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

INFORMATION NOTE No. 60
on the case-law of the Court
January 2004

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

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ARTICLE 2

LIFE
Disappearance following alleged abduction by security forces and lack of effective investigation: *violation*.

TEKDAĞ - Turkey (Nº 27699/95)
Judgment 15.1.2004 [Section II]

Facts: The applicant maintains that her husband was abducted by plain-clothed policemen in 1994. She claims he was taken into custody and killed by State officials. The other detainees who had seen him during custody were later afraid to testify, and she has never heard from her husband again. The applicant reported his disappearance to the Principal Public Prosecutor at the State Security Court, who initially agreed to look into the matter but subsequently denied that her husband had been detained and affirmed that he was responsible for numerous illegal acts. The applicant made other applications to the authorities but never received an explanation for the disappearance of her husband. The Government generally denied the applicant's version of the events and alleged that her husband was a PKK sympathiser who had changed his identity and probably joined that organisation. A delegation of the Court took evidence from witnesses in Turkey.

Law: Article 2 (abduction and killing) – The applicant's allegations were not sufficiently proved. As there were no eyewitnesses to the alleged incidents or to the remand in custody of the applicant's husband, it could not be concluded beyond reasonable doubt that he had been abducted and killed by persons acting on behalf of the State authorities.
Conclusion: no violation (unanimously).

Article 2 (effective investigation) – There were important shortcomings in the investigation into the disappearance of the applicant's husband carried out by the authorities. In particular, there was a lack of coordination between the different prosecutors involved in the investigation. This resulted, for example, in never tracing or interviewing the applicant's main witness, who had allegedly seen her husband whilst in custody, or the police officers allegedly involved in his abduction. In view of the failure of the authorities to carry out an adequate and effective investigation into the circumstances surrounding the disappearance of the applicant's husband, Article 2 had been breached under its procedural limb.
Conclusion: violation (unanimously).

Article 13 – As no effective criminal investigation was conducted, and bearing in mind that the requirement to investigate under Article 13 is broader than that under Article 2, there had also been a breach of this provision.
Conclusion: violation (6 votes to 1).

Article 38(1)(a) – The Government had failed to furnish all necessary facilities to assist the Court in establishing the facts.

Article 41 – The Court awarded the applicant 14,000 euros in respect of non-pecuniary damage. It also made an award in respect of costs and expenses.

ARTICLE 6

Article 6(1) [civil]

APPLICABILITY
Applicability of Article 6 to proceedings concerning the requirement that an accountant in the public sector reimburse certain sums: *Article 6 applicable*.

MARTINIE - France (N° 58675/00)
Decision 13.1.2004 [Section II]

The applicant was an accountant in a public institution. In the course of a judicial audit of the accounts submitted by the applicant, the regional audit board found that he owed the institution certain sums of money corresponding to unauthorised payments he had made in his capacity as a public-sector accountant. The Court of Audit ruled on an appeal by the applicant, who subsequently appealed on points of law to the *Conseil d'Etat*. The applicant was held personally and financially liable and was accordingly ordered to repay a sum of more than FRF 190,000 to the local authority.

Admissible under Article 6(1): The outcome of the proceedings had been decisive for the obligation on the applicant, as a public-sector accountant, to bear personally the financial consequences of irregularities in the management of accounts. That obligation had a "public" connotation in French law, as was evidenced, in particular, by the fact that disputes over such matters fell within the jurisdiction of specialist administrative courts, subject to final review by the *Conseil d'Etat*. The Court considered that the obligation had manifest pecuniary implications for the applicant, which in principle gave it a "civil" connotation. This pecuniary obligation did not belong exclusively to the realm of public law within the meaning of the Court's case-law. Its main purpose was to make good the loss sustained by the local authority as a result of the accountant's negligence in carrying out his supervisory duties. The applicant had therefore been in a financial dispute with the local authority and his position had been similar to that of a person who had committed a tort and was required to make good the damage he had caused. In the Court's view, the private-law features of the case were therefore predominant, so that the obligation was a "civil" one. Accordingly, Article 6 was applicable.

DETERMINATION
Application by an individual to the Federal Constitutional Court to challenge a law: *violation*.

VOGGENREITER - Germany (N° 47169/99)
Judgment 8.1.2004 [Section III]

Facts: The applicant was the owner of a freight-tariff control company and worked as a tariff supervisor until the entry into force in January 1994 of a law abolishing tariffs for rail traffic, which made her occupation superfluous and forced her to close down her business. In December 1993 she challenged the constitutionality of the law in the Federal Constitutional Court, complaining of the consequent termination of her business activities and relying on the constitutional rights of freedom to practise a profession and of property. In June 1994 the Federal Constitutional Court refused to order the temporary suspension of the law but held that, as to the merits, the applicant's appeal was neither manifestly inadmissible nor manifestly ill-founded and raised serious issues regarding the scope and extent of freedom of

occupation. In November 2000 the court dismissed the appeal, pointing out that the law had not prohibited the activities of freight-tariff control companies but had merely abolished tariffs, while acknowledging that that had rendered the applicant's occupation superfluous.

Law: Article 6(1) – *Applicability*: Although in the instant case the State could not have incurred civil liability (and been ordered to pay compensation) in the event of a decision allowing the applicant's appeal, it was clear from the decisions delivered that the dispute had concerned the existence or the scope or manner of exercise of rights that could be said, on arguable grounds, to be recognised under domestic law, namely the applicant's right to practise her profession and her right of property, both of which were safeguarded by the Basic Law. It had not been established that a decision in the applicant's favour would have resulted in the repeal of the law and the restoration of the tariff system, but the respondent Government had not shown that such a decision would have had no effect on the applicant's occupational status. If the Federal Constitutional Court had declared the law unconstitutional, it would have been entitled to order the legislature to make provision for compensation in certain cases or for a transition period during which the applicant would have had a better opportunity to adjust to the changes; it could also have ordered interim measures. Consequently, the proceedings had been directly decisive for the applicant's rights, and the freedom to practise one's profession and, above all, to continue to practise it was a "civil" right. In short, although the proceedings had solely concerned the constitutionality of the law, Article 6 applied.

Reasonable time: The period under consideration, which had begun when the appeal had been received by the Federal Constitutional Court, amounted to six years, eleven months and eleven days. Although, as the Government had argued, that court had a specific role in the German system, the time taken to examine the applicant's appeal had been excessive.
Conclusion: violation (unanimously).
Article 41 – The Court awarded specified sums for non-pecuniary damage and for costs and expenses.

EQUALITY OF ARMS
Longer time-limit for prosecution than for other parties with regard to lodging appeals : *inadmissible*.

GUIGUE and SGEN-CFDT – France (N° 59821/00)
Decision 6.1.2004 [Section IV]

Extract: "The Court also observes that although the period of ten days for lodging an appeal was short, it was not so short as to deprive the applicants of the opportunity to make meaningful use of that remedy. The fact that that period is notably shorter for private parties than for Principal State Counsel – whose position, moreover, is different – cannot in the Court's opinion place the former at a 'substantial disadvantage' *vis-à-vis* the latter within the meaning of the *De Haes and Gijsels* judgment, even accepting that Principal State Counsel may be regarded as their 'opponent' within the meaning of the same judgment.
… having regard to the fact that Article 505 of the Code of Criminal Procedure does not deprive applicants of a remedy available to Principal State Counsel but merely lays down different formal requirements and time-limits for its use, the Court considers that the applicants cannot maintain that there was a breach of the principle of 'equality of arms' inherent in the concept of a fair hearing."

ORAL HEARING
Lack of oral hearing in disciplinary proceedings against a lawyer: *inadmissible*.

A. - Finland (Nº 44998/98)
Decision 8.1.2004 [Section III]

Facts: The applicant, who is a lawyer, was acting in criminal proceedings on behalf of some clients. The claims he submitted on their behalf were rejected by the District Court. As a result, he submitted a lengthy notice of appeal criticising the District Court's decision. The presiding judge in these proceedings complained to the Bar Association about the defamatory language used by the applicant in the notice of appeal. Her complaint was transferred to the Disciplinary Board of the Bar Association, which decided to give the applicant a private warning, considering that his notice of appeal contained belittling and impertinent criticism aimed personally at the presiding judge of the court. The applicant complained that he was unable to defend himself properly, without an appeal or an oral hearing against the disciplinary decision.

Inadmissible under Article 6(1) (oral hearing): Had the sanction imposed on the applicant involved a public warning or disbarment, the applicant could have lodged an appeal to the Court of Appeal. Moreover, the applicant could have requested an oral hearing given that prior to the disciplinary decision being served on him (but after it had been adopted), an amendment to the Code of Judicial Procedure foreseeing this possibility had come into force. Assuming this amendment were not taken into account in the present case given its time of entry into force, the reservation by Finland under the Convention, which exempted it from the obligation to hold hearings before courts of appeal, would come into play: manifestly ill-founded.

Inadmissible under Article 10: The interference was prescribed by law (the Advocates Act) and proportionate to the aim of protecting the reputation or rights of others. The Disciplinary Board's reasoning that the applicant's statements were of a disparaging nature as concerns the presiding judge were sufficient and relevant to justify the interference: manifestly ill-founded.

REASONABLE TIME
Insufficiency of compensation awarded under the Pinto law : *admissible*.

FINAZZI – Italy (N° 62152/00)
Decision 22.01.2004 [Section I]
(see Article 34 below).

Article 6(1) [criminal]

IMPARTIAL TRIBUNAL
Conviction of lawyer for contempt of court by the same court before which the contempt took place: *violation*.

KYPRIANOU – Cyprus (N° 73797/01)
Judgment 27.1.2004 [Section II]

Facts: The applicant is an advocate who, in the course of a trial in which he was acting as defence counsel, was interrupted by the Assize Court judges whilst cross-examining a witness. He felt aggrieved and sought leave to withdraw from the case, but as leave was not granted, the applicant responded to the court in an intemperate outburst. The applicant was given the opportunity to explain himself to the court or to retract his remarks. Following successive breaks to consider the matter, the same court found the applicant guilty of contempt of court and sentenced him to five days' imprisonment. The Supreme Court dismissed the applicant's appeal, finding that the Assize Court was competent to deal with contempt of court.

Law: Article 6(1) (impartial tribunal) – It was not disputed that the offence of contempt of court committed by the applicant involved the determination of a criminal charge, which rendered the defence rights guaranteed by Article 6 applicable. Concerning compliance with this article, the fact that the Assize Court before which the alleged contempt had been committed had subsequently found the applicant guilty and sentenced him raised legitimate doubts, which were objectively justified, as to the impartiality of the court. The Court found that the Assize Court judges had developed a certain personal bias against the applicant as a result of the discussion they had had with him. This was evidenced by the fact of trying him hastily for contempt without making use of less drastic measures (admonition, disciplinary measure, etc.) and ordering his immediate imprisonment. The review by the Supreme Court had not rectified the alleged partiality as there had not been a retrial of the case but merely a review on points of law. Moreover, the applicant's appeal had not suspended the imprisonment sentence, which he had started to serve immediately after being convicted.
Conclusion: violation (unanimously).

Article 6(2) – The Assize Court had formed and expressed an opinion during its discussion with the applicant which showed it had already come to the conclusion that the applicant was guilty of contempt of court. The applicant had not been given a full opportunity to defend himself against a charge which had consequences for his liberty, and had only been expected to provide mitigation on his own behalf before the delivery of the final ruling.
Conclusion: violation (unanimously).

Article 6(3)(a) – The Assize Court informed the applicant of the accusation against him after it had already come to the conclusion of his guilt. Moreover, the detailed facts which had led the Assize Court to convict the applicant had not been put to him by the members of the court, which would have enabled him to prepare his defence. In these circumstances, there had been a violation of Article 6(3)(a).
Conclusion: violation (unanimously).

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

ARTICLE 8

PRIVATE LIFE
Two former KGB officers subject to employment restrictions under domestic Act: *admissible*.

RAINYS and GASPARAVIČIUS - Lithuania (Nº 70665/01 and Nº 74345/01)
Decision 22.1.2004 [Section III]

Facts: The two applicants occupied posts with the KGB until 1991. In accordance with a law laying down employment restrictions for former employees of the KGB, the first applicant, who had become a lawyer in a private telecommunications company, was dismissed from his job in 2000. The second applicant, who was working as a barrister, was disbarred in 2001. They both unsuccessfully instituted administrative actions against their dismissals. The second applicant acknowledged he had worked for the KGB but argued that the employment restrictions should not have applied to him as he had only been involved in criminal (not political) investigations whilst at the KGB. The Regional Administrative Court, in proceedings which were not public, rejected his claim because he had not stopped working with the KGB immediately after Lithuania's independence, which was a condition for the non-application of the restrictions. The Supreme Administrative Court upheld the judgment in a public hearing.

Inadmissible under Article 6(1) (fair hearing): This article was applicable under its "civil" head (not criminal, as alleged by the applicants) as both had lost their jobs in the aftermath of the proceedings. However, the applicants had been afforded ample opportunity to state their cases and contest the evidence they considered false: manifestly ill-founded.

Inadmissible under Article 6(2) and 6(3): In view of the civil, not criminal, nature of the impugned proceedings, the presumption of innocence and other defence rights under these provisions could not be invoked: incompatible *ratione materiae*.

Admissible under Articles 8 and 10, alone and in conjunction with Article 14.

[N.B. The case is almost identical to *Sidabras and Džiautas v. Lithuania,* except that it concerns dismissals in the private sector (and not of public officials).]

PRIVATE LIFE
Noise nuisance from light aircraft at a private aerodrome: *inadmissible*.

ASHWORTH and others – United Kingdom (Nº 39561/98)
Decision 20.1.2004 [Section IV]

Facts: The applicants live in the immediate vicinity of a privately owned and operated aerodrome. With a view to minimising the level of noise caused by light aircraft, their lawyer requested the authorities to change the legal designation of the aerodrome, which would result in applying a stricter noise reduction regime to the aerodrome. The authorities, however, considered that it was not justified to change the aerodrome's designation or to stipulate noise mitigation measures which would be an exception to the general policy that noise issues were to be resolved as far as possible at local level. The applicants complain that noise disturbance from aircraft was an unjustified interference with their private life, considering the aerodrome

did not serve general or economic interests, and that the legal regime did not ensure a fair balance between their interests and the ones of those operating and using the aerodrome.

Inadmissible under Article 8: Whilst States should take into consideration environmental protection when acting within their margin of appreciation (as should the Court when reviewing that margin), it would not be appropriate for the Court to adopt a special approach for the protection of environmental human rights. The policy that aerodrome issues were to be resolved locally was acceptable to the Court. There had been no failure to comply with the requirements of domestic law in the present case. Had the regulations which applied to the aerodrome been breached, the applicants could have made use of legal remedies which were available to them. Moreover, the level of noise was markedly less serious than in the *Hatton* case (judgment of 8 July 2003). The Government had not exceeded its margin of appreciation or failed to take appropriate measures to strike a fair balance between the competing interests: manifestly ill-founded.

Inadmissible under Article 1 of Protocol 1: The applicants had not submitted any evidence that house prices in general or the value of their properties in particular had been adversely affected by flights at the aerodrome: manifestly ill-founded.

PRIVATE AND FAMILY LIFE
Refusal to grant a residence permit to a Russian soldier following the agree withdrawal of Soviet troops: *inadmissible*.

KOLOSOVSKIY – Latvia (N° 50183/99)
Decision 29.1.2004 [Section I]

The applicant, who lives in Latvia and is the son of a Soviet military officer, was deprived of Soviet nationality after the break-up of the USSR in 1991. In 1993 the Latvian authorities refused to enter the applicant in the register of Latvian residents and to issue him with a residence permit, on the ground that he was a member of the family of a Soviet military officer and lived in accommodation belonging to the Russian army. The applicant decided to take Russian nationality, enlisted in the Russian Federation army and was stationed at a military base in Latvia. He was ordered to leave Latvia as part of the mass withdrawal of the Russian armed forces under a 1994 treaty between Latvia and Russia. In 1995 an application by the applicant for a permanent residence permit was refused and his marriage and the birth of his daughter were not registered because he did not have a valid Latvian residence permit. In 1997 the Latvian authorities informed the applicant that, pursuant to the Latvian-Russian treaty and the Aliens Act, he was not entitled to a permanent residence permit. He lodged a number of appeals but without success.

Inadmissible under Article 8: (a) The Latvian authorities' refusal to issue the applicant with a residence permit had amounted to interference with his right to respect for his private and family life; having lived in Latvia since the age of seven, he was now living there together with a woman who was lawfully and permanently resident in Latvia, and they had a daughter who, like the applicant's father, was permanently resident there. The interference, based on the Latvian-Russian treaty on the withdrawal of Russian Federation military troops from the territory of Latvia and on the Aliens Act, had been "in accordance with the law" and had pursued a legitimate aim (see the *Slivenko* judgment of 9 October 2003).
As to whether the interference had been proportionate, the applicant's professional and personal circumstances were different from those considered in the *Slivenko* case. He had been a serving member of the Russian armed forces stationed in Latvia at the time when the Latvian-Russian treaty had been signed, had had very close links to the Soviet army all his life and had volunteered to join the Russian Federation armed forces two years after Latvia had formally regained its independence; accordingly, he must have been aware that he was

enlisting in a foreign military force that was stationed within a sovereign State and would be required to withdraw at some point. Although the applicant had developed personal and social ties in Latvia that went beyond the strictly military sphere, he had mainly lived in Russian army accommodation near the Russian military base. Nor did the applicant's family ties play a decisive role; by the time he had started living together with his partner, he had already been formally refused a residence permit, and neither he nor his partner could have failed to realise the precarious position he was in. Furthermore, there was nothing to suggest that Latvia was the only country in which the applicant, his partner and his daughter would be able to lead a normal family life. In short, the Latvian authorities had not overstepped their margin of appreciation in considering that the public interest (in the removal of foreign servicemen from Latvian territory) prevailed over the applicant's personal interest in staying in Latvia: manifestly ill-founded.
(b) The applicant's complaints concerning the Latvian authorities' refusal to register the birth of his daughter and his marriage (Article 12) were dismissed for failure to exhaust domestic remedies.

FAMILY LIFE
Refusal of courts to establish biological paternity of an illegitimate child and restriction of his inheritance rights: *Articles 8 and 14 not applicable*.

HAAS – Netherlands (N° 36983/97)
Judgment 13.1.2004 [Section II]

Facts: The applicant was born out of wedlock from a relationship between his mother and P., who never recognised the applicant as his son. P. nonetheless made payments to the applicant's mother on a regular basis and spent time with both of them, going out on day trips and offering the applicant presents. The applicant alleged that he called him "daddy". P. died intestate and K., his nephew and only heir, inherited his estate. The applicant instituted proceedings against K. to obtain P.'s estate. Firstly, he claimed that family ties within the meaning of Article 8 of the Convention existed between him and the deceased, who he asserted to be his biological father. Secondly, he contended that Dutch law created a difference of treatment between illegitimate and legitimate children, which was contrary to Article 14 of the Convention. The Regional Court rejected his claim, considering that legal certainty required that only persons with a demonstrable legal family connection with the deceased should be able to inherit. The court found that any hypothetical interference with the applicant's family life was in accordance with the law and necessary in a democratic society. Consequently, it deemed it unnecessary to establish whether P. was actually the applicant's biological father as he alleged. The applicant's appeals were unsuccessful, the Supreme Court finding that although an inability to inherit based solely on the ground of illegitimacy would be contrary to Article 8 and 14, there could be other objective grounds to restrict inheritance by "illegitimate" children, and recalled that Parliament was considering a reform of legislation in this area.

Law: Articles 8 and 14 (taken together) – The applicant's sporadic contacts with P. could not be construed as "family life". Moreover, the applicant had never, prior to the proceedings he instituted to inherit from P., sought to obtain recognition as his son or to form part of his family in terms of emotional security. As a result, the facts of the case could not be accommodated within the ambit of Article 8. The issue before the national courts had not been one of "family life", but rather one of evidence on whether the applicant's ties with the deceased should have been recognised. The Court noted that as new legislation in this area has been adopted in the Netherlands, the possibility was now open for the applicant to seek a declaration of paternity.
Conclusion: Articles 8 and 14 not applicable (unanimously).

FAMILY LIFE
Refusal to allow parents and elder sisters to have access to a child taken into care: *communicated*.

H. and others – Norway (N° 75531/01)
[Section III]

The applicants are two parents who suffer from mental illness. In 1993, their two daughters, I. and U., were placed in a foster home because of the parents' inability to provide proper care, but they were granted a right of access to the girls once a month. In 1997, a third daughter, X., was born whilst the mother was committed to a psychiatric hospital. The authorities placed X. in a different foster home to that of her sisters and deprived the applicants of access and parental responsibilities in respect of her. The applicants did not dispute the compulsory public care of X. from her birth but appealed to the courts on the ground that cutting off X. from her biological parents and from the rest of the family (in particular access to X. by the two elder sisters) was unjustified. The courts, at two levels of jurisdiction, dismissed the applicants' pleas, finding that with a view to X.'s adoption and safe upbringing, it was in her best interest that neither the biological parents nor any other members of the family should be granted a right of access to her. The applicants complain that the refusal to grant the two eldest sisters I. and U. access to their younger sister entailed an interference with their family life.
Communicated under Article 8.

ARTICLE 13

EFFECTIVE REMEDY
Recognition and enforcement by Swedish courts of a judgment delivered in Norway: *inadmissible*.

LINDBERG - Sweden (Nº 48198/99)
Decision 15.1.2004 [Section I]

Facts: The applicant was appointed by the Ministry of Fisheries to serve as seal hunting inspector on board a seal hunting vessel for the 1988 season, having been on the same vessel the year before as a freelance journalist (see *Bladet Tromsø and Stensaas v. Norway*, ECHR 1999-III). Shortly after the expedition finished, the applicant drew up an inspection report which contained allegations that certain seal hunters had violated the Hunting Regulations. The report received wide coverage in the media and excerpts from it were published in several newspapers. In 1989, a film containing footage shot by the applicant during his stay on board, again showing breaches of the regulations, was partly/entirely broadcast on Norwegian and Swedish television. The members of the crew of the vessel brought defamation proceedings against the applicant in Norway and the City Court declared five of the statements in the inspection report, as well as two others the applicant had made in the television programmes, null and void. It further ordered that footage where the crew members could be identified should not be shown, and awarded them compensation. As the applicant was residing in Sweden, the crew members requested the Swedish authorities to enforce the Norwegian court's judgment, which they ordered in 1995. The applicant's appeals against the execution order, arguing that it violated Article 10 of the Convention, were rejected by the Swedish courts at three levels of jurisdiction. The Supreme Court carried out a summary assessment of whether the Norwegian judgment was in conformity with the Convention and

found that public order considerations did not prevent the execution of the judgment in Sweden.

Inadmissible under Article 13 in conjunction with Article 10: It was questionable whether the applicant could at all be considered to have an arguable claim for the purposes of Article 13, as the existence of such a claim had to be assessed in relation to the enforcement proceedings in Sweden, not the main proceedings in Norway where the applicant claimed his freedom of expression had been breached (the applicant had previously pursued an application under the Convention against Norway, which the Court had declared inadmissible as being out of time). Even assuming that Article 13 was applicable, there were no compelling reasons against enforcement of the Norwegian judgment. The Swedish courts had reviewed the substance of the applicant's complaint against enforcement at three levels of jurisdiction to a sufficient degree to provide him an effective remedy for the purposes of Article 13: manifestly ill-founded.

EFFECTIVE REMEDY
Availability of a remedy in respect of the length of criminal proceedings: *violation*.

KANGASLUOMA – Finland (N° 48339/99)
Judgment 20.1.2004 [Section IV]

Facts : In 1990 the police opened investigations in relation to the applicant's business activities and questioned him in that connection. In 1994 he was formally charged with, *inter alia*, aggravated tax fraud, and, subsequently, sentenced to two years' imprisonment. The appeal proceedings instituted by the applicant ended in 1998, when the Supreme Court refused leave to appeal.

Law : Article 6(1) (reasonable time) ─ The Court considered that the applicant had been subject to a "charge" when the preliminary investigations in his case had been opened by the police in 1990, and not in 1994, when he was formally charged with an offence, as the Government maintained. Although the case was of some complexity, several parts of the proceedings had been unjustifiably long, and the overall time of the proceedings, 7 years and 4 months, was not reasonable.
Conclusion: violation (unanimously)

Article 13 ─ The Government claimed that the applicant could have lodged a complaint to the Court of Appeal against any unjustified adjournments in the case or submitted a reasoned request to the courts at any time to have the proceedings accelerated. Likewise, they argued that the applicant could have obtained compensation under the Tort Liability Act if the delay in the court proceedings had been caused by an erroneous or negligent act of a public official. The Court, however, considered that the Government had failed to show how the applicant could have obtained relief – preventive or compensatory – by having recourse to such remedies, in particular considering that a mere delay (when no erroneous act had been committed) was not a ground for compensation under Finnish law. The Government had also failed to supply examples from domestic practice showing it was possible to obtain relief by using such remedies.
Conclusion: violation (unanimously)
Article 41 ─ The Court awarded the applicant 3,000 euros in respect of non-pecuniary damage. It also made an award in respect of costs and expenses.

ARTICLE 34

VICTIM
Applicant complaining of the insufficiency of compensation awarded under the Pinto law : *admissible*.

FINAZZI – Italy (N° 62152/00)
Decision 22.1.2004 [Section I]

The application concerns the length of civil proceedings which lasted slightly more than twelve years and seven months. Following the entry into force of the Pinto Act, the Government objected that domestic remedies had not been exhausted. The applicant applied to the appropriate Court of Appeal under the Pinto Act. The Court of Appeal held that the length of the proceedings had been unreasonable and awarded the applicant 1,500 euros for non-pecuniary damage. The applicant did not appeal to the Court of Cassation. He complained before the Court that the amount he had been awarded for non-pecuniary damage was not sufficient to make good the damage resulting from the violation of Article 6.

Admissible under Article 6(1): Where an applicant's complaints related solely to the amount of compensation awarded under the Pinto Act, the applicant was not required to appeal to the Court of Cassation against the Court of Appeal's decision for the purpose of exhausting domestic remedies, and could still claim to be a "victim" within the meaning of Article 34 of the Convention in that, although the Court of Appeal had acknowledged that the length of the proceedings had been excessive, the amount awarded could not be considered sufficient to make good the alleged damage and breach.

ARTICLE 35

Article 35(1)

EFFECTIVE DOMESTIC REMEDY (Italy)
Applicant complaining about the amount of compensation awarded under the Pinto law not having lodged an appeal to the Court of Cassation: *admissible*.

FINAZZI – Italy (N° 62152/00)
Decision 22.01.2004 [Section I]
(see Article 34 above).

FINAL DOMESTIC DECISION (Russia)
Request for supervisory review of judgment.

BERDZENISHVILI – Russia (Nº 31697/03)
Decision 29.1.2004 [Section I]

Facts: The applicant, who is of Georgian ethnic origin, and two other persons were charged with murder. He was sentenced to 7 years' imprisonment, whilst the other co-accused, both of Russian origin, received lighter sentences. The applicant lodged a cassation appeal, but the

Supreme Court upheld the judgment. He subsequently submitted a complaint for supervisory review of the judgment to the Presidium of the Supreme Court, which was refused. His complaint to the Court is on grounds of discrimination.

Inadmissible under Article 35 – As supervisory review was more akin to a retrial and could be lodged at any time after a judgment became enforceable, if such a procedure were admitted as a remedy for the purposes of Article 35 it would create uncertainty and render the six-month rule nugatory. The date to take into account in calculating the six-month period was therefore the date of the judgment of the Supreme Court in the cassation appeal, which implied the application was out of time.

ARTICLE 1 OF PROTOCOL No. 1

DEPRIVATION OF PROPERTY
Obligation to return property in the GDR to the State without compensation following the reunification: *violation*.

JAHN and others - Germany (N^{os} 46720/99, 72203/01 and 72552/01)
Judgment 22.1.2004 [Section III]

Facts: The applicants are the heirs of the new owners of land expropriated after the Second World War under the land reform in the Soviet Occupied Zone of Germany. Full ownership of the land was conferred on them by a German Democratic Republic (GDR) law, which came into force in March 1990. After German reunification had taken effect, a 1992 law provided that the heirs of new owners who had not been carrying on an activity in the agricultural, forestry or food-industry sector on 15 March 1990, or had not done so during the previous ten years, had to return the land to the State. The applicants, who did not satisfy those criteria, were required by the courts to reassign their land without compensation. They were unsuccessful in their appeals at every level up to the Federal Constitutional Court.

Law: Article 1 of Protocol No. 1 – The applicants had legally acquired full ownership of the land by virtue of a law passed by the GDR parliament before the first free elections in 1990. As a result of the reunification of Germany their title to the land had subsequently become an integral part of FRG law, thus falling within the scope of the Convention. After German reunification the applicants had all been registered as owners in the land register and had, initially, been able to dispose of their property as they wished. Subsequent decisions by which the FRG courts had ordered the applicants to reassign their land to the tax authorities of the *Länder* were to be regarded as a "deprivation" of property. The interference in question had been "provided for by law" and the law had been "in the public interest". Liquidation of the land reform had involved complex issues in the context of German reunification, which the Court took into account in its examination of the case. However, regardless of the applicants' position before the entry into force of the 1990 law, there was no doubt that they had legally acquired full ownership of their land when the law came into force. The fact that the German legislature had subsequently sought to correct the effects of that law by passing a new law two years later did not pose a problem in the Court's view; the problem was the content of the new law. The Court considered that, in order for the principle of proportionality to be complied with, the German legislature could not have deprived the applicants of their property for the benefit of the State without making provision for them to be adequately compensated. Although the circumstances pertaining to German reunification were exceptional, the lack of

any compensation for the State's taking of the applicants' property had upset, to the applicants' detriment, the fair balance which had to be struck between the protection of property and the requirements of the general interest.
Conclusion: violation (unanimously).
Article 41 – The Court reserved the question of Article 41.

SECURE THE PAYMENT OF TAXES
Increase in the licence fee for running gaming machines : *inadmissible*.

ORION-BŘECLAV, S.R.O. - Czech Republic (N° 43783/98)
Decision 13.1.2004 [Section II]

The applicant is a company licensed to operate slot machines. In 1998 two new laws provided for the introduction of a fee for operating slot machines and for an increase in the licence fee for their use. The municipalities in which the applicant company ran its business consequently issued decrees making it compulsory to pay fees for operating slot machines. The applicant company challenged the new provisions but without success.

Inadmissible under Article 1 of Protocol No. 1: The interference had been in accordance with domestic legislation and had reflected the requirements of the general interest. As to whether the requirement of proportionality between the interference with the applicant company's right and the aims pursued had been complied with, the manner in which the legislation in question was to be applied fell within the State's margin of appreciation in such matters, particularly with regard to the implementation of its economic policies. The applicant company's rights as an owner had for the most part been preserved; its business had made a profit even after the contested increase in the fees and it had been able to obtain special terms for payment. In short, regard being had to the State's margin of appreciation in this area, the payment of the fees had not had such an effect on the applicant company's financial position as to amount to a disproportionate measure or an abuse of the State's right to secure the payment of taxes and other contributions: manifestly ill-founded.

Other judgments delivered in January

Article 3

Sadik Önder – Turkey (Nº 28520/95)
Judgment 8.1.2004 [Section III]

alleged ill-treatment of detainee and lack of effective investigation – violation.

Çolak and Filizer – Turkey (Nº 32578/96 et Nº 32579/96)
Judgment 8.1.2004 [Section III]

ill-treatment of detainees – violation.

Matencio – France (Nº 58749/00)
Judgment 15.1.2004 [Section I]

continued detention of disabled prisoner and alleged inadequacy of medical care – no violation.

Articles 3 and 6(1)

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

continued detention of detainee in ill-health and alleged inadequacy of medical care – no violation; failure to give reasons for refusal of compensation for detention on remand – violation.

Articles 3, 8 and 13 and Article 1 of Protocol No. 1

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

destruction of possessions and homes by security forces and lack of an effective remedy – violation.

Article 5(1) and (3), and Article 34

D.P. – Poland (Nº 34221/96)
Judgment 20.1.2004 [Section IV]

continued detention on remand without legal basis after expiry of detention order and length of detention on remand – violation; alleged hindrance of right of petition on account of opening of correspondence with the Court – no violation.

Articles 5, 6 and 8

G.K. – Poland (Nº 38816/97)
Judgment 20.1.2004 [Section IV]

continued detention on remand without legal basis after expiry of detention order, length of detention on remand, absence of possibility of challenging application to Supreme Court to prolong detention on remand and control of convicted prisoner's correspondence with the Court – violation; length of criminal proceedings – no violation.

Article 5(4)

König – Slovakia (Nº 39753/98)
Judgment 20.1.2004 [Section IV]

failure to deal with request for release from detention on remand made immediately before conviction – violation.

Article 6(1)

H.A.L. – Finland (Nº 38267/97)
Judgment 27.1.2004 [Section IV]

non-disclosure to party of medical opinions obtained by social insurance courts and inadequacy of reasons given for their decisions – violation.

Grela – Poland (Nº 73003/01)
Judgment 13.1.2004 [Section IV]

Earl – Hungary (Nº 59562/00)
Lovász – Hungary (Nº 62730/00)
Judgments 20.1.2004 [Section II]

Sekin and others – Turkey (Nº 26518/95)
Judgment 22.1.2004 [Section III]

length of civil proceedings – violation.

Taveirne and others – Belgium (Nº 41290/98)
Judgment 15.1.2004 [Section I]

Gonçalves Ferrão Caboz Santana - Portugal (Nº 55165/00)
Judgment 29.1.2004 [Section III]

length of administrative proceedings – friendly settlement.

Alge – Austria (Nº 38185/97)
Judgment 22.1.2004 [Section III]

length of administrative proceedings and lack of oral hearing before Administrative Court – violation.

Toprak – Turkey (Nº 57561/00)
Becerikli and Altekin – Turkey (Nº 57562/00)
Judgments 8.1.2004 [Section III]

İçöz – Turkey (Nº 54919/00)
Erolan and others – Turkey (Nº 56021/00)
Hidir Özdemir – Turkey (Nº 46952/99)
Metin Polat and others – Turkey (Nº 48065/99)
Çinar – Turkey (Nº 48155/99)
Arrêts 15.1.2004 [Section III]

Güven and others – Turkey (Nº 40528/98)
İrfan Kaya – Turkey (Nº 44054/98)
Jalaliaghdam – Turkey (Nº 47340/99)
Kircan – Turkey (Nº 48062/99)
Özertikoğlu – Turkey (Nº 48438/99)
Korkmaz – Turkey (Nº 50903/99)
Judgments 22.1.2004 [Section III]

Tahir Duran – Turkey (Nº 40997/98)
Halil Doğan – Turkey (Nº 49503/99)
Kalyoncugil and others – Turkey (Nº 57939/00)
Judgments 29.1.2004 [Section III]

independence and impartiality of State Security Court – violation.

Rouille - France (Nº 50268/99)
Judgment 6.1.2004 [Section II]

Panek – Poland (Nº 38663/97)
Judgment 8.1.2004 [Section III]

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

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

length of criminal proceedings – violation.

Articles 6(1) and 13

Kormacheva – Russia (Nº 53084/99)
Judgment 29.1.2004 [Section I]

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

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

Bellini – Italy (Nº 64258/01)
Judgment 29.1.2004 [Section I]

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

Gianturco – Italy (Nº 40672/98, Nº 40680/98, Nº 40681/98 and Nº 40884/98)
Judgment 22.1.2004 [Section I]

Carnasciali – Italy (Nº 66754/01)
Judgment 29.1.2004 [Section I]

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

Sorrentino Prota – Italy (Nº 40465/98)
Judgment 29.1.2004 [Section I]

staggering of granting of police assistance to enforce eviction orders and prolonged non enforcement of judicial decision – no violation; staggering of granting of police assistance to enforce eviction orders, prolonged non-enforcement of judicial decision and absence of possibility of court review of prefectoral decisions staggering granting of police assistance – violation.

Article 11

Balikçi – Turkey (Nº 26481/95)
Judgment 6.1.2004 [Section II]

imposition of disciplinary sanction on person employed under contract by a State entreprise for participating in a one-day stoppage – striking out.

Article 14

Owens – United Kingdom (Nº 61036/00)
Judgment 13.1.2004 [Section IV]

unavailability of widows' allowance to widower – friendly settlement.

Article 1 of Protocol No. 1

Güçlü and others – Turkey (Nº 42670/98)
Ilkay – Turkey (Nº 42786/98)
Judgments 8.1.2004 [Section III]

delays in payment of compensation for expropriation – violation.

Just satisfaction

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

Judgments which have become final

Article 44(2)(a)

The following judgment has become final in accordance with Article 44(2)(a) of the Convention (see Information Note No. 57):

NYÍRŐ and TAKÁCS - Hungary (Nº 52724/99 and Nº 52726/99)
Judgment 21.10.2003 [Section II]

Article 44(2)(b)

The following judgments have become final in accordance with Article 44(2)(b) of the Convention (expiry of the three month time limit for requesting referral to the Grand Chamber) (see Information Note No. 57):

HENNIG - Austria (Nº 41444/98)
SABATINI and DI GIOVANNI - Italy (Nº 59538/00)
BONAMASSA - Italy (Nº 65413/01)
SANTORO - Italy (Nº 67076/01)
RAGONE - Italy (Nº 67412/01)
KIZILYAPRAK - Turkey (Nº 27528/95)
ANDREA CORSI - Italy (revision) (Nº 42210/98)
Judgments 2.10.2003 [Section I]

DURIEZ-COSTES - France (Nº 50638/99)
Judgment 7.10.2003 [Section II]

VON BÜLOW - United Kingdom (Nº 75362/01)
Judgment 7.10.2003 [Section IV]

AĆIMOVIĆ – Croatia (N°61237/00)
SERNI - Italy (Nº 47703/99)
ROBBA - Italy (Nº 50293/99)
GHELARDINI and BRUNORI - Italy (Nº 53233/99)
LARI - Italy (Nº 63336/00)
FEDERICI - Italy (Nº 63523/00)
A.G. - Italy (Nº 66441/01)
BIOZOKAT A.E. - Greece (Nº 61582/00)
Judgments 9.10.2003 [Section I]

GAUCHER - France (Nº 51406/99)
FADİME ÖZKAN - Turkey (Nº 47165/99)
ERTAN ÖZKAN - Turkey (Nº 47311/99)
GÖNÜLŞEN - Turkey (Nº 59649/00)
SAÇIK - Turkey (Nº 60847/00)
Judgments 9.10.2003 [Section III]

LILLY FRANCE - France (Nº 53892/00)
SIGNE - France (Nº 55875/00)
CHAINEUX - France (Nº 56243/00)
Judgments 14.10.2003 [Section II]

D.M. - Poland (N° 13557/02)
ČÍŽ - Slovakia (Nº 66142/01)
DYBO - Poland (Nº 71894/01)
HENRYKA MALINOWSKA - Poland (Nº 76446/01)
POREMBSKA - Poland (Nº 77759/01)
I.P. - Poland (Nº 77831/01)
MAŁASIEWICZ - Poland (Nº 22072/02)
Judgments 14.10.2003 [Section IV]

TASSINARI - Italy (Nº 47758/99)
SERAFINI - Italy (Nº 58607/00)
DELFINO SAVIO - Italy (Nº 59537/00)
BRIENZA - Italy (Nº 62849/00)
CALOSI - Italy (Nº 63947/00)
Judgments 16.10.2003 [Section I]

AYŞE KILIÇ - Turkey (Nº 49164/99)
DEMIRTAŞ - Turkey (no. 2) (Nº 37452/97)
NEVES FERREIRA SANDE E CASTRO and others - Portugal (Nº 55081/00)
WYNNE - United Kingdom (no. 2) (Nº 67385/01)
Judgments 16.10.2003 [Section III]

BROCA and TEXIER-MICAULT - France (N° 27928/02 and Nº 31694/02)
Judgment 21.10.2003 [Section II]

CEGIELSKI - Poland (Nº 71893/01)
Judgment 21.10.2003 [Section IV]

NELISSENNE - Belgium (Nº 49518/99)
ACHLEITNER - Austria (Nº 53911/00)
KANAKIS and others - Greece (Nº 59142/00)
S.H.K. - Bulgaria (Nº 37355/97)
DIAMANTIDES - Greece (Nº 60821/00)
Judgments 23.10.2003 [Section I]

TIMOFEYEV - Russia (Nº 58263/00)
Judgment 23.10.2003 [Section III]

BAARS - Netherlands (Nº 44320/98)
STEUR - Netherlands (Nº 39657/98)
MINJAT - Switzerland (Nº 38223/97)
Judgments 28.10.2003 [Section II]

GONZÁLEZ DORIA DURÁN DE QUIROGA - Spain (Nº 59072/00)
LOPES SOLE Y MARTIN DE VARGAS - Spain (Nº 61133/00)
STONE SHIPPING COMPANY S.A. - Spain (Nº 55524/00)
Judgments 28.10.2003 [Section IV]

CAVICCHI and RUGGERI - Italy (Nº 56717/00)
CUCINOTTA - Italy (Nº 63938/00)
RISPOLI - Italy (Nº 55388/00)
GANCI - Italy (N° 41576/98)
Judgments 30.10.2003 [Section I]

Statistical information[1]

Judgments delivered		January
Grand Chamber		0
Section I		10(13)
Section II		7
Section III		26(29)
Section IV		7
Sections in former compositions		2
Total		**52(58)**

Judgments delivered in January 2004					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	0	0	0	0	0
former Section I	0	0	0	0	0
former Section II	1	0	0	1	2
former Section III	0	0	0	0	0
former Section IV	0	0	0	0	0
Section I	7	3(6)	0	0	10(13)
Section II	6	0	1	0	7
Section III	25(28)	1	0	0	26(29)
Section IV	6	1	0	0	7
Total	**45(48)**	**5(8)**	**1**	**1**	**52(58)**

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			January
I. Applications declared admissible			
Grand Chamber			0
Section I			29(31)
Section II			4
Section III			7(8)
Section IV			12(14)
former Sections			0
Total			**52(56)**
II. Applications declared inadmissible			
Section I	- Chamber		10
	- Committee		345
Section II	- Chamber		8
	- Committee		364
Section III	- Chamber		5
	- Committee		145
Section IV	- Chamber		9
	- Committee		351
Total			**1237**
III. Applications struck off			
Section I	- Chamber		6
	- Committee		1
Section II	- Chamber		5
	- Committee		10
Section III	- Chamber		12
	- Committee		4
Section IV	- Chamber		3
	- Committee		7
Total			**48**
Total number of decisions[1]			**1337(1341)**

1. Not including partial decisions.

Applications communicated	January	2004
Section I		25
Section II		29
Section III		15
Section IV		5
Total number of applications communicated		**74**

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