CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

INFORMATION NOTE No. 71
on the case-law of the Court
January 2005

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

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ARTICLE 3

INHUMAN TREATMENT
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MAYZIT - Russia (Nº 63378/00)
Judgment 20.1.2005 [Section I]

Facts: Criminal investigations were opened against the applicant for a shooting incident. He was detained on this account for short periods in 1998 and 1999. On the basis of further investigations, the authorities ordered anew the applicant's detention for having changed his residence, failing to appear for interrogations and hampering the proceedings. He was detained in a remand centre from July 2000 until 7 March 2001 (and from mid-May to mid-July 2001). The size of the six cells in which he was successively kept were very small, overcrowded and their average surface left about 1 square metre per person. Detainees were obliged to sleep in turns and allowed to wash only every 10 days. The applicant lodged an application for release with the District Court on 30 July 2000. The case was successively remitted to other courts for review. On 15 December 2000 the District Court rejected the application for release. In the subsequent criminal trial the court appointed a defence counsel, after the applicant had refused eight different counsels. During the trial, the court rejected the applicant's request to be represented by his mother and sister, as the case was complex and required special legal knowledge. The applicant was sentenced to six years imprisonment. The sentence was partly lowered in appeal proceedings. Moreover, in subsequent supervisory review proceedings, the Supreme Court rendered a judgment which in part found in the applicant's favour.

Law: Article 3 – The applicant had been kept for a total of 9 months and 14 days in cells for six to ten inmates, leaving around 1.3 and 2.51 square metres for each inmate. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has set 7 square metres per prisoner as desirable. The Court was aware of the overcrowding in Russian pre-trial detention centres, but, in the instant case, leaving less than 2 square metres on average per prisoner raised an issue under this provision. The Court did go into details concerning the sanitary conditions, which the applicant alleged were dirty, infested with bugs and let in very little light, whilst the Government described them as satisfactory. Although there were no indications of an intention to humiliate or debase the applicant, enduring such conditions for more than nine months must have undermined his human dignity and aroused in him feelings of humiliation and debasement. In the light of the above, the applicant's conditions of detention had amounted to a degrading treatment.
Conclusion: violation (unanimously).

Article 5(4) – The District Court had dealt with the applicant's application for release 4 months and 15 days after he had lodged it. It was only at this stage that the court decided to keep the applicant in detention pending trial. This period was not "speedy" as domestic law established that an application had to be decided by the courts not later than five days after being sent by a detainee. The whole period was attributable to the authorities.
Conclusion: violation (unanimously).

Article 6(3)(c) – The general requirement of the Code of Criminal Procedure was that defenders should be professional advocates. Thus, the restriction imposed on the applicant's choice of representation, which had been limited to excluding his mother and sister, had been legitimate, since as lay persons the District Court had found they would not have been able to ensure the efficient defence of the applicant in compliance with the procedure.
Conclusion: no violation (unanimously).

Article 6(3)(b) – The applicant had been given sufficient "time" to prepare for the trial. Whilst his conditions of detention did not favour intense mental work, no restrictions were placed on his access to the case-file. The allegations of lack of access to law books and having been placed in a tight cell the days of the court hearings remained unsubstantiated.
Conclusion: no violation (unanimously).

Article 41 – The Court awarded the applicant 3,000 euros for non-pecuniary damage.

INHUMAN TREATMENT
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TRAITEMENT INHUMAIN
Special prison regime aimed at preventing any contact with the Mafia: *inadmissible*.

BASTONE - Italy (N° 59638/00)
Decision 18.1.2005 [Section II]

The applicant had already been convicted of attempted murder and was charged with complicity in a homicide, crimes which were linked to the Mafia. In view of the danger posed by the applicant, the Minister of Justice issued an order imposing a special prison regime as provided for in Article 41*bis* of the Judicial Administration Act. This special regime entailed several restrictions on the imprisoned applicant's freedoms, in particular a limitation on visits from family members (a maximum of one one-hour visit per month), a restriction on access to exercise (two hours per day at most), prohibitions on meetings with third persons, telephone use or involvement in cultural, recreational and sporting activities and a ban on taking part in arts-and-crafts activities. The applicant was placed under this special regime from the end of April 1993 until the beginning of September 2003 (his second conviction became final in April 2002). In June 1997 the applicant was permitted a one-hour telephone call per month with family members where he was unable to meet them. In June 1998 the Minister of Justice lifted the restriction on the exercise period, which was subsequently re-imposed at the end of December 2002, albeit to a lesser extent, as a result of which the applicant was permitted to leave his cell for four hours per day, two hours of which could be spent in the open air.

Inadmissible under Article 3: The prohibition on contacts with other prisoners on security, disciplinary or protective grounds did not in itself amount to inhuman treatment or punishment. The applicant had not been subjected to sensory isolation or total social isolation within the prison: admittedly, his opportunities for contact were limited, but one could not speak of isolation in this context. The restrictions also concerned the frequency of the applicant's contacts with his family, and his recreational, sporting and crafts activities. However, those measures had been justified by the seriousness of the offences with which the applicant had been charged, which were linked to the Mafia, and by the wish to prevent any resumption of contact with organised criminal structures. The applicant had not shown that the Italian authorities' concerns in this respect were groundless or unreasonable. In addition, the prohibition on working in his cell was applicable only to work involving the use of dangerous tools, which was justified within the high-security wing of a prison. Equally, the applicant's regime had become less strict. In view of the applicant's age and state of health, the special prison regime did not reach the minimum level of severity for it to fall within the scope of Article 3: manifestly ill-founded.

Inadmissible under Article 8 (family life): While any lawful detention was likely to result in a restriction of family life, it was essential for the respect of family life that the prison administration helped the prisoner to maintain contact with his or her close family. In the present case, the applicant had been subject to a special prison regime resulting in additional restrictions on the number of family visits (one per month) and close supervision of those meetings (use of a glass partition). This interference in the right to respect for the applicant's family life was prescribed by law and pursued legitimate aims. The special prison regime was intended to put an end to any remaining ties between the prisoner and the Mafia environment from which he had come. It had been established that family relations often played a crucial role in the Mafia's functioning as a criminal organisation. Furthermore, numerous States party to the Convention had high-security regimes for dangerous prisoners. The Italian parliament could therefore reasonably have considered that such security measures were required to reach the legitimate aims pursued, namely the prevention of disorder and the interests of public safety, as well as the prevention of crime. The special regime was imposed on the applicant for an extended period. However, he was not subjected at any point to restrictions on family visits, which were authorised under this regime. At the end of the fourth year, the applicant was allowed to have a one-hour telephone call per month with members of his family, failing a meeting with them. This attested to the authorities' concern to assist the applicant in maintaining contact with his close family, in so far as that was possible, and thus to strike a fair balance between his rights and the aims they sought to achieve through the special regime. Accordingly, the restrictions on the applicant's right to respect for his family life had not gone further than was necessary in a democratic society in order to prevent disorder or crime and to protect public safety: manifestly ill-founded.

INHUMAN TREATMENT
Transfer to a prison in the Netherlands Antilles and conditions of detention in that prison alleged to be unacceptable: *inadmissible.*

NARCISIO - Netherlands (Nº 47810/99)
Decision 27.1.2005 [Section III]

An order for the applicant's detention on remand in Curaçao was issued by an investigating judge in that territory in 1998, on murder and firearms charges. The applicant was arrested in Rotterdam on 21 January 1999. The following day his lawyer requested the Minister of Justice and public prosecutor not to deport the applicant and enable him to undergo his detention on remand in the Netherlands. On 25 January the applicant was flown to the Netherlands Antilles. Prior to his detention in the centre, he spent 23 days in a police cell. The

applicant complains that his transportation to Curaçao for the purpose of his detention in that centre breached Articles 3 and 8 and exposed him to unacceptable conditions of detention as he was deprived of basic necessities such as access to running water and proper sanitary facilities. The conditions of detention in this centre have been examined on four occasions by the CPT (Prevention of Torture and Inhuman or Degrading Treatment or Punishment) delegations. In the reports of 1994 and 1997, it was concluded that the conditions in the centre did in fact amount to "inhuman and degrading treatment". In the 1999 and 2002 reports by the CPT it was noted that a number of improvements had been made at the centre, despite a prevailing high level of violence at the prison.

Inadmissible under Article 3. The Government's objection (non-exhaustion): the Court could not exclude that the applicant might have made use of summary civil proceedings to prevent his transfer. However, it dispensed itself from speculating on this point and did not declare the application inadmissible on this ground.
The CPT visit to the prison in 1999, shortly before the applicant's arrival there, mentioned some changes for the better. In 2002, further material improvements at the centre were noted, despite the remaining problem of inter-prisoner violence. In the absence of any specific complaints from the applicant on the prevailing level of aggression, it would seem he was not troubled by the violent excesses described in the CPT reports. The lack of access to running water and sanitary facilities complained of cannot be considered of sufficient severity to bring within the scope of Article 3: manifestly ill-founded.

Inadmissible under Article 8: no distinct issues arose from those already discussed under Article 3: manifestly ill-founded.

ARTICLE 5

Article 5(1)

DEPRIVATION OF LIBERTY
Compulsory isolation orders in hospital of an HIV positive person: *violation.*

ENHORN - Sweden (Nº 56529/00)
Judgment 25.1.2005 [Section II]

Facts: In 1994, the applicant, who is homosexual, discovered that he was infected with the HIV virus and that he had transmitted it to a 19-year old man with whom he had had first sexual contact in 1990. On these grounds, a county medical officer issued a number of instructions to the applicant to avoid the spreading of the disease, including the prohibition for him to have sexual intercourse without first informing his partners about his HIV infection, as well as the obligation to keep to several appointments with the county medical officer. As the applicant failed to comply with some of the visits, the county medical officer petitioned the courts for an order that the applicant be kept in compulsory isolation. In a judgment of February 1995, the County Administrative Court, under the 1988 Infectious Diseases Act, ordered that the applicant be kept in compulsory isolation for up to three months. The order took effect immediately, but as the applicant failed to report to the hospital, he was taken there by the police in March 1995. Prolongations of the confinement order were repeatedly prolonged by periods of six months at a time The order to deprive the applicant of his liberty was in force until 2001, for almost seven years. However, as the applicant absconded from the hospital several times, his actual deprivation of liberty lasted around one and a half years in total. The applicant's successive appeals were dismissed by the Administrative Court of

Appeal. Leave to appeal to the Supreme Administrative Court was also refused. In 2001, the County Administrative Court turned down a petition for a further prolongation of the compulsory isolation order. It argued that the applicant's whereabouts were unknown and that therefore no information was available regarding his behaviour, state of health and so on. It appears that since 2002 the applicant's whereabouts have been known, but that the competent county medical officer has made the assessment that there are no grounds for the applicant's further involuntary placement in isolation.

Law: Article 5(1) – It was common ground between the parties that the applicant had been deprived of his liberty, and that his detention could be examined under Article 5(1)e of the Convention, as the purpose of this provision was to prevent the spreading of the HIV virus. The Court was satisfied that the detention had a basis in national law, the 1988 Infectious Diseases Act, which entrusted the consulting physician with a wide discretion when issuing the practical instructions needed to prevent the spread of infection. The two essential criteria to assess the "lawfulness" of the detention were whether the spreading of the infectious disease had been dangerous for public health or safety, and whether detention had been the last resort to prevent the spreading of the disease, because less severe measures had been found insufficient. It was undisputed that the first criteria had been fulfilled. As to the second one, despite the fact that the applicant had absconded several times during the compulsory orders, he had in total remained one and a half years deprived of his liberty. The Government have not provided any examples of less severe measures which might have been considered. Among the several instructions which were issued to the applicant, the one of 1 September 1994 prohibited him from having sexual intercourse without first having informed his partner about his HIV infection. The Court notes that between February 1995 and December 2001, there was no evidence or indication that the applicant had transmitted the virus to anybody during that period, or that he had engaged in sexual intercourse without informing his partner of his disease. As to the infection of a 19-year old man in 1990, there was no indication that the applicant had transmitted the virus to the young man as a result of intent or gross neglect. He had himself become aware of his infection in 1994. In these circumstances, the compulsory isolation was not a last resort to prevent the spreading of the disease because less severe measures had been considered and found insufficient to safeguard the public interest. By extending the orders for a period of almost seven years, which resulted in the applicant's involuntary hospitalisation for almost a year and a half, the authorities had failed to strike a fair balance between the need to ensure that the HIV virus did not spread and the applicant's right to liberty.
Conclusion: violation (unanimously).

Article 41 – The Court awarded the applicant 12,000 euros for non-pecuniary damage. It also made an award for costs and expenses.

DEPRIVATION OF LIBERTY
Alleged deprivation of liberty for being held at police station on the basis of a deportation order subsequently declared null and void: *inadmissible.*

NAUMOV - Albania (Nº 10513/03)
Decision 4.1.2005 [Section IV]

The applicant, a former Ambassador of the Republic of Bulgaria in Albania was granted Albanian citizenship in 1997. In 2001, the newly elected President of the Republic revoked the applicant's Albanian citizenship as having been granted on the basis of forged documents. He was also taken to a police station and kept there for a few hours, where he was verbally ordered to leave Albanian territory within three days pursuant to a deportation order which had been issued against him. Moreover, the authorities issued a press release on the applicant's deportation. The applicant lodged actions against the revocation of his citizenship

and the deportation order with the District court. Following proceedings which involved several referrals and periods of inactivity, the president's decree revoking Albanian citizenship was declared null and void, as was the deportation order.

Inadmissible under Article 5(1): The applicant had brought no proceedings in the domestic courts concerning the time spent in the police station. Even assuming no legal remedies were available concerning the alleged deprivation of liberty, this part of the application was out of time.

Inadmissible under Article 6(1): Concerning the applicant's complaint that he had been denied a fair hearing, this provision did not apply to proceedings concerning citizenship and/or entry, stay and deportation of aliens: incompatible *ratione materiae.*

Inadmissible under Article 8: The applicant had brought no proceedings in the domestic courts concerning alleged violation of his private life and reputation by the press divulgation of his deportation. Even assuming no legal remedies were available, this part of the application was out of time.

Inadmissible under Article 3 of Protocol No. 4: Even if in some cases revocation of citizenship followed by expulsion may raise potential problems under this provision, as the deportation order was never executed, there was no appearance of a violation in the present case.

Article 5(4)

SPEEDINESS OF REVIEW
Application for release from detention decided 4 months and 15 days after being lodged: *violation.*

MAYZIT - Russia (Nº 63378/00)
Judgment 20.1.2005 [Section I]
(see Article 3, above).

ARTICLE 6

Article 6(1) [civil]

APPLICABILITY
Applicability of Article 6 to summary injunction proceedings concerning customs duties or charges: *inadmissible*.

EMESA SUGAR N.V. - Netherlands (Nº 62023/00)
Decision 13.1.2005 [Section III]

The applicant company operates a sugar factory established in Aruba, a State which under EC law is included in the category of "overseas countries and territories" (OCT). Until 1997, the EC Council Decision within which the company operated provided that goods imported to the EC which originated from OCT's were exempt of custom duties. That year the EC Council

Decision was amended and the imports of sugar of OCT origin were limited to a certain amount per year. The applicant company instituted summary injunction proceedings against the EC Council Decision before the Regional Court. The action was dismissed but a number of questions were referred by the court to the European Court of Justice (ECJ) for a preliminary ruling. Following a hearing at the ECJ in March 1999, the Advocate General of the ECJ submitted an opinion and the oral proceedings were brought to an end. The applicant company's request for leave to submit written observations on the Advocate General's opinion was rejected by the ECJ in 2000. The ECJ subsequently gave the requested preliminary ruling, upholding the above-mentioned Council Decision. The summary injunction proceedings before the Regional Court were as a result discontinued. The applicant complains it was deprived of its right to a fair hearing in the proceedings before the ECJ, arguing that the national judiciary was obliged to respect and follow the ECJ's preliminary ruling.

Inadmissible under Article 6: The Court did not find it necessary to deal with the question raised by the Government that they could not be held responsible for the alleged violation as it concerned an act by the ECJ, as it was necessary to determine in first place whether the proceedings at issue fell within the ambit of this article. Whilst pecuniary interests are certainly at stake in proceedings on the question of customs duties or charges, merely showing that a dispute is "pecuniary" in nature is not in itself sufficient to attract the applicability of Article 6(1) under its "civil" head. As customs duties or charges for imported goods are regarded as coming under the realm of tax matters, which fall outside the scope of civil rights and obligations, the summary injunction proceedings in question did not come under the civil head of Article 6: incompatible *ratione materiae*.

CIVIL RIGHTS AND OBLIGATIONS
Opposition of a detainee to his placement under a strict monitoring regime (E.I.V): *Article 6 applicable*.

MUSUMECI - Italy (N° 33695/96)
Judgment 11.1.2005 [Section IV]
(see below).

CIVIL RIGHTS AND OBLIGATIONS
Opposition to restrictive detention measures enforced under a special detention regime: *Article 6 applicable.*

MUSUMECI - Italy (N° 33695/96)
Judgment 11.1.2005 [Section IV]
(see below).

RIGHT TO A COURT
Impossibility for a detainee to contest his placement under a strict monitoring regime (E.I.V.): *violation*

MUSUMECI - Italy (N° 33695/96)
Judgment 11.1.2005 [Section IV]

Facts: While the applicant was detained on remand, the Minister of Justice placed him under the special prison regime provided for in Article 41*bis* of the Judicial Administration Act, in view of a suspicion that he was at the head of a Mafia-type organisation. In application of that regime, the applicant was subject to restrictive measures, involving in particular the suppression or limitation of visits and contact with other prisoners or people outside the

establishment, including members of his family, monitoring of his correspondence, and a series of prohibitions concerning his activities within the prison. Application of the regime was extended systematically at six-month intervals on the basis of ministerial decrees. The Act stated that appeals against those decrees did not have suspensive effect and were to be decided within ten days, but in this case the court pronounced its decisions after that time-limit. In addition, an appeal on points of law lodged by the applicant was dismissed on the ground that the decree's period of application had expired and that, consequently, the applicant had lost any interest in examination of his appeal. The applicant was convicted of murder. The special prison regime was formally lifted more than four years after the first decree had been issued. The applicant was subsequently informed by his lawyer that he had been placed under the strict monitoring regime (*Elevato Indice di Vigilanza: EIV*) provided for in a circular of 9 July 1998. This regime was applicable to those prisoners classified as dangerous, on account, *inter alia*, of their involvement in terrorist crime, the nature or number of offences, escape attempts or acts of serious violence against other prisoners or prison wardens. Prisoners placed under this regime were separated from other prisoners and subject to particularly strict supervision. The applicant challenged the imposition of the EIV regime. The court dismissed his application on the ground that placement under the EIV regime did not amount to a decision to subject a prisoner to a special monitoring regime but was an instance of the authorities' discretionary power in organising prison life.

Law: Article 6(1) right to a tribunal: *Effectiveness of proceedings to challenge measures taken in application of the special prison regime* – Article 6(1) was applicable to the complaints procedure against decrees issued by the Minister of Justice in the context of the special prison regime provided for in Article 41*bis* of the Judicial Administration Act. The applicant had been the subject of nine decrees and he had challenged each of them; none of the decisions on those appeals had been reached within the statutory time-limit of ten days, but had taken two or three months. Each decree was valid for a limited period of six months and the Minister of Justice was not bound by any decision the court may have taken to rescind all or part of the restrictions imposed by the previous decree. This meant that immediately after the expiry of the period of validity of one such decree he could issue a new decree, reintroducing the restrictions struck down by the court. The systematic failure to comply with the statutory ten-day time-limit had considerably reduced, and indeed practically nullified, the impact of judicial review of the decrees issued by the Minister of Justice. For example, the court had on four occasions rescinded the restrictions on family visits but the tardy nature of those decisions meant that the applicant had suffered those restrictions longer than necessary. In addition, on at least one occasion the Court of Cassation had dismissed the appeal on points of law on the ground that the period of application had expired and that, consequently, the applicant had lost any interest in examination of his appeal. In those circumstances, the action before the court did not constitute an effective remedy and the delay with which the courts had given their decisions had infringed the applicant's right to have his case heard by a tribunal.
Conclusion: violation (unanimously).

Opportunity to contest the imposition of the strict monitoring regime (EIV) before a court – Article 6(1) was applicable to the proceedings through which the applicant had applied for removal of the above regime, in that the limitations on the applicant's personal freedom arising from imposition of the EIV regime related to civil rights (see the decision in *Musumeci v. Italy*, no. 33695/96, 17 December 2002). With the exception of complaints concerning prisoners' work and disciplinary matters, the legislation provided no legal remedy in respect of the prison administration's actions in this matter. The applicant had not had an opportunity to contest his placement under the EIV regime.
Conclusion: violation (5 votes to 2).

Article 8 (right to respect for one's correspondence) – Monitoring of the applicant's correspondence on the basis of Article 18 of the Prison Administration Act was not "in accordance with the law" (see, for example, *Messina v. Italy (no. 2),* ECHR 2000-X).
Conclusion: violation (unanimously).

RIGHT TO A COURT
Failure by court to comply with statutory time-limit to decide on appeals : *violation*.

MUSUMECI - Italy (N° 33695/96)
Judgment 11.1.2005 [Section IV]
(see above).

FAIR HEARING
Alleged arbitrary interpretation by the courts of provisions relating to restitution of property: *no violation*.

BLÜCHER - Czech Republic (N° 58580/00)
Judgment 11.1.2005 [Section II (former composition)]

Facts: The applicant had inherited from his cousin properties situated in the territory of the Czech Republic which had been nationalised by the State during the Communist period. In 1992 he exercised his rights under the Land Ownership Act. The Act stated that individuals who had been deprived of their property and were entitled to request restitution of their assets were to be of Czechoslovakian nationality and reside within the national territory; in the event of the death of a person who had been deprived of his or her property, heirs who fulfilled the nationality and residence conditions were entitled to apply for restitution, subject to certain conditions which concerned the rules governing legacies. In the applicant's case, the Constitutional Court stated that the nationality criterion laid down in the Act must also have been met by the property's original owner. The administrative authorities dismissed the applicant's request on that ground, noting the absence of evidence that the original owner of the properties concerned had been of Czechoslovakian nationality. The municipal court found that the question of the original owner's nationality was irrelevant. It based its decision on the applicant's status as an heir and held that, on that specific point, he failed to meet the legal conditions concerning the rules governing legacies. The Constitutional Court dismissed the applicant's appeal, and its decision was based on the same ground as its previous judgment. A further application for restitution resulted in administrative and judicial decisions which were based on similar arguments. The Constitutional Court upheld its previous opinions and concluded that, under the principle that 'no-one may transmit to another more rights than he or she enjoys', heirs could not enjoy more rights than the original owner.

Law: Article 6(1) – *Judicial interpretations of the law*: All the courts which had ruled on the disputed proceedings had stated with sufficient clarity the reasons for which they had reached their decisions, and there was no indication of arbitrariness in their positions. It was within the Constitutional Court's jurisdiction to fill the legal vacuum revealed by this case, by means of an interpretation that complied with the Constitution and took account of the Act's spirit and objective. In that connection, its reference to the principle that 'no-one may transmit to another more rights than he or she enjoys' had not been illogical. Moreover, the State had met its obligation to act with the utmost consistency in order to ensure legal certainty. The issue of whether the criterion of Czechoslovakian nationality was also applicable to the original owner had been the subject of several consistent rulings by the Constitutional Court, and the applicant had never been placed in a situation of legal uncertainty as a result of previous final decisions being called into question.

Failure to hold a hearing before the Constitutional Court: The constitutional proceedings, which were restricted to an examination of issues of constitutionality, did not imply a direct and comprehensive assessment of the applicant's civil rights. The failure to hold a hearing before the Constitutional Court had been sufficiently compensated by the public hearings held before the municipal court.

Burden of proof: The applicant was required to prove that his cousin, who had died in 1974, had been of Czechoslovakian nationality, but the Court was not satisfied that it had been absolutely impossible to furnish that proof, given, *inter alia*, the historical context in the post-war period and the interest German-speaking persons could have had in asserting their loyalty to the Czechoslovakian State. Nor had the applicant claimed that he had been denied access to the relevant registers.

Fairness of the proceedings concerning claims for restitution of property: Given that the Convention did not impose on the Contracting States any restriction on their freedom to determine the scope of legislation that they might adopt concerning the restitution of property and decide on the conditions under which they agreed to restore property rights to dispossessed persons, it was for the Czech courts in this case, particularly the highest Court of the country, to interpret the legislation enacted at the time of reconstruction of the country, such as that aimed at redressing certain wrongs committed in the past. In the instant case, the courts had fulfilled the role with which they were entrusted in a State governed by the rule of law and, in so far as their conclusions could not be described as arbitrary, the Court could not call them into question.
Conclusion: no violation (unanimously).

FAIR HEARING
Alleged incorrect application of domestic law and arbitrary findings by domestic courts: *admissible.*

TATISHVILI - Russia (Nº 1509/02)
Decision 20.1.2005 [Section I]
(see Article 2 of Protocol No. 4, below).

PUBLIC HEARING
Lack of public hearing before the Constitutional Court: *no violation.*

BLÜCHER - Czech Republic (N° 58580/00)
Judgment 11.1.2005 [Section II (former composition)]
(see above).

Article 6(1) [criminal]

FAIR HEARING
Refusal to order an appraisal of victims and to examine the defence expert in a case related to accusations of sexual abuse of minors: *inadmissible*

ACCARDI and Others - Italy (N° 30598/02)
Decision 20.1.2005 [Section III]
(see Article 6(3), below).

TRIBUNAL ESTABLISHED BY LAW
Examination of minors by investigating judge with a psychologist who questioned the witnesses alone at one point: *inadmissible*

ACCARDI and Others - Italy (N° 30598/02)
Decision 20.1.2005 [Section III]
(see Article 6(3), below).

Article 6(2)

PRESUMPTION OF INNOCENCE
Compensation for detention followed by discontinuation of proceedings: request for damages rejected on ground of failure to submit evidence proving innocence: *violation*.

CAPEAU - Belgium (N° 42914/989)
Judgment 13.1.2005 [Section I]

Facts: The applicant, who was arrested in connection with an arson investigation, was placed in pre-trial detention for more than three weeks. The courts which ruled on the action to be taken as a result of the investigation considered that there was insufficient evidence to justify sending him for trial, and accordingly found that there was no case to answer. The applicant immediately applied for compensation in respect of the time held in pre-trial detention. Under the relevant legislation, a person who had been placed in pre-trial detention and subsequently found to have no case to answer was required, when applying for compensation, to establish his or her innocence on factual or legal grounds. The authorities noted that the applicant had not submitted evidence establishing his innocence, concluded that he had not provided proof of his innocence as required by the law and accordingly dismissed his application.

Law: Article 6(2) – The refusal to compensate the applicant was based solely on the fact that he had not submitted evidence of his innocence. The burden of proof could not properly be reversed as part of compensation proceedings brought following a final decision to discontinue criminal proceedings. The requirement that a person provide evidence of his or her innocence - which suggested that the court considered the person concerned guilty - seemed unreasonable and showed an infringement of the presumption of innocence. Accordingly, the reasoning behind the dismissal of the applicant's request for compensation was incompatible with the presumption of innocence.
Conclusion: violation (unanimously).

Article 6(3)(d)

EXAMINATION OF WITNESSES
Conviction essentially based on the testimony of minors subject to sexual abuse to which the accused were not confronted: *inadmissible*

ACCARDI and Others - Italy (N° 30598/02)
Decision 20.1.2005 [Section III]

The applicants were the parents of two underage children and their mother's partner. Proceedings were brought against them for sexual abuse of the two minors. The children, who were then aged over six and a half, were questioned during the preliminary investigation. The investigating judge carried out the questioning in the presence of child psychologist, who asked the children certain questions. The applicants, their lawyers and the representative of the prosecution service were in a different room, separated by a two-way mirror, from where they could listen to and see the children. Given the difficulty experienced by one of the children in replying to a question, the judge left the courtroom in order to follow the final part of the sitting from behind the two-way mirror. The applicants were committed for trial. The court convicted them of the offences charged. It based its decision on two elements of the prosecution's evidence: an audiovisual recording of the questioning of the children during the preliminary investigation, and the evidence of persons, examined during the court proceedings, who had been in contact with the children at the time of the alleged offences and in whom the children had confided. The court refused to hear the expert witness for the defence. The applicants were convicted and sentenced to twelve years' imprisonment. They appealed, criticising the failure to order a psychological report on the victims, and asking that the children be examined and that another hearing be held to question the victims. The appeal court upheld the guilty verdict and dismissed the defence's requests: the children, whose statements were, taken as a whole, coherent, had already been monitored over a lengthy period by a psychologist from social services and questioned by a psychologist during the preliminary investigation; the applicants had attended that hearing and their lawyers had had an opportunity, through the investigating judge, to ask the children any questions they considered necessary for the defence. The sentence for the mother was reduced to nine years' imprisonment. The applicants appealed unsuccessfully on points of law.

Inadmissible under Article 6:

Witnesses for the prosecution: In so far as the children's testimony constituted practically the only element of proof on which the courts had based their findings of the applicants' guilt, the latter should have had sufficient opportunity to exercise their defence rights in respect of this evidence against them. With regard to the particular case of criminal procedures concerning sexual abuse, certain measures could be taken in order to protect victims – who frequently experienced distress on account of the confrontation, against their will, with the accused, especially if they were underage, – provided that those measures could be reconciled with the effective and sufficient exercise of the rights of the defence. In the present case, the applicants and their lawyers had been able to follow the questioning of the victims from a separate room through a two-way mirror. Thus, they had been aware of the questions and replies and had observed the children's behaviour. The applicants' lawyers had had an opportunity to ask the children any question considered necessary for the defence's case, through the intermediary of the judge; they had not done so, which could be understood as an implicit approval of the way in which the questioning had been carried out. The authorities had made an audiovisual recording of this investigative measure, which was available for examination by the trial courts. Those courts had thus had an opportunity to observe the prosecution witnesses'

conduct during questioning, and the defendants had had an opportunity to submit their comments in this respect. In those circumstances, the steps taken by the domestic authorities had sufficed to enable the applicants to challenge the witnesses' statements and credibility during the criminal proceedings: manifestly ill-founded.

Refusal to order a psychological report and to question the defence's expert at the trial: The courts had decided that such investigative measures were immaterial to the proceedings, and had based that refusal on logical and relevant arguments. The court of appeal had stated that the children had been monitored for a considerable period by a psychologist from social services and that there was nothing to suggest that the children were incapable of describing the events they had experienced. Furthermore, the victims had been questioned with the assistance of an expert in child psychology. Consequently, the defendants' defence rights had not been restricted to the point of infringing the principles of a fair trial: manifestly ill-founded.

Tribunal established by law: The applicants complained that, during the questioning of the victims, questions were posed by the psychologist and not by the investigating judge. The Court of Cassation had emphasised that the questioning had been carried out by the judge. The fact that the judge had made use of his right to direct the performance of investigative measures and had decided to use the intermediary of a psychologist to pose certain questions did not alter that conclusion. Admittedly, the judge had moved away during the questioning of one of the children, but this had been a measure aimed at protecting the composure of the underage child being questioned, and the judge had continued to follow the questioning from behind a two-way mirror. For those reasons, it could not be concluded that the investigating judge had not represented a "tribunal established by law": manifestly ill-founded.

ARTICLE 8

PRIVATE LIFE
Absence of a legal basis for the handing over to the press by the police of a photograph of a person under house arrest : *violation*

SCIACCA - Italy (N° 50774/99)
Judgment 11.1.2005 [Section IV]

Facts: The applicant was a teacher in a private school which she ran together with other partners. She was arrested and charged with tax evasion and criminal association. Placed under house arrest, she was not detained in custody. The police draw up a case file on the applicant; identity photos and her fingerprints were included in it. On the same day, the prosecuting authorities gave a press conference. Newspapers reported the charges and the illegal acts concerned, and published a photograph of the applicant, taken by the police at the time of her arrest and subsequently released to the press. There was no legislation governing the photographing of persons who had been arrested and placed under house arrest without being placed in custody or the handing over of such photographs to the press. The applicant was committed for trial and the criminal proceedings ended in a sentence of one year's imprisonment and the imposition of a fine.

Law: Article 8 – The applicant complained that the prosecuting authorities had distributed to the press a photograph of her, taken by those same authorities at the time of her arrest.
The publication of a person's photograph, taken when criminal proceedings had been brought against him or her in the context of preliminary investigations, amounted to an "interference" in his or her right to respect for private life.

The matter was not governed by a "law" which satisfied the criteria set down in the Court's case-law, but by custom. Although an exception to the principle of the confidentiality of preliminary investigation measures did exist in the Code of Criminal Procedure, it concerned another situation. The interference was thus not in accordance with the law.
Conclusion: violation (unanimously).

Article 41 - The Court considered that the finding of a violation constituted in itself sufficient just satisfaction in respect of non-pecuniary damage. It awarded a specified sum for the costs incurred before it.

PRIVATE LIFE
Publication by the press of the photograph of a prosecuted person: *violation*

SCIACCA - Italy (N° 50774/99)
Judgment 11.1.2005 [Section IV]
(see above).

FAMILY LIFE
Alleged impairment of family life for having to spend own money on medical treatment not provided by State: *inadmissible.*

PENTIACOVA and Others - Moldova (Nº 14462/03)
Decision 4.1.2005 [Section IV]

Facts: The applicants suffer from chronic renal failure and require haemodialysis treatment. They receive such treatment in Chişinău hospital, which they maintain between 1997 and 2004 only provided them with the strictly necessary medication and procedures required for their treatment. They claim that during this period they had to pay for the rest of the necessary medication and that their disability allowance was insufficient to pay for the medication not provided by the hospital. As a result, they allege that they were forced to undergo the treatment with unbearable pain and suffering, and that some of the patients who refused to undergo the procedure because of a lack of money died. They also claim that insufficient State funding of their medical treatment has had a negative impact on their family lives. Some of the patients living in the provinces allege that they were not always reimbursed for their travel expenses to the capital to receive treatment. In 2004, a new law reforming the medical care system entered into force and the situation of the patients considerably improved. The applicants maintain that they had no effective domestic remedy for their problem.

Inadmissible under Article 8: The Court was prepared to assume that this provision was applicable to the applicants' complaint that having to spend most of their families' money on their treatment had impaired their family lives. Whilst it was clearly desirable that all individuals had access to a full range of medical treatment, and not underestimating the difficulties apparently encountered by the applicants during the contentious period, they had had access to standard health care before the 2004 reforms, and full medical care thereafter. In the special circumstances, and bearing in mind the wider margin of appreciation of States in cases involving an allocation of limited State resources, the State had not failed to discharge its positive obligations under this provision: manifestly ill-founded.

Inadmissible under Article 2: The applicants had failed to adduce evidence that their lives had been put at risk. The fact that a person had died of this disease was not proof in itself that the death had been caused by shortcomings in the medical care system. As regards the State's positive obligations, the same conclusion as under Article 8 applied: manifestly ill-founded.

Inadmissible under Article 13: The applicants had no arguable grievances: manifestly ill-founded.

FAMILY LIFE
Special prison regime involving restrictions on family visits aimed at preventing contacts with the Mafia : *inadmissible*

BASTONE - Italy (N° 59638/00)
Decision 18.1.2005 [Section II]
(see Article 3, above).

CORRESPONDENCE
Control of prisoner's correspondence: *violation*.

MUSUMECI - Italy (N° 33695/96)
Judgment 11.1.2005 [Section IV]
(see Article 6(1) [civil] above).

ARTICLE 9

MANIFEST RELIGION OR BELIEF
Obligation to remove turban when going through the security screen of an airport: *inadmissible*.

PHULL - France (N° 35753/03)
Decision 11.1.2005 [Section II]

The applicant was a practising Sikh, and thus belonged to a religion that required its followers to wear the turban. He complained that, when going through the security scanner at an airport as a prelude to entering the departure area, security staff had required him to remove his turban for inspection, although he had agreed to go through the walk-through scanner and to be checked with a hand-held detector.

Inadmissible under Article 9: As the Sikh religion required its male followers to wear a turban, the Court could assume that the disputed measure constituted an interference in the applicant's freedom to manifest his religion or beliefs. The applicant did not allege that the measure was not "prescribed by law" and the measure pursued at least one of the legitimate aims listed in the second paragraph of Article 9 (guaranteeing "public safety"). As to whether the interference was necessary in a democratic society, safety checks in airports were undoubtedly necessary for "public safety" and the arrangements for implementing them in the instant case fell within the respondent State's margin of appreciation, all the more so since this measure was only occasionally required: manifestly ill-founded.

Inadmissible under Article 2 of Protocol No. 4: In themselves, security checks in airports, imposed on passengers prior to departure, did not constitute a restriction on freedom of movement: incompatible *ratione materiae*.

ARTICLE 10

FREEDOM OF EXPRESSION
Foreseeability of a conviction, based on the law of associations, for the public disclosure of a declaration to the press: *violation*

KARADEMİRCİ and Others - Turkey (N° 37096/97 and N° 37101/97)
Judgment 25.1.2005 [Section IV]

Facts: The applicants were leaders of a union of health professionals. As part of a group of twenty-five persons, they gathered in front of a secondary school in Izmir in 1995; the chairperson read out a text from the trade union, criticising the treatment meted out to certain pupils in that school. The participants dispersed after twenty-five minutes. The applicants were prosecuted for those acts. The judicial authorities considered that the events came under section 44 of the Associations Act. That section concerned the act of "publishing or distributing leaflets, written statements and similar publications" and made that action subject to preconditions and prior formalities. The applicants unsuccessfully argued that they had read aloud a statement to the press, an action which was not covered by the section in issue. In application of the section 44 concerned, they were sentenced to a term of imprisonment, which was commuted to a fine, for failure to observe the preliminary requirements.

Law: Article 10 – Section 44 of the Associations Act, in force until 2004, did not directly limit freedom of expression, but made associations subject to a "formality or condition", within the meaning of Article 10(2) of the Convention, before publishing or distributing leaflets, written statements and similar publications. This condition and the applicants' conviction amounted to an "interference". The sentence imposed had a basis in domestic law and the law applied was accessible. Freedom of expression could be made subject to certain formalities and Article 10 did not prohibit the imposition of prior restraints on a form of communication. However, where failure to observe a formality was punishable by a criminal penalty, the law must clearly define its application and the restriction could not be extensively construed to the detriment of an accused, for instance by analogy. An individual had to be able to ascertain from the wording of the relevant provision and, where necessary, with the assistance of the courts' interpretation of it, what acts and omissions would make him criminally liable.
In this particular case, the applicants had been prosecuted and acquitted on several occasions in the past under the section 44 in issue, for similar offences. However, the court had interpreted the provision differently, holding that such acts were subject to the same formality as that established for "leaflets, written declarations and similar publications". In this particular instance, the courts had found that the fact of reading a text aloud during a press conference could be considered as a publication in the same way as leaflets, written statements and similar publications. Like the Turkish Court of Cassation sitting as a full Court in 2000 and 2002, the Court considered that a statement to the press could not be classified as a "leaflet", "written statement" or "similar publication": the latter, intended for publication or dissemination, required greater consideration and preparation, while a press statement was intended instead to inform members of the press of the contents of a speech which was to be delivered orally, or had just been delivered. In short, the domestic courts had applied an interpretation that extended the scope of the criminal law through analogy, which could not reasonably have been foreseen in the circumstances of the case. Accordingly, the applicants could not reasonably have foreseen that the public reading and distribution of a press statement could be considered as an action which fell within the scope of section 44 of the Associations Act. The requirements of foreseeability were thus not met.
Conclusion: violation (unanimously).

Article 41 – The Court made awards in respect of non-pecuniary damage and for costs and expenses.

FREEDOM OF EXPRESSION
Refusal of television authority to the broadcasting of an advertisement: *communicated*

VEREIN GEGEN TIER FABRIKEN SCHWEIZ (VGT) - Switzerland (N° 32772/02)
Decision 18.1.05 [Section IV]

The applicant association, a Swiss association dedicated to the protection of animals, was refused authorisation to broadcast a television commercial, prepared by it, against industrial animal production. In a judgment of 28 June 2001 (no. 24699/94, ECHR 2001-VI), the Strasbourg Court had declared that the Swiss authorities' refusal to broadcast the television commercial was in violation of Article 10 of the Convention. The applicant association filed a complaint against the disputed domestic decision, as authorised under Swiss law, but was unsuccessful. Later, in the Committee of Ministers' Resolution ending examination of the application, the Swiss Government indicated that, in accordance with the measures taken in execution of the Court's judgment, there was no longer a risk that the violation would be repeated. In this new application, the applicant association complained that it had still not received authorisation to have the disputed commercial broadcast.

Communicated under Article 10; in this context, a specific question was submitted to the defendant in respect of Article 46 of the Convention.

ARTICLE 13

EFFECTIVE REMEDY
Absence of a remedy in domestic law permitting a detainee to contest his placement in solitary confinement: *violation.*

RAMIREZ SANCHEZ - France (N° 59450/00)
Judgment 27.1.2005 [Section I]

Facts: The applicant was placed in detention in mid-August 1994. He was investigated in connection with several terrorist attacks and was sentenced to life imprisonment in 1997 for the murder of a police officer. He was placed in the prison's solitary confinement wing in application of a measure which was renewed on a three-monthly basis until mid-October 2002. The reasons given to justify the solitary confinement were generally the level of danger posed by the prisoner, the need to maintain order and safety in the prison and the likelihood that he might seek to escape. The detention in solitary confinement lasted for eight years and two months. It involved detention in a single cell, no contact with other prisoners or the prison warders, a prohibition on activity outside the cell apart from a two-hour daily walk, and restrictions on his visiting rights; the applicant could read newspapers and watch television in his cell. The applicant's psychological and physical health remained satisfactory. No appeal lay against the decision to place him in solitary confinement and the decisions to prolong it, which were taken by the administrative authorities on the basis of a medical report.

Law: Article 3 – As to the conditions of the applicant's detention: he had not been detained in complete sensory isolation or in total social isolation; with regard to this second point, although he had been forbidden to have any contact with the other prisoners and the prison wardens, he did receive numerous visits. As to the length of the solitary confinement, the Court attached particular importance to the fact that the applicant's lawyer, who was also his

partner, had been able to visit him on a very regular basis, and that he had also received visits from 57 other lawyers; in addition, given the applicant's age and state of health, his continued detention in solitary confinement had not caused him a level of suffering that reached the threshold of gravity required for a violation of Article 3. He had received regular visits by doctors. Although the doctors no longer condoned his detention in solitary confinement after July 2000, none of the medical certificates drawn up when deciding on whether to prolong the applicant's solitary confinement had specifically stated that solitary confinement had had adverse effects on his physical or mental health, or had requested a psychiatric report. The applicant had declined the psychological treatment suggested. Finally, the respondent Government's fears that the applicant would re-establish contact with members of his terrorist group, seek to spread his beliefs among the other prisoners or plan an escape were not groundless or unreasonable. While it shared the concerns of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment with regard to the possible long-term effects of the applicant's solitary confinement, the Court found that the general and very particular conditions in which he had been detained, and the length of that detention, had not reached the minimum level of severity necessary to constitute inhuman treatment, particularly in view of the applicant's personality and the exceptional level of danger that he posed.
Conclusion: no violation (4 votes to 3).

Article 13 – According to the established case-law of the *Conseil d'Etat*, decisions placing prisoners in solitary confinement were to be regarded as equivalent to internal regulations and could not be appealed against before the administrative courts. In a judgment of 30 July 2003, the *Conseil d'Etat* amended its position and established that judicial review could be sought with regard to a decision to place a prisoner in solitary confinement. In this particular case, there had been a violation of Article 13 on account of the absence in French law of a remedy which would have enabled the applicant to contest the decision to prolong his detention in solitary confinement.
Conclusion: violation (unanimously).

Article 41 – The Court considered that the finding of a violation was in itself sufficient just satisfaction for the non-pecuniary damage suffered by the applicant. It made an award in respect of the costs and expenses incurred in bringing the proceedings.

ARTICLE 56

Article 56(3)

LOCAL REQUIREMENTS
Restrictions on the right to vote in elections for congress in New-Caledonia: *no violation*

PY - France (N° 66289/01)
Judgment 11.1.2005 [Section II (former composition)]

Facts: In 1995 the applicant was appointed to a post at the French University of the Pacific. This university was based in Nouméa, New Caledonia, which, at the material time, was an overseas territory. In 1998 the Nouméa Agreement established the political arrangements for New Caledonia during a transition phase and the procedure for moving to self-determination. The Agreement altered New Caledonia's constitutional status, making it a *sui generis* community with institutions that were designed specifically for the territory. Ordinance no. 99-209 of 19 March 1999 strengthened the Congress's powers and brought in a ten-year residence condition for participating in elections to the Congress. The Ordinance was enacted as part of a process of self-determination for the peoples of New Caledonia and provided for the transfer of State powers to the territory, where the Congress was the decision-making

body: the Congress managed New Caledonia's collective affairs and enacted its laws. In April 1999 the applicant applied to be registered on the electoral roll in order to be able to vote in the first elections to Congress as part of the transitional process set out in the text of 19 March 1999. His application for registration was refused on the ground that he would not have been resident in New Caledonia for ten years on the date of those elections (9 May 1999). The applicant made unsuccessful appeals against the refusal to register him on the electoral roll.

Law: Article 3 of Protocol No. 1: According to the French Government, while the powers conferred on Congress by the Ordinance of 19 March 1999 were extensive, nonetheless, given the importance of the areas in which the French State continued to have jurisdiction Congress did not have enough powers to be considered as a "legislature", within the meaning of Article 3 of Protocol No. 1, in an equivalent manner as the French National Assembly and Senate. In the Court's view, given the powers attributed to it by the 1999 Ordinance, the Congress of New Caledonia was no longer merely a consultative body, but had become a body that was called on to play a decisive role, depending on the issues to be dealt with, in the legislative process in New Caledonia. The New Caledonia Congress was sufficiently associated with this specific legislative process to be regarded as part of the "legislature" of New Caledonia within the meaning of Article 3 of Protocol No. 1.
Having to satisfy a residence or length-of-residence requirement in order to have or exercise the right to vote in elections did not, in principle, constitute an arbitrary restriction on the right to vote and was therefore not in itself incompatible with the provisions of Article 3 of Protocol No. 1. In this particular case, the 1999 Ordinance restricted the possibility of voting in the elections to Congress to those electors who meet certain conditions, in particular that of residence in the territory for more than ten years, a condition which the applicant did not meet. The residence thresholds had been imposed in response to concerns expressed by representatives of the local population during negotiation of the Nouméa Agreements, and were intended to ensure that the consultations would reflect the will of "interested" persons and that the result would not be altered by a massive vote cast by recent arrivals on the territory who had no solid links with it. In addition, the restriction on the right to vote was a direct and necessary consequence of establishing Caledonian citizenship. The applicant had since returned to metropolitan France, and his position was different to that of a resident citizen, which justified the residence condition. The latter pursued a legitimate aim. Although the ten-year residence requirement could appear disproportionate to the aim pursued, it was necessary to determine whether there were local requirements, within the meaning of Article 56, of a kind that meant that the restriction on the right to vote could be considered not to have infringed Article 3 of Protocol No. 1. When depositing the instruments of ratification of the Convention and of Protocol No. 1, France had declared that these would apply to "the whole territory of the Republic, having due regard, where the overseas territories are concerned, to local requirements, as mentioned in Article 63 (the present Article 56) of the Convention". New Caledonia's current status amounted to a transitional phase prior to the acquisition of full sovereignty and was part of a process of self-determination. The system was *"incomplete and provisional*". After a tormented political and institutional history this ten-year residence condition, established by the Ordinance of 19 March 1999, had been a key factor in appeasing the deadly conflict. The local situation was based on problems that were more deep-seated and far-reaching than the linguistic differences at the origin of the cases which the Court had previously examined *(*see *Polacco and Garofalo; Mathieu-Mohin and Clerfayt*). New Caledonia's political situation was currently calm and the territory was continuing to develop politically, economically and socially. Consequently, the history and status of New Caledonia were such that they could be regarded as amounting to "local requirements" of a kind warranting the restrictions imposed on the applicant's right to vote.
Conclusion: no violation (unanimously).

ARTICLE 1 OF PROTOCOL No. 1

PEACEFUL ENJOYMENT OF POSSESSIONS
Alleged interference with proprietary rights as a result of eviction without prior establishment of ownership: *communicated.*

JANKOVIC - Bosnia-Herzegovina (Nº 5172/03)
Decision 25.1.2005 [Section IV]

In 1993 the applicant and his wife concluded a contract by which they became registered owners of property in the Republika Srpska. The persons with whom they had entered the contract instituted proceedings in the First Instance Court, seeking that the contract of 1993 be declared void. They also filed an application with a Commission for Real Property Claims of Displaced Persons and Refugees, which confirmed they were entitled to repossess the property. In October 2002, the authorities issued an order that the applicant and his wife were to vacate the house in 15 days. They were not offered alternative accommodation, and were evicted from the house in December 2002. The applicant complained about his eviction to the Human Rights Chamber, which shortly afterwards ceased to exist. It appears the application is pending before a Human Rights Commission within the recently created Constitutional Court. In 2003, the First Instance Court declared the 1993 contract void *ab initio* as it had been concluded under duress. The applicant's appeal to the District Court is still pending.

Communicated under Articles 8 and Article 1 of Protocol No. 1

PEACEFUL ENJOYMENT OF POSSESSIONS
Granting of traditional Sámi fishing rights to other local residents: *inadmissible.*

JOHTTI SAPMELACCAT RY and Others - Finland (Nº 42969/98)
Decision 18.1.2005 [Section IV]

The first applicant is an association promoting Sámi culture. The other applicants are Finnish nationals of Sámi origin. The applicants, who are not landowners themselves, enjoy fishing rights based on custom from time immemorial in several municipalities in Finland. Their rights are constitutionally protected and entitle them to fish in the State-owned water-areas of these municipalities. In 1997, the Fishing Act was amended and public fishing rights were granted to other people living permanently in those municipalities. The applicants complain that the legislative amendment weakened the legal position of landless Sámi people and that, as a result, their fishing rights no longer enjoy the constitutional protection of property.

Inadmissible under Article 1 of Protocol No. 1. Government's objections: (i) victim status of first applicant: the first applicant association was not responsible for fishing within its respective area. Moreover, the fishing rights in question could only be exercised by a Sámi as a private individual; (ii) non-exhaustion: although the applicants had not challenged the contentious amendment before a national court, the nature of their rights, as recognised by the Constitution, remained very general, and the Government have failed to show the existence of an effective remedy for the applicants' complaints.
The general aim of the 1997 amendment was to protect the rights of the Sámi, while ensuring the rights of other local residents as well. The applicants had not appreciably shown the adverse impact of the 1997 amendment of the Fishing Act on their concrete possibilities to exercise their traditional fishing rights. The Court was not satisfied there had been an interference with their property rights: manifestly ill-founded.

ARTICLE 3 OF PROTOCOL No. 1

LEGISLATURE
Congress of New-Caledonia

PY - France (N° 66289/01)
Judgment 11.1.2005 [Section II (former composition)]
(see Article 56(3), above).

VOTE
Requirement of ten years' residence in New Caledonia in order to be registered to vote in elections for its Congress : *no violation*.

PY - France (N° 66289/01)
Judgment 11.1.2005 [Section II (former composition)]
(see Article 56(3), above).

ARTICLE 2 OF PROTOCOL No. 4

Article 2(1) of Protocol No. 4

FREEDOM TO CHOOSE RESIDENCE
Refusal to grant residence registration despite submission of documents required under domestic law: *admissible.*

TATISHVILI - Russia (Nº 1509/02)
Decision 20.1.2005 [Section I]

The applicant, who is Georgian-born, lives in Moscow and continues to hold citizenship of the former USSR. In 2000, she requested residence registration at a Moscow police station, for which she submitted her USSR passport and a consent form from her flat owner which was certified by the housing maintenance authority. The application was refused. She was orally informed it was because she was not a relative of the flat owner. In the written refusal the reason given was that she had "failed to provide a complete set of documents". In 2001, the applicant challenged the decision at the District Court, basing her plea on the fact that under the relevant law in force the authorities had no discretion in granting/refusing registration once the appropriate documents had been submitted. The District Court dismissed her claim as she had failed to prove her Russian nationality or her right to move into the flat in question. Her application for a clarification of the judgment was dismissed, as was her appeal with the City Court. The applicant complains that the refusal to grant her residence registration has complicated her daily life and rendered uncertain her access to medical assistance.

Admissible under Article 2 of Protocol No. 4, Articles 6 and 13.
Inadmissible under Article 14.

Other judgments delivered in January

Article 2

Life

Ceyhan Demir and Others - Turkey (N° 34491/97) 13.1.2005 [Section I] – violation.
Menteşe and Others - Turkey (N° 36217/97) 18.1.2005 [Section II] – violation - no violation.

Article 3

Inhuman and degrading treatment

Kehayov - Bulgaria (N° 41035/98) 18.1.2005 [Section I] – violation.
Menteşe and Others - Turkey (N° 36217/97) 18.1.2005 [Section II] – no violation.
Sunal - Turkey (N° 43918/98) 25.1.2005 [Section IV] – violation.

Article 5(1)

Security of persons

Menteşe and Others - Turkey (N° 36217/97) 18.1.2005 [Section II] – no violation.

Article 5(1)(f)

Length of detention pending expulsion

Singh - Czech Republic (N° 60538/00) 25.1.2005 [Section II] – violation.

Article 5(3)

Role of investigator and prosecutor in ordering detention

E.M.K. - Bulgaria/Bulgarie (N° 43231/98) 18.1.2005 [Section I]
Kehayov - Bulgaria/Bulgarie (N° 41035/98) 18.1.2005 [Section I]
violation (cf. *Nikolova*).

Detention on remand

E.M.K. - Bulgaria (N° 43231/98) 18.1.2005 [Section I] – violation.

Article 5(4)

Speediness of review of lawfulness of detention and procedural guarantees of review

E.M.K. - Bulgaria (N° 43231/98) 18.1.2005 [Section I] – violation (cf. *Ilijkov ; Nikolova*).

Speediness of review of lawfulness of detention with a view to expulsion

Singh - Czech Republic (N° 60538/00) 25.1.2005 [Section II] – violation.

Procedural guarantees of review

Kehayov - Bulgaria (N° 41035/98) 18.1.2005 [Section I] – violation (cf. *Shishkov*).

Article 6(1)

Legislation staying all proceedings relating to claims for damages resulting from, respectively, acts of members of the army or police during the war in Croatia and terrorist acts

Pikić - Croatia (N° 16552/02) 18.1.2005 [Section I] – violation (cf. *Multiplex ; Aćimović*).

Prolonged non-enforcement of court decision

Dubenko - Ukraine (N° 74221/01) 11.1.2005 [Section II] – violation (cf. *Shmalko*).
Gizzatova - Russia (N° 5124/03) 13.1.2005 [Section I] – violation (cf. *Burdov*).
Popov - Moldova (N° 74153/01) 18.1.2005 [Section IV] – violation.

Quashing of a final and binding judicial decision

Poltorachenko - Ukraine (N° 77317/01) 18.1.2005 [Section II] – violation (cf *Svetlana Naumenko*).

Striking out of a cassation appeal on the ground of the appellant's failure to implement the judgment appealed against

Carabasse - France (N° 59765/00) 18.1.2005 [Section IV] – violation (cf. *Annoni di Gussola*).

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

Sibaud - France (N° 51069/99) 18.1.2005 [Section II] – violation (cf. *Reinhardt et Slimane-Kaïd*).

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

Sibaud - France (N° 51069/99) 18.1.2005 [Section II] – violation (cf. *Meftah*).

Presence of *avocat général* during deliberations of Court of Cassation

Sibaud - France (N° 51069/99) 18.1.2005 [Section II] – violation (cf. *Fontaine et Bertin*).

Independence and impartiality of State Security Court

Tekin and Taştan - Turkey (N° 69515/01) 11.1.2005 [Section II]
Halis - Turkey (N° 30007/96) 11.1.2005 [Section IV]
Özdoğan - Turkey (N° 49707/99) 18.1.2005 [Section II]
Dolaşan - Turkey (N° 29592/96) 18.1.2005 [Section II]
violation (cf. *Özel ; Özdemir*).

Length of proceedings

Çakmak - Turkey/Turquie (N° 53672/00) 25.1.2005 [Section II] - no violation.

Molin İnşaat - Turkey (N° 38424/97) 11.1.2005 [Section II]
Jalević-Mitrović - Croatia (N° 9591/02) 13.1.2005 [Section I]
Camasso - Croatia (N° 15733/02) 13.1.2005 [Section I]
Rash - Russia (N° 28954/02) 13.1.2005 [Section I]
E.M.K. - Bulgaria (N° 43231/98) 18.1.2005 [Section I]
Todorov - Bulgaria (N° 39832/98) 18.1.2005 [Section I]
Sidjimov - Bulgaria (N° 55057/00) 27.1.2005 [Section I]
Fattell - France (N° 60504/00) 27.1.2005 [Section I]
violation.

Article 8

Home

Menteşe and Others - Turkey (N° 36217/97) 18.1.2005 [Section II] – no violation.

Article 10

Conviction for disseminating separatist propaganda

Halis - Turkey (N° 30007/96) 11.1.2005 [Section IV]
Dağtekin - Turkey (N° 36215/97) 13.1.2005 [Section I]
violation (cf. *İbrahim Aksoy*).

Article 13

Death of relatives

Ceyhan Demir and Others - Turkey (N° 34491/97) 13.1.2005 [Section I] – violation.
Menteşe and Others - Turkey (N° 36217/97) 18.1.2005 [Section II] – violation.

Ill-treatment

Sunal - Turkey (N° 43918/98) 25.1.2005 [Section IV] – violation.

Length of proceedings

Todorov - Bulgaria (N° 39832/98) 18.1.2005 [Section I] – violation.
Sidjimov - Bulgaria (N° 55057/00) 27.1.2005 [Section I] – violation (cf. *Osmanov and Yuseinov*).

Destruction of property

Menteşe and Others - Turkey (N° 36217/97) 18.1.2005 [Section II] – no violation.

Article 14

Menteşe and Others - Turkey (N° 36217/97) 18.1.2005 [Section II] – no violation.

Article 18

Menteşe and Others - Turkey (N° 36217/97) 18.1.2005 [Section II] – no violation.

Article 1 of Protocol No. 1

Presumption of benefit accruing from expropriation

Organochimika Lipasmata Makedonias A.E. - Greece (N° 73836/01) 18.1.2005 [Section I] – violation (cf. *Efstathiou and Michailidis & Co. Motel Amerika*).

Prolonged non-enforcement of court decision

Dubenko - Ukraine (N° 74221/01) 11.1.2005 [Section II] – violation (cf. *Voytenko*).
Gizzatova - Russia (N° 5124/03) 13.1.2005 [Section I] – violation (cf. *Burdov*).
Popov - Moldova (N° 74153/01) 18.1.2005 [Section IV] – violation.

Quashing of a final and binding judicial decision

Poltorachenko - Ukraine (N° 77317/01) 18.1.2005 [Section II] – violation.

Protection of property

Menteşe and Others - Turkey (N° 36217/97) 18.1.2005 [Section II] – no violation.

Striking out / Radiation

Razaghi - Sweden (N° 64599/01) 25.1.2005 [Section II]: expulsion case.

Friendly settlement

Zana /and Others - Turkey (N° 51002/99 and N° 51489/99) 11.1.2005 [Section II]
Netolická and Netolocká - Czech Republic (N° 55727/00) 11.1.2005 [Section II]
Šoller - Czech Republic (N° 48577/99) 18.1.2005 [Section II]
Townsend - United Kingdom (N° 42039/98) 18.1.2005 [Section IV]
Florică - Romania (N° 49781/99) 25.1.2005 [Section II]

Just satisfaction

Buzatu - Romania (N° 34642/97) 27.1.2005 [Section III]

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. 67 and 68):

Korbel - Poland (Nº 57672/00)
Romanow - Poland (Nº 45299/99)
Kusmierek - Poland (Nº 10675/02)
Judgments 21.9.2004 [Section IV]

Pieniazek - Poland (Nº 62179/00)
Król - Poland (Nº 65017/01)
Jastrzębska - Poland (Nº 72048/01)
Iżykowska - Poland (Nº 7530/02)
Durasik - Poland (Nº 6735/03)
Judgments 28.9.2004 [Section IV]

Barbu Anghelescu - Romania (Nº 46430/99)
Blondet - France (Nº 49451/99)
Presidential Party of Mordovia - Russia (Nº 65659/01)
Dala - Hungary (Nº 71096/01)
Móder - Hungary (Nº 4395/02)
Molnár - Hungary (Nº 22592/02)
Kútfalvi - Hungary (Nº 4853/02)
Caille - France (Nº 3455/02)
Onnikian - France (Nº 15816/02)
Mitre - France (Nº 44010/02)
Reisse - France (Nº 24051/02)
Judgments 5.10.2004 [Section II]

Falęcka - Poland (Nº 52524/99)
Malinowska-Biedrzycka - Poland (Nº 63390/00)
Kuśmierkowski - Poland (Nº 63442/00)
Sikora - Poland (Nº 64764/01)
Przygodzki - Poland (Nº 65719/01)
Lizut-Skwarek - Poland (Nº 71625/01)
Dudek - Poland (Nº 2560/02)
Judgments 5.10.2004 [Section IV]

Poleshchuk - Russia (Nº 60776/00)
Judgment 7.10.2004 [Section I]

Mehmet Bülent Yilmaz and Şahin Yilmaz - Turkey (Nº 42552/98)
Vatan - Russia (Nº 47978/99)
Judgments 7.10.2004 [Section III]

Bursuc - Romania (Nº 42066/98)
Chesnay - France (Nº 56588/00)
Lafaysse - France (Nº 63059/00)
Judgments 12.10.2004 [Section II]

Ospina Vargas - Italy (Nº 40750/98)
Nordica Leasing s.p.a. - Italy (Nº 51739/99)
Ettotre Caracciolo - Italy (Nº 52081/99)
Assymomitis - Greece (Nº 67629/01)
Pedersen and Pedersen - Denmark (Nº 68693/01)
Rodopoulos - Greece (Nº 11800/02)
Velliou - Greece (Nº 20177/02)
Judgments 14.10.2004 [Section I]

Yanikoğlu - Turkey (Nº 46284/99)
Durmaz and Others - Turkey (Nº 46506/99, Nº 46569/99, Nº 46570/99 and Nº 46939/99)
Judgments 14.10.2004 [Section III]

Makhfi - France (N° 59335/00)
Jahnová - Czech Republic (Nº 66448/01)
Judgments 19.10.2004 [Section II]

Varićak - Croatia (Nº 78008/01)
Marinković - Croatia (Nº 9138/02)
Woditschka and Wilfling - Austria (Nº 69756/01 and Nº 6306/02)
Ullrich - Austria (Nº 66956/01)
Bettina Malek - Austria (Nº 16174/02)
Gialamas - Greece (Nº 70314/01)
Judgments 21.10.2004 [Section I]

Doğaner - Turkey (Nº 49283/99)
Judgment 21.10.2004 [Section III]

Fackelman ČR, Spol. S.R. O. - Czech Republic (Nº 65192/01)
Jírů - Czech Republic (Nº 65195/01)
Pištorová - Czech Republic (Nº 73578/01)
Judgments 26.10.2004 [Section II]

Terazzi - Italy (Nº 27265/95)
Judgment (just satisfaction) 26.10.2004 [Section IV]

AB Kurt Kellermann - Sweden (N° 41579/98)
Judgment 26.10.2004 [Section IV]

Bojinov - Bulgaria (N° 47799/99)
Judgment 28.10.2004 [Section I]

Neshev - Bulgaria (Nº 40897/98)
Judgment 28.10.2004 [Section III]

Statistical information[1]

Judgments delivered	**January**	**2005**
Grand Chamber	0	0
Section I	16	16
Section II	14(15)	14(15)
Section III	1	1
Section IV	8(9)	8(9)
former Sections	4	4
Total	**43(45)**	**43(45)**

Judgments delivered in January 2005					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	0	0	0	0	0
Section I	16	0	0	0	16
Section II	9	4(5)	1	0	14(15)
Section III	0	0	0	1	1
Section IV	7(8)	1	0	0	8(9)
Former Section II	4	0	0	0	4
Total	**36(37)**	**5(6)**	**1**	**1**	**43(45)**

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

Decisions adopted		January	2005
I. Applications declared admissible			
Grand Chamber		0	0
Section I		17	17
Section II		14	14
Section III		8	8
Section IV		3	3
Total		**42**	**42**
II. Applications declared inadmissible			
Grand Chamber		0	0
Section I	- Chamber	11	11
	- Committee	757	757
Section II	- Chamber	13	13
	- Committee	473	473
Section III	- Chamber	13	13
	- Committee	204	204
Section IV	- Chamber	7	7
	- Committee	664	664
Total		**2142**	**2142**
III. Applications struck off			
Section I	- Chamber	1	1
	- Committee	6	6
Section II	- Chamber	6	6
	- Committee	6	6
Section III	- Chamber	1	1
	- Committee	2	2
Section IV	- Chamber	6	6
	- Committee	7	7
Total		**35**	**35**
Total number of decisions[1]		**2219**	**2219**

1. Not including partial decisions.

Applications communicated	January	2005
Section I	41	41
Section II	62	62
Section III	39	39
Section IV	17	17
Total number of applications communicated	**159**	**159**

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