be determined under Article 10 was whether the interference with the applicants' freedom of expression had been "necessary in a democratic society". The Government had contended that, as the applicants were not journalists, they should not attract the high level of protection afforded to the press under Article 10. The Court considered, however, that in a democratic society even small and informal campaign groups, such as London Greenpeace, had to be able to carry on their activities effectively.

There existed a strong public interest in enabling such groups and individuals outside the mainstream to contribute to the public debate by disseminating information and ideas on matters of general public interest such as health and the environment.
The safeguard afforded by Article 10 to journalists in relation to reporting on issues of general interest was subject to the proviso that they acted in good faith in order to provide accurate and reliable information in accordance with the ethics of journalism, and the same principle applied to others who engaged in public debate. In a campaigning leaflet a certain degree of hyperbole and exaggeration could be tolerated, and even expected, but in the case under review the allegations had been of a very serious nature and had been presented as statements of fact rather than value judgments.
The applicants, who, despite the High Court's finding to the contrary, had denied that they had been involved in producing the leaflet, had claimed that it placed an intolerable burden on campaigners such as themselves, and thus stifled public debate, to require those who merely distributed a leaflet to bear the burden of establishing the truth of every statement contained in it. They had also argued that large multinational companies should not be entitled to sue in defamation, at least without proof of actual financial damage. Complaint was further made of the fact that under the law McDonald's were able to bring and succeed in a claim for defamation when much of the material included in the leaflet was already in the public domain.
Like the Court of Appeal, the Court was not persuaded by the argument that the material was in the public domain since either the material relied on did not support the allegations in the leaflet or the other material was itself lacking in justification. As to the complaint about the burden of proof, it was not in principle incompatible with Article 10 to place on a defendant in libel proceedings the onus of proving to the civil standard the truth of defamatory statements. Nor should in principle the fact that the plaintiff in the present case was a large multinational company deprive it of a right to defend itself against defamatory allegations or entail that the applicants should not have been required to prove the truth of the statements made. It was true that large public companies inevitably and knowingly laid themselves open to close scrutiny of their acts and the limits of acceptable criticism are wider in the case of such companies. However, in addition to the public interest in open debate about business practices, there was a competing interest in protecting the commercial success and viability of companies, for the benefit of shareholders and employees, but also for the wider economic good. The State therefore enjoyed a margin of appreciation as to the means it provided under domestic law to enable a company to challenge the truth, and limit the damage, of allegations which risk harming its reputation.
If, however, a State decided to provide such a remedy to a corporate body, it was essential, in order to safeguard the countervailing interests in free expression and open debate, that a measure of procedural fairness and equality of arms was provided for. The more general interest in promoting the free circulation of information and ideas about the activities of powerful commercial entities, and the possible “chilling” effect on others were also important factors to be considered in this context. The lack of procedural fairness and equality which the Court had already found in respect of Article 6 therefore also gave rise to a breach of Article 10.
Moreover, under the Convention, an award of damages for defamation must bear a reasonable relationship of proportionality to the injury to reputation suffered. While it was true that no steps had so far been taken to enforce the damages award against either applicant, the fact remained that the substantial sums awarded against them had remained enforceable since the decision of the Court of Appeal. In those circumstances, the award of damages in the present case was disproportionate to the legitimate aim served.
Conclusion: violation (unanimously).

Article 41 – The Court awarded the applicants EUR 20,000 and 15,000 to the respective applicants in respect of non-pecuniary damage. It also made an award in respect of costs and expenses.

ORAL HEARING
Lack of oral hearing in proceedings for determining entitlement to disability benefits: *violation.*

MILLER - Sweden (N° 55853/00)
Judgment 8.2.2005 [Section II]

Facts: In 1996 the applicant applied for disability benefits under Chapter 9, section 2 of the Social Insurance Act 1962. He claimed that, even before his 65th birthday in 1983, he had incurred extra costs due to his illness (Charcot-Marie-Tooth), from which he had suffered since the 1970s and which had been diagnosed in 1982. In support of his claim he submitted a certificate by his general practitioner in 1996; a statement of 1997 in which another doctor had reproduced extracts from the applicant's medical records for the period between 1975 and 1983, including a diagnosis of the Charcot-Marie-Tooth disease arrived at in 1982; and a statement of 1983 in which a further medical expert had agreed with that diagnosis.
The Social Insurance Office refused the request, finding that the applicant's disability had not reached the required level before he turned 65 years of age. The applicant appealed to the County Administrative Court, seeking an oral hearing in order to call as witnesses his personal doctor, the doctor appointed by the Office and all the members of the Office who had participated in the decision in his case.
The County Administrative Court found an oral hearing to be unnecessary and invited the applicant to complete his written observations. In response he reiterated his request for an oral hearing, relying on Article 6 of the Convention. The County Administrative Court rejected his appeal on the grounds that the medical and other evidence in the case showed that, even before he had reached the age of 65, he had for a considerable time been functionally impaired, but not to such a degree that, on an assessment of the overall need of assistance, he was entitled to disability benefit. The applicant's requests for leave to appeal were refused by the Administrative Court of Appeal and the Supreme Administrative Court.

Law: The Court noted that the County Administrative Court had had full jurisdiction to examine the issue raised in the applicant's appeal, namely whether he fulfilled the conditions for obtaining disability benefits under Chapter 9, section 2 of the 1962 Act. Since both the Administrative Court of Appeal and the Supreme Administrative Court had refused him leave to appeal, the County Administrative Court in fact became the first and only instance to examine the merits of his case. Whereas proceedings before the Swedish administrative courts were in principle in writing, an oral hearing was to be held if so requested by a party and if the competent court found that a hearing would neither be unnecessary nor dispensable for other particular reasons.
The Court noted that the question of the degree of disability from which the applicant had been suffering prior to turning 65 had apparently not been straightforward. It was unable to accept the Government's argument that, because of the passage of time, oral evidence from the applicant's personal doctor was unlikely to add anything useful. Nor did it seem, either from the arguments and evidence submitted to the County Administrative Court or that court's reasons, that the issue of extra costs incurred by the applicant as a result of his illness had been clear-cut.
The issues raised by the applicant's judicial appeal were not only technical in nature. The administration of justice would have been better served by affording the applicant a right to explain, on his own behalf or through his representative, his personal situation, taken as a whole at the relevant time, in a hearing before the County Administrative Court. Against this background it could not be said that the question whether the applicant, before the age of 65, had fulfilled the legal conditions for the grant of a disability pension, was of such a nature as to dispense the County Administrative Court from the normal obligation to hold an oral hearing.
Conclusion: violation (4 votes to 3).

Article 41 – The Court awarded the applicant EUR 1,000 in respect of non-pecuniary damage. It also made an award in respect of costs and expenses.

Article 6(1) [criminal]

FAIR HEARING
Extradition to the Republic of Uzbekistan in spite of provisional measure indicated by the Court under Rule 39 of its Rules of Procedure: *no violation*.

MAMATKULOV and ASKAROV - Turkey (N° 46827/99 and N° 46951/99)
Judgment 4.2.2005 [Grand Chamber]
(see Article 34, below).

ADVERSARIAL TRIAL
Advocate-general's submissions not communicated prior to the Court of Cassation's hearing: *no violation*.

K.A. and A.D. - Belgium (N° 42758/98 and N° 45558/99)
Judgment 17.2.2005 [Section I]
(see below).

EQUALITY OF ARMS
Reporting judge's report and advocate-general's submissions first made orally at the hearing before the Court of Cassation: *no violation.*

K.A. and A.D. - Belgium (N° 42758/98 and N° 45558/99)
Judgment 17.2.2005 [Section I]

Facts: The applicants, a judge and a doctor, were found guilty of inflicting particularly serious assault occasioning actual bodily harm on a third person during sessions of sadomasochistic practices. One of the applicants was also convicted of incitement to immorality and to prostitution. They were both given prison sentences and ordered to pay fines, these penalties being suspended. In the context of the examination of their appeal on points of law, the reporting judge's report and the advocate-general's submissions were presented for the first time orally at the public hearing. According to the written law in force at the material time, counsels who were present at the hearing were entitled to speak after the report. In line with the practice in force, the parties could respond to the advocate-general's submissions at the hearing and obtain, if they sought it, an adjournment of the proceedings in order to reply in writing. In the instant case, neither the applicants nor their lawyers attended the hearing. The Court of Cassation dismissed the appeal after the hearing.

Law: Article 6 – *Failure to communicate the reporting judge's report prior to the public hearing at the Court of Cassation:* Since the reporting judge's report had been submitted for the first time orally at the public hearing in the Court of Cassation, the parties to the proceedings, the judges and the public had all learned of the content of those submissions and the recommendation made in them on that occasion. No breach of the principle of equality of arms had therefore been made out.
As to the failure to communicate the advocate-general's submissions prior to the hearing at the Court of Cassation, there had been no violation of the principle of equality of arms or the right to adversarial proceedings, in keeping with the judgment in *Wynen v. Belgium* (ECHR 2002-VIII).

Conclusion: no violation (unanimously).

Article 7 (*nullum crimen sine lege*) – The Court held that there had been no violation of this Article in view of the circumstances of the case, and that the applicants could not have been unaware that they were at risk of being prosecuted. It further emphasised that the applicants were respectively a legal and a medical practitioner.

Article 8 – The conviction for actual bodily harm inflicted in the context of sadomasochistic practices represented an interference in the right to respect for "private life". Prescribed by law, the conviction was in this case intended to protect the victim's rights and freedoms. The Belgian judicial authorities had thus sought to protect health and to prevent disorder and crime, and there was no cause to believe that, in pursuing those objectives, they had been pursuing other aims alien to the Convention. As to the necessity of the interference in a democratic society, the Court noted the conditions in which the sessions in question had been held: the facts showed that the applicants' undertaking to intervene and put an immediate stop to the practices in question when the "victim" no longer consented had not been honoured; they had drunk significant quantities of alcohol, so that all sense of organisation or control of the situation had been lost. There had been an increasing degree of violence and the applicants themselves had admitted that they had not known where it would end.
While individuals could claim the right to engage in sexual practices as freely as possible, the need to respect the wishes of the "victims" of such practices – whose own right to freedom of choice in expressing their sexuality had likewise to be safeguarded – placed a limit on that freedom. This implied that the practices in question would take place in conditions which permitted such safeguards, which had not been the case. Having regard to the nature of the acts complained of, the penalties had not been disproportionate.
Conclusion: no violation (unanimously).

ÉGALITE DES ARMES
Complainant's rights during the pre-trial investigation: *inadmissible.*

SOTTANI - Italy (N° 26775/02)
Decision 24.2.2005 [Section III]

The applicant's wife, who was suffering from acute leukaemia, died in hospital. The medical examination indicated that she had died of acute bronchopneumonia. The applicant lodged a complaint. On the basis of an expert report, the public prosecution service ordered that the complaint be filed without further action. The investigating judge commissioned an expert report to establish whether the drug cited by the applicant had been administered to the latter's wife in accordance with established professional practice. The report concluded that there had been no error, carelessness or negligence in the patient's treatment. The complaint was set aside as requiring no further action. The applicant lodged a second complaint. This too was set aside as requiring no further action on the strength of another expert report. Following a third complaint by the applicant, the doctors concerned were committed for trial, on a charge of murder as a result of the acts complained of by the applicant. A preliminary hearing was held, and enabled the applicant to apply to join the proceedings as a civil party. It was eventually held that there was no case to answer. It had not been demonstrated with certitude that the drug concerned had caused the death; in addition, the public prosecutor had not ordered an autopsy at the time of the investigation immediately after the death, which had occurred eleven years previously, so that it was no longer possible to ascertain the exact causes of death.

Inadmissible under Article 2: The applicant complained that the public prosecutor had not ordered an autopsy at the time of the first investigation. During the first investigation, there had been no evidence suggesting that a crime had been committed, and no evidence to that effect had been submitted in the expert report drawn up at the time; it had not therefore been

"necessary" for the public prosecutor to order an autopsy for the purposes of Article 116 of the Enforcement Provisions of the Code of Criminal Procedure: manifestly ill-founded.

Inadmissible under Article 6(1): The applicant complained that, under Article 394 of the Code of Criminal Procedure, only the public prosecutor could directly request an investigating judge to order an autopsy, and alleged that this was contrary to the principle of equality of arms. It was true that, under Italian law, injured parties could not apply to join the proceedings as a civil party until the preliminary hearing. However, they could exercise the rights and powers expressly recognised by law during the pre-trial investigation. Those rights included, for example, the power to ask the public prosecutor to ask the investigating judge for immediate production of evidence and the right to appoint a legal representative to exercise the rights and powers that they enjoyed. In addition, exercise of those rights could prove essential in order to be able to join the proceedings as a civil party effectively, particularly when, as in the present case, the case involved evidence liable to deteriorate over time and which would be impossible to obtain in later stages of the proceedings. In addition, injured parties were entitled to submit memoranda at any stage of the proceedings and, with the exception of appeals on points of law, could refer to evidence.
In the present case, the applicant ought to have applied to the public prosecutor's office, asking it to request the investigating judge to produce a particular item of evidence, namely an autopsy, immediately. As the applicant had failed to make use of a remedy afforded by national law, this complaint had to be dismissed for failure to exhaust domestic remedies.

Article 6(3)(a)

INFORMATION IN LANGUAGE UNDERSTOOD
Information given in a language not understood and interpreter appointed to translate it orally: *inadmissible.*

HUSAIN - Italy (N° 18913/03)
Decision 24.2.2005 [Section III]

The applicant was convicted in absentia in Italy and sentenced to life imprisonment. The prosecutor's office subsequently issued an enforcement order, ordering the applicant's arrest and appointing official counsel for him. The applicant was arrested in Greece and extradited to Italy. On his arrival in Italy, the authorities served him with a copy of the enforcement order. As the applicant was a Yemeni national, an interpreter was instructed to interpret the content of the document into Arabic for him. The document stated the date of the judgment by which the applicant had been found guilty, the sentence imposed and the legal classification of the charges, and referred to the pertinent articles of the Criminal Code and the other relevant texts. The applicant complained that there was no written translation into Arabic of the enforcement order and applied unsuccessfully to have it set aside. He argued that he had been unable to understand the content of the order served on him, and had thus been unaware of his rights in Italy, which had deprived him of the option of applying for a reopening of the criminal proceedings.

Inadmissible under Article 6(3)(a) and (b): The Court pointed out that Article 6(3)(e) did not go so far as to require a written translation of any documentary evidence or official paper from the case file, and noted that the wording of the provision in question referred to an "interpreter" rather than a "translator". This gave ground to consider that oral linguistic assistance could satisfy the Convention's requirements. Nevertheless, the interpretation provided was to be such as to enable the defendant to have knowledge of the case against him and to defend himself, notably by being able to put his version of events to the court.

In the present case, since the applicant had been untraceable at the time of his trial, he had learned of the accusations against him when he was served with the enforcement order. On that occasion, he had been assisted, free of charge, by an Arabic interpreter. There was no evidence that the latter's interpretation had been defective or otherwise ineffective. Indeed, the applicant had not challenged the quality of the interpretation, which could have led the authorities to believe that he had understood the content of the document in issue.
Through the information contained in that document, the applicant had received, in a language he understood, sufficient information concerning the charges against him and the penalty imposed. He could then have consulted his officially-appointed counsel, whose name had been cited in the document, with a view to ascertaining the steps to be taken in order to appeal against the conviction and to prepare his defence in relation to the offences with which he had been charged.
Thus, even supposing that Article 6 was applicable to proceedings to set aside the serving of an enforcement order, the application was in any event manifestly ill-founded.

Article 6(3)(e)

FREE ASSISTANCE OF INTERPRETER
Oral assistance of interpreter.

HUSAIN - Italy (N° 18913/03)
Decision 24.2.2005 [Section III]
(see Article 6(3)(a), above).

ARTICLE 7

NULLUM CRIMEN SINE LEGE
Foreseeability of rules of criminal liability: *no violation*.

K.A. and A.D. - Belgium (N° 42758/98 and N° 45558/99)
Judgment 17.2.2005 [Section I]
(see Article 6(1) [criminal], above).

ARTICLE 8

PRIVATE LIFE
Criminal conviction for certain sadomasochistic practices with others: *no violation.*

K.A. and A.D. - Belgium (N° 42758/98 and N° 45558/99)
Judgment 17.2.2005 [Section I]
(see Article 6(1) [criminal], above).

PRIVATE LIFE

Lawful abortion denied even though applicant's health could deteriorate with delivery: *communicated.*

TYSIĄC - Poland (N° 5410/03)
[Section IV]

The applicant, who was suffering from severe myopia, was refused a therapeutic abortion and obliged to carry her third child to term. Although various medical experts had concluded that bringing the child to term could seriously endanger her health, they had declined to authorise a termination of the pregnancy. Having delivered the child, the applicant's eyesight further deteriorated and she became nearly blind. The prosecutors refused to bring criminal proceedings against a chief physician who had ultimately denied her permission to have an abortion. Her request to have disciplinary proceedings instituted against him was also unsuccessful. Referring to her medical condition, she repeatedly requested the prosecution authorities to assist her in familiarising herself with the documents on file. This was allegedly refused. She did not lodge an action with a civil court, in which she could have claimed compensation either from the physician or from the public hospital where he worked. Under domestic law abortion is available when it is established that a pregnancy endangers the mother's life or health.
The applicant complains, *inter alia,* that the refusal of permission to abort her third child negatively and permanently affected her health and that Polish law provides for no possibility of reviewing decisions taken by doctors in respect of a woman's request for therapeutic termination of pregnancy. She further complains that she was discriminated against in realising her Article 8 rights both on the grounds of her gender and her disability (in that no assistance was provided to enable her to study all documents on file). She also complains that she had no effective remedy with regard to the state's failure to secure respect for her private life.

Communicated under Articles 8, 13 and 14 (with a question under Article 35 (1) on the requirement, if any, to exhaust the civil remedies available).

HOME
Measures taken by the authorities with a view to re-establishing and protecting the applicant's right to reside in his home: *violation.*

NOVOSELETSKIY - Ukraine (N° 47148/99)
Judgment 22.2.2005 [Section II]
(see Article 1 of Protocol No. 1, below).

ARTICLE 10

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

STEEL and MORRIS - United Kingdom (N° 68416/01)
Judgment 15.2.2005 [Section IV]
(see Article 6, above).

FREEDOM OF EXPRESSION

Conviction of author of article strongly critical of archbishop: *communicated.*

KLEIN - Slovakia (N° 72208/91)
[Section IV]

The applicant published an article in which he had strongly criticised a Slovakian archbishop for his public proposal to withdraw from distribution the film by M. Forman "The People v. Larry Flynt" as well as the poster accompanying the distribution of that film. The applicant used slang terms with offensive connotation and the appellate court found that his article had exceeded the limits of journalistic ethics. Criminal proceedings were brought against the applicant following complaints by two associations stating that the religious feelings of their members had been offended by the article. The archbishop himself declined to join the proceedings as a complainant, stating that he had pardoned the applicant. The applicant was convicted of "defamation of a group of persons on the ground of their religious belief" and sentenced to pay a fine amounting to approximately EUR 375.

ARTICLE 11

FREEDOM OF ASSOCIATION
Refusal to register political party respecting fundamental democratic principles: *violation.*

PARTIDUL COMUNISTILOR (NEPECERISTI) ET UNGUREANU - Romania
(N° 46626/99)
Judgment 3.2.2005 [Section III]

Facts: The application was lodged by a political group named Partidul Comunistilor (Nepeceristi) (Party of Communists who have not been members of the Romanian Communist Party – "the PCN"), and by its chairman. In 1996 the courts refused to register the PCN as a political party, having regard to its constitution and political programme. They considered that the PCN was seeking to establish a humane, democratic society founded on communist doctrine and that this implied that it regarded the constitutional and legal order that had been in place since 1989 as inhumane and undemocratic. The PCN had not been politically active before applying for registration.

Law: Article 11 – The interference entailed by the refusal to enter the PCN in the special register for political parties had been "prescribed by law" and had pursued the aims of protecting national security and the rights and freedoms of others. An assessment of whether the interference had been necessary in a democratic society should focus on the PCN's political programme and constitution since they had formed the basis for the national courts' decisions. The courts had found against the applicants on the ground that the PCN's aims did not uphold national sovereignty and, in particular, that the means proposed for achieving them were incompatible with the constitutional and legal order in place in Romania. The Court observed that the PCN's constitution and political programme stressed the importance of upholding the country's national sovereignty, territorial integrity and legal and constitutional order, and of the principles of democracy, and did not contain any passages that might be considered a call for the use of violence, an uprising or any other form of rejection of democratic principles, or for the "dictatorship of the proletariat".
The PCN's programme and constitution had distanced themselves from the former Communist Party's abuses and had criticised the policy pursued since 1989. In a democracy there could be no justification for hindering a political group that complied with fundamental democratic principles solely because it had criticised the country's constitutional and legal order and had sought a public debate in the political arena. The domestic courts had not demonstrated any way in which the PCN's programme and constitution were contrary to the country's constitutional and legal order and, in particular, to the fundamental principles of

democracy. It was not acceptable for a Contracting State to refuse to allow a democratic debate on the emergence of a new communist party. Admittedly, it was necessary to verify that a party's political programme did not conceal objectives and intentions different from the ones it proclaimed, but that should be done by comparing the content of the programme with the actions of the party's members and leaders and the positions they defended. However, the PCN had not even had time to take any practical action as its prior application for registration had been refused. Although Romania had indeed had experience of totalitarian communism prior to 1989, that consideration could not by itself justify the need for the interference, especially as communist parties adhering to Marxist ideology existed in a number of countries that were signatories to the Convention. Since the courts had failed to establish that the applicants' political programme was incompatible with a "democratic society", let alone that there was evidence of a sufficiently imminent risk to democracy, the refusal to register the PCN as a political party, before its activities had even started, had not met a "pressing social need" and was disproportionate to the aim pursued.
Conclusion: violation (unanimously).

Article 41 – The Court considered that the finding of a violation of the Convention constituted in itself sufficient just satisfaction and made an award for costs and expenses.

ARTICLE 13

Ineffective criminal investigations into military actions resulting in the killing of civilians in Chechnya: *violation*.

KHASHIYEV and AKAYEVA - Russia (Nº 57942 and Nº 57945/00)
Judgment 24.2.2005 [Section I – (former composition)]

ISAYEVA, YUSUPOVA and BAZAYEVA - Russia (Nos. 57947-49/00)
Judgment 24.2.2005 [Section I – (former composition)]

ISAYEVA - Russia (Nº 57950/00)
Judgment 24.2.2005 [Section I – (former composition)].

No possibility of obtaining review of doctor's refusal to terminate pregnancy on medical grounds: *communicated*.

TYSIĄC - Poland (Nº 5410/03)
[Section IV]
(see Article 8, above).

ARTICLE 14

DISCRIMINATION (Article 8)
Alleged discrimination due to disability (no assistance provided in order to enable severely myopic applicant to study case file): *communicated.*

TYSIĄC - Poland (N° 5410/03)
[Section IV]
(see Article 8, above).

DISCRIMINATION (Article 3 of Protocol No. 1)
Denied registration as a candidate in parliamentary elections due to the applicant's inability to pay a deposit: *admissible.*

SUKHOVETSKYY - Ukraine (N° 13716/02)
Decision 1.2.2005 [Section II]
(see Article 3 of Protocol No. 1, below)

ARTICLE 34

HINDER THE EXERCISE OF THE RIGHT OF PETITION
State's failure to abide by provisional measure indicated by the Court under Rule 39 of its Rules of Procedure: *failure to comply with obligations.*

MAMATKULOV and ASKAROV - Turkey (N° 46827/99 and N° 46951/99)
Judgment 4.2.2005 [Grand Chamber]

The facts: The applicants are two Uzbek nationals and members of an opposition party in Uzbekistan. They were arrested by Turkish police under international arrest warrants on suspicion of having committed terrorist acts in their country of origin. The Republic of Uzbekistan made a request for their extradition to which the Turkish authorities acceded. The applicants appealed in vain. They alleged, *inter alia*, that they risked being ill-treated if they were extradited. The European Court of Human Rights indicated to the Turkish Government under Rule 39 of the Rules of Court that they should not extradite the applicants until it had examined the case. However, before it had done so, the Turkish authorities issued a decree ordering extradition. The Court decided to extend the interim measure until further notice. The Turkish authorities did not comply with the measure indicated and handed the applicants over to the Uzbek authorities, subsequently informing the Court that they had received assurances before the extradition that the applicants would not be tortured or sentenced to capital punishment in Uzbekistan. The applicants were convicted by the Uzbek courts and sentenced respectively to twenty years' and eleven years' imprisonment. Following the applicants' extradition, their representatives were unable to contact them further.

The law: Article 3 – The Court had to establish whether at the time of their extradition there existed a real risk that the applicants would be subjected in Uzbekistan to treatment proscribed by Article 3. The applicants had been extradited to Uzbekistan on 27 March 1999, despite the interim measure that had been indicated by the Court under Rule 39. It was, therefore, that date that had to be taken into consideration when assessing whether there was a real risk of their being subjected in Uzbekistan to treatment proscribed by Article 3. By

applying Rule 39, the Court had indicated that it was not able on the basis of the information then available to make a final decision on the existence of a real risk. Had Turkey complied with the measure indicated under Rule 39, the relevant date would have been the date of the Court's consideration of the case in the light of the evidence that had been adduced. Turkey's failure to comply with the indication given by the Court had prevented the Court from following its normal procedure. Nevertheless, the Court could not speculate as to what the outcome of the case would have been had the extradition been deferred as it had requested. For that reason, it had to assess Turkey's responsibility under Article 3 by reference to the situation that had obtained on 27 March 1999. In the light of the material before it, the Court was not able to conclude that substantial grounds had existed on the date the applicants were extradited for believing that they faced a "real risk" of treatment proscribed by Article 3. Turkey's failure to comply with the indication given under Rule 39 had prevented the Court from assessing whether a "real risk" existed in the manner it considered appropriate in the circumstances of the case. That failure had to be examined under Article 34. Consequently, no violation of Article 3 of the Convention could be found.
Conclusion: no violation (14 votes to 3).

Article 6(1) (fair trial) – In extradition cases, the risk of a "flagrant denial of justice" in the country of destination – like the risk of treatment proscribed by Article 2 and/or Article 3 – had primarily to be assessed by reference to the facts which the Contracting State knew or should have known when it extradited the persons concerned. When extradition was deferred following an indication by the Court under Rule 39, the risk of a flagrant denial of justice also had to be assessed in the light of the information available to the Court when it considered the case. The applicants had been extradited to Uzbekistan on 27 March 1999. Although, in the light of the information available, there might have been reasons for doubting at the time that they would receive a fair trial in the State of destination, there was not sufficient evidence to show that any possible irregularities in the trial were liable to constitute a "flagrant denial of justice". Turkey's failure to comply with the indication given by the Court under Rule 39 of the Rules of Court, which had prevented the Court from obtaining additional information to assist it in its assessment of whether there had been a real risk of a flagrant denial of justice, would be examined under Article 34. Consequently, no violation of Article 6(1) could be found.
Conclusion: no violation (13 votes to 4).

Article 34 (effective exercise of right of individual application) – The fact that the respondent Government had failed to comply with the measures indicated by the Court under Rule 39 of the Rules of Court raised the issue of whether the respondent State was in breach of its undertaking under Article 34 of the Convention not to hinder the applicants' right of individual application. The facts of the case clearly showed that the Court had been prevented by the applicants' extradition to Uzbekistan from conducting a proper examination of their complaints in accordance with its settled practice in similar cases and ultimately from protecting them, if need be, against potential violations of the Convention as alleged. As a result, the applicants had been hindered in the effective exercise of their right of individual application guaranteed by Article 34 of the Convention, which was rendered nugatory by the applicants' extradition.
By virtue of Article 34 of the Convention Contracting States undertook to refrain from any act or omission that might hinder the effective exercise of an individual applicant's right of application. A failure by a Contracting State to comply with interim measures was to be regarded as preventing the Court from effectively examining the applicant's complaint and as hindering the effective exercise of his or her right and, accordingly, as a violation of Article 34 of the Convention.
Having regard to the material before it, the Court concluded that, by failing to comply with the interim measures indicated under Rule 39 of the Rules of Court, Turkey was in breach of its obligations under Article 34 of the Convention.
Conclusion: failure by Turkey to comply with its obligations (14 votes to 3).

Article 41 – The applicants had undeniably suffered non-pecuniary damage as a result of Turkey's breach of Article 34 which could not be repaired solely by a finding that the respondent State had failed to comply with its obligations under Article 34. The Court awarded each of the applicants an amount for non-pecuniary damage and a sum in respect of their costs.

ARTICLE 35

Article 35(1)

EFFECTIVE DOMESTIC REMEDY (Russia)
Relatives of civilian casualties in military attacks not required to pursue civil-law remedies: *preliminary objection dismissed.*

KHASHIYEV and AKAYEVA - Russia (Nº 57942 and Nº 57945/00)
Judgment 24.2.2005 [Section I – (former composition)]

ISAYEVA, YUSUPOVA and BAZAYEVA - Russia (Nos. 57947-49/00)
Judgment 24.2.2005 [Section I – (former composition)]

ISAYEVA – Russia (Nº 57950/00)
Judgment 24.2.2005 [Section I – (former composition)]
(see Article 2, above).

SIX-MONTH PERIOD
Late substantiation of complaint: *inadmissible.*

BOŽINOVSKI - the Former Yugoslav Republic of Macedonia (Nº 68368/01)
Decision 1.2.2005 [Section III]

The applicant was a defendant in civil proceedings concerning the title to part of a house. The proceedings had commenced in 1991 or earlier and came to end in 2000, when the Appellate Court rejected the applicant's appeal. Before the Court the applicant complained about the length of the proceedings. He submitted that he had fully complied with Article 35 § 1 as had received the final decision on 15 August 2000 and had submitted his application on 30 January 2001.

The Court found that the six-month period had begun to run from 15 August 2000, whereas the applicant's complaint about the length of the proceedings had been mentioned only in an application form dated 4 April 2001. While it was true that an earlier application form had been submitted by the applicant dated 30 January 2001, this had not included any explanation as to the alleged violations in his case and had merely annexed the documents from the domestic proceedings. The Court was not persuaded that the provision of the documents from the proceedings was sufficient to constitute an introduction of all subsequent complaints based on those proceedings. Some indication of the nature of the alleged violation under the Convention was required to introduce a complaint and thereby interrupt the running of the six-month time-limit: *non-compliance with the six-month rule.*

SIX MONTH PERIOD (Turkey)
Starting-point of the six-month period (application concerning criminal proceedings): *preliminary objection allowed.*

YAVUZ and Others - Turkey (N° 48064/99)
Decision 1.2.2005 [Section IV]

The husband and father of the applicants were found dead after being shot. Criminal proceedings were brought against two individuals. The assize court found one defendant guilty and acquitted the other. The applicants joined the criminal proceedings as a civil party. Those proceedings were finally concluded by a decision of the Court of Cassation, which was added to the case file kept at the registry of the court of assize on 29 April 1998 and was not served on the parties. The applicants applied to the Strasbourg Court on 15 March 1999.

Inadmissible pursuant to Article 35(1) of the Convention: The applicants relied on Articles 2, 3, 5, 6, 8 and 13 and on Article 1 of Protocol No. 1. The Court of Cassation's judgment had not been served on the parties. The six-month time limit began to run from the date on which the Court of Cassation's judgment was added to the case file kept at the registry of the court of assize, which was also the date on which the text of the judgment was made available to the parties. It was then for the parties or their representative to show diligence in obtaining a copy.
The applicants had applied to the Strasbourg Court more than six months after the date on which the text of the Court of Cassation's judgment had been added to the case file kept at the registry of the court of assize. This delay had been due to their own negligence. The application was therefore out of time.

ARTICLE 1 OF PROTOCOL No. 1

PEACEFUL ENJOYMENT OF POSSESSIONS
Impossibility of recovering property or obtaining adequate rent from tenants: *violation*.

HUTTEN-CZAPSKA - Poland (Nº 35014/97)
Judgment 22.2.2005 [Section IV]

Facts: The applicant is one of around 100,000 landlords in Poland affected by a restrictive system of rent control (from which some 600,000 to 900,000 tenants benefit), which originated in laws adopted under the former communist regime. The system imposes a number of restrictions on landlords' rights, in particular, setting a ceiling on rent levels which is so low that landlords cannot even recoup their maintenance costs, let alone make a profit.
The property in question was taken under state management after the entry into force of a 1946 decree giving the Polish authorities power to assign flats in privately-owned buildings to particular tenants. The applicant's parents tried unsuccessfully to regain possession of their property. In 1974 a new regime on the state management of housing entered into force, the so-called “special lease scheme”. In 1975, the mayor issued a decision by which the ground floor of the house was leased to another tenant. In the 1990s the applicant tried to have that decision declared null and void but only succeeded in obtaining a decision declaring that it had been issued contrary to the law.
In 1990 the District Court declared that the applicant had inherited her parents' property and, in 1991, she took over the management of the house. She then brought several unsuccessful sets of proceedings – civil and administrative – to regain possession of her property and to relocate the tenants.

In 1994 a rent control scheme was applied to private property in Poland, under which landlords were both obliged to carry out costly maintenance work and prevented from charging rents which covered those costs. According to one calculation, rents covered only about 60% of the maintenance costs. Severe restrictions on the termination of leases were also in place. The 1994 Act was replaced by a new act in 2001, designed to improve the situation, which maintained all restrictions on the termination of leases and obligations in respect of maintenance of property and also introduced a new procedure for controlling rent increases. For instance, it was not possible to charge rent at a level exceeding 3% of the reconstruction value of the property in question. In the applicant's case this amounted to 1,285 Polish zlotys (PLN) in 2004 (equivalent to 316 euros).
In 2000 and 2002 the Constitutional Court found that the rent-control scheme under both the 1994 Act and the 2001 Act was unconstitutional and that it had placed a disproportionate and excessive burden on landlords. The provisions in question were repealed and from 10 October 2000 until 31 December 2004 the applicant was able to increase the rent she charged by about 10% to PLN 5.15 a square metre (approximately 1.27 euros). On 1 January 2005, new provisions (the “December 2004 amendments”) entered into force which allowed, for the first time, rents exceeding 3% of the reconstruction value of the property being rented to increase by not more than 10% a year.
The applicant complained under Article 1 of Protocol No. 1 to the Convention that the situation created by the implementation of the laws imposing tenancy agreements on her and setting an inadequate level of rent amounted to a continuing violation of her right to the enjoyment of her possessions. The very essence of her right of property had been impaired because she was not only unable to derive any income from her property but also, owing to restrictions on the termination of lease of flats subject to the rent-control scheme, she could not regain possession and use of her property.

Law: Article 1 of Protocol No. 1 – The Court recalled that it could only consider the possible effect on the applicant's property rights of decisions taken, or laws applicable, from 10 October 1994, the date when Poland ratified Protocol No. 1 to the European Convention on Human Rights.
The Court noted that the applicant had never lost her right to sell her property. Nor had the authorities applied any measures resulting in the transfer of her ownership. It was true that she had not been able to exercise her right of use in terms of physical possession as the house had been occupied by the tenants and that her rights in respect of letting the flats, including her right to receive rent and to terminate leases, had been subject to a number of statutory limitations. The measures taken could not be considered a formal or even *de facto* expropriation but constituted a means of State control of the use of her property, to be examined under the second paragraph of Article 1 of Protocol No. 1 (references to *Mellacher and Others v. Austria*, Series A no. 169, and *Immobiliare Saffi v. Italy*, ECHR 1999-V).
The rent-control scheme in Poland originated in the continued shortage of dwellings, the low supply of flats for rent and the high costs of acquiring a flat. The Court therefore accepted that, in the social and economic circumstances of the case, the legislation in question had a legitimate aim in the general interest. Concerning the 1994 Act, the Court further accepted that, given the exceptionally difficult housing situation in Poland and the inevitably serious social consequences involved in the reform of the lease market, the decision to introduce laws restricting levels of rent in privately-owned flats to protect tenants was justified, especially as it put a statutory time-limit on this measure. However, no procedures enabling landlords to recover maintenance costs were available under the 1994 Act and Polish legislation did not secure any mechanism for balancing the costs of maintaining the property and the income from the controlled rent, which covered only 60% of maintenance costs. Against that background and having regard to the consequences that the various restrictive provisions had on the applicant, the Court found that the combination of restrictions under the 1994 Act impaired the very essence of the applicant's right of property.
In addition, the provisions of the 2001 Act, which had been intended to ameliorate the situation by introducing a new procedure for controlling rent increases, unduly restricted the applicant's property rights and placed a disproportionate burden on her, which could not be

justified in terms of the legitimate aim pursued by the authorities in implementing the relevant remedial housing legislation. Concerning the period between 10 October 2002 and 31 December 2004, the Court did not see how the possibility of increasing rent up to the statutory ceiling could ameliorate the situation of the applicant or the other landlords. Nor did the Court consider that it provided them with any relief for the past state of affairs. Neither did the December 2004 Amendments provide the applicant with any kind of relief that could compensate for the violation that had already occurred, because being able to raise the rent charged by 10% of the current rent did not amount to a significant increase.
The Court acknowledged that the difficult housing situation in Poland, in particular an acute shortage of dwellings and the high cost of acquiring flats on the market, and the need to transform the extremely rigid system of distribution of dwellings inherited from the communist regime, justified not only the introduction of remedial legislation to protect tenants during the reform of the country's political, economic and legal system but also the setting of a low rent, at a level below the market rate. Yet it found no justification for Poland's continued failure to secure to the applicant and other landlords throughout the entire period under consideration the sums necessary to cover maintenance costs, not to mention even a minimum profit from the lease of flats. It was incumbent on the Polish authorities to eliminate or at least to find a prompt remedy for the problem. Furthermore, the principle of lawfulness in Article 1 of Protocol No. 1 and of the foreseeability of the law ensuing from that rule required the State to repeal the rent-control scheme, which by no means excluded the adoption of procedures protecting the rights of tenants in a different manner.
Having regard to all the foregoing circumstances and, more particularly, to the consequences which the operation of the rent-control scheme entailed for the exercise of the applicant's right to the peaceful enjoyment of her possessions, the Court held that the authorities imposed a disproportionate and excessive burden on her.
Conclusion: violation (unanimously).

Article 46 – The applicant's case, which – like *Broniowski v. Poland* – ([GC], no. 31443/96, ECHR 2004-...) had been chosen by the Court as a pilot case for determining the compatibility with the Convention of a domestic scheme that affected large numbers of people, revealed an underlying systemic problem, in that Polish housing legislation imposed, and continues to impose, on individual landlords, restrictions on increases in rent for their dwellings, making it impossible for them to receive rent reasonably commensurate with the general costs of property maintenance.
The Court considered that Poland had to, above all, through appropriate legal and/or other measures, secure a reasonable level of rent to the applicant and those similarly affected, or provide them with a mechanism mitigating the consequences of State control over rent increases on their right of property. It was not for the Court to indicate what would be the "reasonable" level of rent in the present case or in Poland in general, or in what way the mitigating procedures should be set up; under Article 46 Poland remained free to choose the means by which it would discharge its obligations arising from the execution of the Court's judgments.

Article 41 – The question of the application of Article 41 (just satisfaction), concerning pecuniary or non-pecuniary damage, was not ready for decision (6 votes to 1). The Court made an award for costs and expenses.

PEACEFUL ENJOYMENT OF POSSESSIONS
Criminal investigation into the disappearance of the applicant's possessions as a result of an entry into his flat authorised by a public authority: *violation.*

NOVOSELETSKIY - Ukraine (N° 47148/99)
Judgment 22.2.2005 [Section II]

Facts: The applicant was granted a permit of unlimited duration by his employer, a state Institute, authorising him to occupy an apartment owned by it. The applicant moved to Russia to prepare his doctoral thesis, and his wife moved to another town to receive medical treatment. The Institute cancelled the applicant's occupation permit and granted it to the T. family. In the applicant's absence, T. moved into the flat. Some of the applicant's belongings disappeared. On their return, the applicant and his wife were unable to move into the flat, which was already occupied, and were obliged against their will to live with members of another household. The applicant instituted proceedings to recover the flat and obtain compensation for pecuniary and non-pecuniary damage. He won his case in respect of the right to free enjoyment of the property. As to the alleged damage, the court noted, *inter alia*, that compensation for non-pecuniary damage in landlord-and-tenant disputes was not provided for by law. Meanwhile, the flat had been sold to the T. family with the Institute's authorisation. Since the flat was occupied, the authorities (the bailiff, prosecution service and court) took action to enforce the judicial decision in the applicant's favour. The applicant was granted an enforcement order more than two years after the judicial decision in his favour. Meanwhile the applicant and his wife were obliged to live in the home of members of another family for more than five years as the flat's uninhabitable state made it impossible for them to move back in. This situation continued for more than three years after the enforcement order was issued, in spite of actions taken by the applicant. He had also lodged a criminal complaint alleging that his belongings had been removed from his flat. More than seven years later, the investigation was finally ended with a decision to discontinue the proceedings since no offence had been committed. In particular, the applicant was criticised for inventing the allegations of theft.

Law: Article 8 (*State's positive obligations*) – The applicant had been deprived of his flat and obliged, together with his wife, to live with the members of another household for more than five years. The courts had taken account of the T. family's situation, but did not use all the means at their disposal to protect the applicant's private and family life during the proceedings. Although the courts did eventually re-establish the applicant's rights to take possession of the disputed flat, they did so with undue delay. Their judgment did not result in re-establishment of the applicant's right to respect for his home and his private and family life. The judgment in the applicant's favour could not be rapidly enforced since, in the meantime and with the Institute's authorisation, the T. family had purchased the flat. The Institute performed public duties assigned to it by law under the supervision of the authorities, namely the management and allocation of that part of the State's housing stock included in its assets, so that its actions engaged the State's responsibility under the Convention. The Institute could have reacted more appropriately to the applicant's situation, for example by providing him with temporary accommodation, especially after the judgment in the applicant's favour, but it had taken no such action. On the contrary, the Institute had agreed to the sale of the flat to T. during the judicial proceedings without informing the court. That decision had caused enforcement of the judgment in the applicant's favour to be delayed. The flat was subsequently made available to the applicant in a state that was unfit for human habitation, and the Institute took no action to carry out the necessary repairs or to prosecute those responsible for the damage.
In short, the State had not fulfilled its positive obligations to re-establish and protect the applicant's effective enjoyment of his right to respect for his home and for his private and family life.
Conclusion: violation (unanimous).

Article 1 of Protocol No. 1 (*State's positive obligations*) – The criminal investigation into the disappearance of the applicant's possessions from his flat had been successively re-opened and closed by the prosecution service on several occasions, and there was no evidence justifying the length of those proceedings (more than seven years). In the present case, the identity of the persons who had entered the applicant's flat was known; they had drawn up a document claiming that the flat had been empty and had asked other persons to sign it, without any verification of the facts. The prosecution service had given no attention to the issue of the legality of the entry into the applicant's flat and of the liability of those who had entered it, in spite of the arguments submitted by the applicant. The investigation was primarily concerned with establishing whether the applicant genuinely possessed the items whose disappearance he alleged. While the Court did not dispute the method used in the investigation, which consisted in verifying the applicant's allegations, it found it difficult to understand why the investigation denied the existence of any of the applicant's personal belongings, particularly in view of a statement made by a witness who had helped him to move house. While it had meticulously verified the existence of the possessions the applicant claimed to have lost, the prosecution service had not shown the same attention with regard to his complaints or the responsibility of the authorities and persons implicated in them.
In short, the State had failed to strike a fair balance between the competing interests and had not made the effort which could normally have been expected to conduct an efficient and impartial investigation into the disappearance of the applicant's possessions following the entry into his flat, which had been authorised by a public authority.
Conclusion: violation (unanimous).

Article 41 – The Court awarded the applicant EUR 8,000 for pecuniary and non-pecuniary damage.

PEACEFUL ENJOYMENT OF POSSESSIONS
Bombing of convoy by Russian military jets during Chechen war, leading to destruction of property: *violation*.

ISAYEVA, YUSUPOVA and BAZAYEVA - Russia (Nos. 57947-49/00)
Judgment 24.2.2005 [Section I – former composition]
(see Article 2, above).

PEACEFUL ENJOYMENT OF POSSESSIONS
Award of welfare payments not enforced for lack of public funds: *violation.*

POZNAKHIRINA - Russia (N° 25964/02)
Judgment 24.2.2005 [Section I]
(see Article 6(1), above).

ARTICLE 3 OF PROTOCOL No. 1

FREE EXPRESSION OF OPINION OF PEOPLE
Requirement to obtain over ten per cent of the votes cast at national level in order to qualify for a seat in Parliament: *communicated.*

YUMAK and SADAK - Turkey (N° 10226/03)
Decision 22.2.2005 [Section II]

The applicants stood as candidates in the 2002 parliamentary elections in a county where their party obtained about 45.95% of the votes cast. However, as their party did not reach the legal threshold of 10% of votes cast at national level, the applicants were not elected to parliament. The three seats assigned to the county in question were allocated as follows: two seats were assigned to a party which had obtained 14.05% of the vote and one seat to an independent candidate who had obtained 9.69% of the vote. The legislation provided that parties could not win a seat in a general election if they failed to exceed the threshold of 10% of votes cast at national level.
Communicated under Article 3 of Protocol No. 1.

STAND FOR ELECTION
Denied registration as a candidate in parliamentary elections due to the applicant's inability to pay a deposit: *admissible.*

SUKHOVETSKYY - Ukraine (N° 13716/02)
Decision 1.2.2005 [Section II]

The Electoral Committee refused to register the applicant as a candidate for the 2002 parliamentary elections due to his failure to pay the election deposit of sixty times the tax-free monthly income (around EUR 160). The applicant unsuccessfully challenged these decisions before the Central Electoral Committee and the Supreme Court, stating that he was unable to pay the deposit as his annual income was less than this sum. The applicant complains under Article 3 of Protocol No. 1 to the Convention, separately and in conjunction with Article 14. He argues that the refusal to register him as a candidate was based on his financial status and therefore his right to participate in the elections was limited in comparison with other "wealthy" candidates.
Article 3 of Protocol No. 1 and Article 14 of the Convention: *admissible*.
Articles 17 and 18 of the Convention: *manifestly ill-founded.*

Other judgments delivered in February

Article 3

Inhuman and degrading treatment

Zülcihan Şahin and Others - Turkey (Nº 53147/99) 3.2.2005 [Section I] – violation/non-violation.
Biyan - Turkey (Nº 56363/00) 3.2.2005 [Section III] – violation.

Article 5(1)(f)

Detention pending expulsion

Bordovskiy - Russia (Nº 49491/99) 8.2.2005 [Section II] – no violation.

Article 5(2)

Information on reasons for arrest

Bordovskiy - Russia (Nº 49491/99) 8.2.2005 [Section II] – no violation.

Article 5(3)

Detention on remand

Panchenko - Russia (Nº 45100/98) 8.2.2005 [Section IV] – violation.
Sulaoja - Estonia (Nº 55939/00) 15.2.2005 [Section IV] – violation.
Sardinas Albo - Italy (Nº 56271/00) 17.2.2005 [Section I (former composition)] – violation.

Article 5(4)

Speediness of review

Panchenko - Russia (Nº 45100/98) 8.2.2005 [Section IV] – violation.
Sulaoja - Estonia (Nº 55939/00) 15.2.2005 [Section IV] – violation - no violation.

Article 6(1)

Failure to communicate observations of the *avocat général* in Court of Cassation proceedings to unrepresented appellant

Philippe Pause - France (Nº 58742/00) 15.2.2005 [Section II] – violation (cf. *Meftah).*

Non-disclosure in Court of Cassation proceedings of report of the *conseiller rapporteur*, available to the *avocat general*

SCP Huglo, Lepage & Associés, Conseil - France (Nº 59477/00) 1.2.2005 [Section II] – violation (cf. *Reinhardt* and *Slimane-Kaïd*).

Failure to communicate observations of the *avocat général* and report of the *conseiller rapporteur* to unrepresented appellant in Court of Cassation proceedings

Lacas - France (Nº 74587/01) 8.2.2005 [Section II] – violation (cf. *Meftah* ; *Reinhardt* and *Slimane-Kaïd*).

Prolonged non-enforcement of court decision

Sharenok - Ukraine (Nº 35087/02) 22.2.2005 [Section II] – violation (cf. *Mykhaylenky and Others*).

Petrushko - Russia (Nº 36494/02) 24.2.2005 [Section I]
Koltsov - Russia (Nº 41304/02) 24.2.2005 [Section I]
Gasan - Russia (Nº 43402/02) 24.2.2005 [Section I]
Plotnikovy - Russia (Nº 43883/02) 24.2.2005 [Section I]
Makarova and Others - Russia (Nº 7023/03) 24.2.2005 [Section I]
violation (cf. *Burdov*).

Quashing of a final judicial decision

Iacob - Romania (Nº 39410/98) 3.2.2005 [Section III] – violation (cf. *Brumărescu*).

Independence and impartiality of State Security Court

Biyan - Turkey (Nº 56363/00) 3.2.2005 [Section III]
Erdost - Turkey (Nº 50747/99) 8.2.2005 [Section II]
violation (cf. *Özel ; Özdemir*).

Access to court

Fociac - Romania (Nº 2577/02) 3.2.2005 [Section III] – no violation.
Bifulco - Italy (Nº 60915/00) 8.2.2005 [Section II] – violation (cf. *Ganci*).
Sukhorubchenko - Russia (Nº 69315/01) 10.2.2005 [Section I] – violation.
Budmet Sp. z.o.o. - Poland (Nº 31445/96) 24.2.2005 [Section III (former composition)] – no violation.
Stift - Belgium (Nº 46848/99) 24.2.2005 [Section I] – violation (cf. *Goedhart*).

Equality of arms

Frangy - France (Nº 42270/98) 1.2.2005 [Section II] – non-violation.

Adversarial trial

Ziliberberg - Moldova (Nº 61821/00) 1.2.2005 [Section IV] – violation.

Oral hearing

Birnleitner - Austria (Nº 45203/99) 24.2.2005 [Section I] – violation.

Length of proceedings

Zieliński - Poland (Nº 38497/02) [Section IV] – non-violation.

Frangy - France (Nº 42270/98) 1.2.2005 [Section II]
Kolasiński - Poland (Nº 46243/99) 1.2.2005 [Section IV]
Beller - Poland (Nº 51837/99) [Section IV]
Crowther - United Kingdom (Nº 53741/00) 1.2.2005 [Section IV]
Quemar - France (Nº 69258/01) 1.2.2005 [Section II]
Sylvester (no.2) - Austria (Nº 54640/00) 3.2.2005 [Section I]
Stamatios Karagiannis - Greece (Nº 27806/02) 10.2.2005 [Section I]
Blum - Austria (Nº 31655/02) 3.2.2005 [Section I]
Sadik Amet and Others - Turkey (Nº 64756/01) 3.2.2005 [Section I]
Riepl - Austria (Nº 37040/02) 3.2.2005 [Section I]
Hatun, Nural, Nihal, Emrah and Ahmet Güven - Turkey (Nº 42778/98) 8.2.2005 [Section II]
Panchenko - Russia (Nº 45100/98) 8.2.2005 [Section IV]
Schwarkmann - France (Nº 52621/99) 8.2.2005 [Section II]
Uhl - Germany (Nº 64387/01) 10.2.2005 [Section III]
Lagouvardou-Papatheodorou and Others - Greece (Nº 72211/01) 10.2.2005 [Section I]
Veli-Makri and Others - Greece (Nº 72267/01) 10.2.2005 [Section I]
Vasilaki and Others - Greece (Nº 72270/01) 10.2.2005 [Section I]
Giamas and Others - Greece (Nº 72285/01) 10.2.2005 [Section I]
Kouremenos and Others - Greece (Nº 72289/01) 10.2.2005 [Section I]
Goutsia and Others - Greece (Nº 72983/01) 10.2.2005 [Section I]
Kozyris and Others - Greece (Nº 73669/01) 10.2.2005 [Section I]
Fehr - Austria (Nº 19247/02) 3.2.2005 [Section I]
Andrianesis and Others - Greece (Nº 21824/02) 10.2.2005 [Section I]
Vlasopoulos and Others - Greece (Nº 27802/02) 10.2 2005 [Section I]
Charalambos Katsaros - Greece (Nº 32279/02) 10.2.2005 [Section I]
Kalliri-Giannikopoulou and Others - Greece (Nº 33173/02) 10.2.2005 [Section I]
Kotsanas - Greece Nº 33191/02) 10.2.2005 [Section I]
Andreadaki and Others - Greece (Nº 33523/02) 10.2.2005 [Section I]
Papamichaïl and Others - Greece (Nº 33808/02) 10.2.2005 [Section I]
Kosti-Spanopoulou and Others - Greece (Nº 33819/02) 10.2.2005 [Section I]
Mikros - Greece (Nº 34358/02) 10.2.2005 [Section I]
Koutroubas and Others - Greece (Nº 34362/02) 10.2.2005 [Section I]
Stathoudaki and Others - Greece (Nº 34366/02) 10.2.2005 [Section I]
Karobeïs - Greece (Nº 37420/02) 10.2.2005 [Section I]
Selianitis - Greece (Nº 37428/02) 10.2.2005 [Section I]
Theodoros Anagnostopoulos - Greece (Nº 37429/02) 10.2.2005 [Section I]
Charmantas and Others - Greece (Nº 38302/02) 10.2.2005 [Section I]
Švolík - Slovakia (Nº 51545/99) 15.2.2005 [Section IV]
Vargová - Slovakia (Nº 52555/99) 15.2.2005 [Section IV]
Kokkini - Greece (Nº 33194/02) 17.2.2005 [Section I]

Kallitsis (n° 2) - Greece (Nº 38688/02) 17.2.2005 [Section I]
Oikonomidis - Greece (Nº 42589/02) 17.2.2005 [Section I]
Meryem Güven and Others - Turkey (Nº 50906/99) 22.2.2005 [Section II]
Günter - Turkey (Nº 52517/99) 22.2.2005 [Section II]
Wimmer - Germany (Nº 60534/00) 24.2.2005 [Section III]
Kern - Austria (Nº 14206/02) 24.2.2005 [Section I]
Nowicky - Austria (Nº 34983/02/02) 24.2.2005 [Section I]
violation.

Impartial tribunal

Thaler - Austria (Nº 58141/00) 3.2.2005 [Section I] – violation.
Indra - Slovakia (Nº 46845/99) 1.2.2005 [Section VI] – violation.

Article 6(3)(c)

Stift - Belgium (Nº 46848/99) 24.2.2005 [Section I] – violation (cf. *Van Geyseghem*).

Article 6(3)(d)

Graviano (n° 2) - Italy (Nº 10075/02) 10.2.2005 [Section III] – non-violation.

Article 8

Private life and home

L.M. - Italy (Nº 60033/00) 8.2.2005 [Section IV] – violation.

Correspondence

Jankauskas - Lithuania (Nº 59304/00) 24.2.2005 [Section III] – violation.

Article 10

Conviction for disseminating separatist propaganda

Erdost - Turkey (Nº 50747/99) 8.2.2005 [Section II] – violation (cf. *İbrahim Aksoy*).

Conviction for defamation

Pakdemirli - Turkey (Nº 35839/97) 22.2.2005 [Section II] – violation.

Article 13

Effective remedy

Ill-treatment

Zülcihan Şahin and Others - Turkey (Nº 53147/99) 3.2.2005 [Section I] – violation - non-violation.

Length of proceedings

Vlasopoulos and Others - Greece (Nº 27802/02) 10.2.2005 [Section I]
Stamatios Karagiannis - Greece (Nº 27806/02) 10.2.2005 [Section I]
Charalambos Katsaros -Greece (Nº 32279/02) 10.2.2005 [Section I]
Karobeïs - Greece (Nº 37420/02) 10.2.2005 [Section I]
Selianitis - Greece (Nº 37428/02) 10.2.2005 [Section I]
Theodoros Anagnostopoulos - Greece (Nº 37429/02) 10.2.2005 [Section I]
Oikonomidis - Greece (Nº 42589/02) 17.2.2005 [Section I]
violation (cf. *Konti-Arvaniti*).

Private life & home

L.M. - Italy (Nº 60033/00) 8.2.2005 [Section IV] – violation.

Article 14 in conjunction with Article 8

Age of consent for homosexual acts

Ladner - Austria (Nº 18297/03) 3.2.2005 [Section I] – violation (cf. *L. and V.*).

Article 1 of Protocol No. 1

Delay in payment of compensation for expropriation

Mancar - Turkey (Nº 57372/00) 15.2.2005 [Section II] – violation (cf. *Akkuş*).

Prolonged non-enforcement of court decision

Sharenok - Ukraine (Nº 35087/02) 22.2.2005 [Section II] – violation (cf. *Mykhaylenky and others*).

Petrushko - Russia (Nº 36494/02) 24.2.2005 [Section I]
Koltsov - Russia (Nº 41304/02) 24.2.2005 [Section I]
Gasan - Russia (Nº 43402/02) 24.2.2005 [Section I]
Plotnikovy - Russia (Nº 43883/02) 24.2.2005 [Section I]
Makarova and Others - Russia (Nº 7023/03) 24.2.2005 [Section I]
violation (cf. *Burdov*).

Quashing of a final judicial decision already executed

Iacob - Romania (Nº 39410/98) 3.2.2005 [Section III] – violation (cf. *Brumărescu*).

Protection of possessions

Sukhorubchenko - Russia (Nº 69315/01) 10.2.2005 [Section I] – no violation.
Veselinski - the Former Yugoslav Republic of Macedonia (Nº 45658/99) 24.2.2005 [Section III] – violation.
Djidroski - the Former Yugoslav Republic of Macedonia (Nº 46447/99) 24.2.2005 [Section III] – violation (cf. *Veselinski*).

Striking out

Liuba - Romania (Nº 31166/96) 17.2.2005 [Section III]
Popovăţ - Romania (Nº 32265/96) 17.2.2005 [Section III]
Ohlen - Denmark (Nº 63214/00) 24.2.2005 [Section I]

Friendly settlement

Valová, Slezák and Slezák - Slovakia (Nº 44925/98) 15.2.2005 [Section IV]
Carvalho Magalhães - Portugal (Nº 18065/02) 15.2.2005 [Section II]
Constantin - Romania (Nº 49145/99) 17.2.2005 [Section III]
Roman and Hogea - Romania (Nº 62959/00) 17.2.2005 [Section III]
Zuckerstätter and Reschenhofer - Austria (Nº 76718/01) 24.2.2005 [Section I]

Relinquishment in favour of the Grand Chamber

Article 30

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

The case concerns civil proceedings for damages and an allowance, brought by the applicant following an accident of which he had been the victim. While the case remained pending the applicant complained to the Federal Constitutional Court about the length of the proceedings. The applicant also brought an unsuccessful civil action against the State with regard to the length of the proceedings. Before the Court the applicant complains about the length of the pending proceedings and about the absence of an effective remedy for challenging the excessive length of the proceedings. The application was declared admissible on 29 April 2004 under Articles 6(1) and 13.

JALLOH - Germany (Nº 54810/00)
[Section III]

The case concerns the use in criminal proceedings of evidence obtained from the accused by forced administration of emetics. It was declared admissible on 26 October 2004 under Articles 3, 6 (fair hearing) and 8.

Referral to the Grand Chamber

Article 43(2)

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

SCORDINO - Italy (N° 1) (N° 36813/97)
Judgment 29.7.2004 [Section I]

The case concerns the length of proceedings relating to payment of compensation for expropriation, the passing of legislation affecting outcome of pending court proceedings and the adequacy of compensation for expropriation.

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. 68 and 69):

H.L. - United Kingdom (Nº 45508/99)
Judgment 5.10.2004 [Section IV]

VARLI and Others - Turkey (Nº 38586/97)
Judgment 19.10.2004 [Section II]

LIPOWICZ - Poland (Nº 57467/00)
MEJER and JALOSZYNSKA - Poland (Nº 62109/00)
R.P.D. - Poland (Nº 77681/01)
Judgments 19.10.2004 [Section IV]

RAJNAI - Hungary (Nº 73369/01)
Judgment 26.10.2004 [Section II]

DÖNER - Turkey (Nº 34498/97)
ÇELIK and İMRET - Turkey (Nº 44093/98)
MILLER and Others - United Kingdom (Nº 45825/99, Nº 45826/99 and Nº 45827/99)
WIATRZYK - Poland (Nº 52074/99)
Judgments 26.10.2004 [Section IV]

DRAGOVIC - Croatia (Nº 5705/02)
Judgment 28.10.2004 [Section I]

PASZKOWSKI - Poland (Nº 42643/98)
ÇILOGLU and Others - Turkey (Nº 50967/99)
ÇENESIZ and Others - Turkey (Nº 54531/00)
EPÖZDEMIR - Turkey (Nº 43926/98)
KAYMAZ and Others - Turkey (Nº 57758/00)
ZENGIN - Turkey (Nº 46928/99)
Y.B. and Others - Turkey (Nº 48173/99 and Nº 48319/99)
Judgments 28.10.2004 [Section III]

COULAUD - France (Nº 69680/01)
ABDÜLSAMET YAMAN - Turkey (Nº 32446/96)
HAVELKA - Czech Republic (Nº 76343/01)
IONESCU - Romania (Nº 38608/97)
CHIVORCHIAN - Romania (Nº 42513/98)
Judgments 2.11.2004 [Section II (former composition)]

MARTINEZ SALA and Others - Spain (Nº 58438/00)
Judgment 2.11.2004 [Section IV]

TUNCER and DURMUS - Turkey (Nº 30494/96)
DOJS - Poland (Nº 47402/99)
HENWORTH - United Kingdom (Nº 515/02)
Judgments 2.11.2004 [Section IV (former composition)]

GERALDES BARBA - Portugal (Nº 61009/00)
AYSE ÖZTÜRK - Turkey (Nº 59244/00)
TAYDAS and ÖZER - Turkey (Nº 48805/99)
Judgments 4.11.2004 [Section III (former composition)]

MARPA ZEELAND B.V. and METAL WELDING B.V. - Netherlands (Nº 46300/99)
DEL LATTE - Netherlands (Nº 44760/98)
Judgments 9.11.2004 [Section II]

MARASLI - Turkey (Nº 40077/98)
HASAN İLHAN - Turkey (Nº 22494/93)
BAKAY and Others - Ukraine (Nº 67647/01)
MAGLÓDI - Hungary (Nº 30103/02)
Judgments 9.11.2004 [Section II (former composition)]

SIKORSKI - Poland (Nº 46004/99)
Judgment 9.11.2004 [Section IV (former composition)]

SAEZ MAESO - Spain (Nº 77837/01)
Jugement 9.11.2004 [Section IV]

CANEVI and Others - Turkey (Nº 40395/98)
Judgment 10.11.2004 [Section I (former composition)]

VOLKAN AYDIN - Turkey (Nº 54501/00)
DICLE - Turkey (Nº 34685/97)
ODABASI - Turkey (Nº 41618/98)
KALIN - Turkey (Nº 31236/96)
BARAN - Turkey (Nº 48988/99)
ÜNAL - Turkey (Nº 48616/99)
Judgments 10.11.2004 [Section III (former composition)]

ÜNAL TEKELİ - Turkey (Nº 29865/96)
Judgment 16.11.2004 [Section IV]

HOOPER - United Kingdom (Nº 42317/98)
KING - United Kingdom (Nº 13881/02)
MASSEY - United Kingdom (Nº 14399/02)
WOOD - United Kingdom (Nº 23414/02)
ALBERTO SANCHEZ - Spain (Nº 72773/01)
Judgments 16.11.2004 [Section IV (former composition)]

KARHUVAARA and ILTALEHTI - Finland (Nº 53678/00)
SELISTÖ - Finland (Nº 56767/00)
MORENO GÓMEZ - Spain (Nº 4143/02)
BRUNCRONA - Finland (Nº 41673/98)
Judgments 16.11.2004 [Section IV]

PROKOPOVICH – Russia (Nº 58255/00)
Judgment 18.11.2003 [Section I]

FOTOPOULOU - Greece (Nº 66725/01)
KVARTUC - Croatia (Nº 4899/02)
WASSERMAN - Russia (Nº 15021/02)
Judgments 18.11.2004 [Section I (former composition)]

PAPASTAVROU - Greece (Nº 46372/99)
Judgment (just satisfaction) 18.11.2004 [Section I (former composition)]

REINMÜLLER - Austria (Nº 69169/01)
Judgment 18.11.2004 [Section III (former composition)]

PUOLITAIVAL and PIRTTIAHO - Finland (Nº 54857/00)
Judgment 23.11.2004 [Section IV (former composition)]

BAKALOV - Ukraine (Nº 14201/02)
FENECH - France (Nº 71445/01)
VRÁNA - Czech Republic (Nº 70846/01)
KOS - Czech Republic (Nº 75546/01)
KARASOVA - Czech Republic (Nº 71545/01)
VANEY - France (Nº 53946/00)
ŞAHINDOGAN - Turkey (Nº 54545/00)
BRUXELLES - France (Nº 46922/99)
Judgments 30.11.2004 [Section II]

GÜMÜSTEN - Turkey (Nº 47116/99)
ÖZKAYA - Turkey (Nº 42119/98)
A.K. and V.K. - Turkey (Nº 38418/97)
Judgments 30.11.2004 [Section IV]

Statistical information[1]

Judgments delivered	February	2005
Grand Chamber	1	1
Section I	50	66
Section II	19	33(34)
Section III	14	15
Section IV	14	22(23)
former Sections	2	6
Total	**100**	**143(145)**

Judgments delivered in February 2005					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	1	0	0	0	1
Section I	48	1	1	0	50
Section II	18	1	0	0	19
Section III	10	2	1	1	14
Section IV	13	0	0	1	14
former Section I	1	0	0	0	1
former Section III	1	0	0	0	1
Total	**92**	**4**	**2**	**2**	**100**

Judgments delivered in 2005					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	1	0	0	0	1
former Section I	1	0	0	0	1
former Section II	1	0	0	0	1
former Section III	4	0	0	0	4
former Section IV	0	0	0	0	0
Section I	64	1	1	0	66
Section II	27	5(6)	1	0	33(34)
Section III	10	2	1	2	15
Section IV	20(21)	1	0	1	22(23)
Total	**128(129)**	**9(10)**	**3**	**3**	**143(145)**

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		February	2005
I. Applications declared admissible			
Grand Chamber		0	0
Section I		21(22)	38(39)
Section II		8	22
Section III		9(11)	17(19)
Section IV		4	7
Total		**42(45)**	**84(87)**
II. Applications declared inadmissible			
Grand Chamber / Grande Chambre		0	0
Section I	- Chamber	4	15
	- Committee	795	1552
Section II	- Chamber	2	15
	- Committee	155	628
Section III	- Chamber	6	19
	- Committee	286	490
Section IV	- Chamber	7	14
	- Committee	288	952
Total		**1543**	**3685**
III. Applications struck off			
Section I	- Chamber	2	3
	- Committee	7	13
Section II	- Chamber	4	10
	- Committee	2	8
Section III	- Chamber	2	3
	- Committee	6	8
Section IV	- Chamber	4	10
	- Committee	4	11
Total		**31**	**66**
Total number of decisions[1]		**1616(1619)**	**3835(3838)**

1. Not including partial decisions.

Applications communicated	February	2005
Section I	42	83
Section II	21	83
Section III	28	67
Section IV	11	28
Total number of applications communicated	**102**	**261**

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