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LIFE
Suicide of a prisoner who had been placed in a punishment cell, and effectiveness of the investigation: *violation*.

TRUBNIKOV – Russia (Nº 49790/99)
Judgment 5.7.2005 [Section II]

Facts: The applicant's son, who was serving a prison sentence, was found dead in a punishment cell in September 1998. During his imprisonment, which had started in 1993, he had on several occasions been placed in punishment cells when found to be under the influence of alcohol. During one of these disciplinary confinements he had inflicted bodily injury on himself and on another occasion had attempted suicide. Thereafter, he had been placed under psychiatric supervision. In September 1998, the applicant's son had again been placed in a punishment cell for being under the influence of alcohol. About an hour after, he was found dead, hanged by the sleeve of his jacket. That same day the prison governor conducted an inquest. After examining a number of documents and reports, he concluded that the applicant's son had hanged himself and that no criminal investigation was to be opened, as there was no appearance that a crime had been committed. The applicant asked the prison authorities to initiate a criminal investigation. He was not informed that a decision not to do so had been taken. The applicant subsequently requested the prosecutor's office to provide him information about the circumstances of his son's death, which refused to institute criminal proceedings. It was only after the case was communicated to the respondent Government that, in February 2002, the prosecutor's office opened an investigation into the death of the applicant's son. The investigation principally consisted of two forensic examinations and the taking of testimonies from officers, inmates and the prison psychiatrist. In October 2002, the prosecutor's office concluded that the applicant's son had committed suicide. The applicant received a copy of the termination order in March 2003.

Law: Article 38(1) – The refusal of the Government to provide the original medical file concerning the psychiatric supervision of the applicant's son on grounds that it was unsafe to remove it from the prison archives where it was held, despite the Court's reassurance that the file would be returned at the end of the proceedings, had represented a breach of this provision.
Conclusion: failure of Russia to fulfil its obligations (unanimously)

Article 2 (as regards the authorities' positive obligations to protect the right to life) – For a positive obligation to arise regarding a prisoner with suicidal tendencies, it had to be established that the authorities knew, or ought to have known, of the existence of a real and immediate risk to the life of the identified individual. In the present case, whilst the applicant's son showed a tendency to inflict self-harm in response to being subjected to disciplinary confinement and had once attempted suicide, his prison medical records indicated that he displayed no acute psychiatric symptoms. Moreover, his psychiatrist had never expressed that he was likely to commit suicide. The Court could not therefore conclude that the authorities were aware of an imminent threat to his life, or that they could have reasonably foreseen this in view of his apparently stabilised mental and emotional state. Despite the fact that the applicant's son history showed that the combination of his inebriation with a disciplinary punishment was not without some risk for his condition, this was not sufficient to vest the authorities with the entire responsibility for his death.
Conclusion: No violation (unanimously).

Article 2 (as regards the authorities' failure to provide an effective investigation) – For a positive obligation to safeguard the life of persons in custody to arise, the Court's established case-law requires for an independent and impartial official investigation which satisfies some minimum standards as to effectiveness. The initial inquest into the death of the applicant's son did not satisfy the minimum requirement of independence since the investigating body – the prison governor – represented the

authority involved. Moreover, the inquest did little to satisfy the need for public scrutiny. The family was not even informed about the formal refusal to institute criminal proceedings. As regards the investigation carried out in 2002, it was only conducted after the present application was communicated by the Court to the Government, that is, more than three years after the incident. Such a substantial delay constituted a breach of the authorities' obligation to exercise exemplary diligence and promptness. Moreover, the applicant and the rest of the family were entirely excluded from the proceedings, had not been granted the official status of victims in the proceedings and never received any information about the progress of the investigation. Hence, the investigation had lacked a sufficient element of public scrutiny, and did not safeguard the interests of the next-of-kin. Whilst the authorities had taken a number of important steps to establish the true circumstances of the death, the investigation fell short of the essential requirements under this provision of promptness, exemplary diligence, initiative on the part of the authorities and public scrutiny.
Conclusion: violation (unanimously).

Article 41 – The Court awarded the applicant 8,000 euros in respect of non-pecuniary damage. It also made an award for costs and expenses.

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

NACHOVA AND OTHERS – Bulgaria (N° 43577/98 and 43579/98)
Judgment 6.7.2005 [Grand Chamber]
(see Article 14, below)

LIFE
Killing of the applicant's husband by persons that were identified, and effectiveness of the investigation : *no violation/violation*.

FATMA KAÇAR – Turkey (N° 35838/97)
Judgment 15.7.2005 [Section I]

Facts: In 1994 the applicant's husband was shot and killed in the street as he left his home. An investigation was launched: evidence was gathered at the scene, a statement taken from a witness and a post-mortem carried out which revealed that the victim had died after receiving several gunshot wounds to the back.
In December 1998 the police arrested a suspect, I.H., in connection with an operation mounted against an illegal terrorist organisation. He admitted carrying out the killing with a person known as U., on the organisation's orders. The criminal proceedings instituted against I.H. were pending before the assize court when the Court delivered its judgment. The applicant applied to join the proceedings as a third party. In June 2001 the police arrested H.G., who said in a statement that he and an accomplice, M.E.G., had received orders from the organisation through an intermediary known as S. to kill the applicant's husband. The criminal proceedings against H.G. were pending before the assize court when the Court delivered its judgment. In October 2002 the State Security Court sentenced M.E.G. to life imprisonment for, among other offences, his involvement in the murder. It found that the killing had been carried out by H.G. on the orders of S., while M.E.G. had supervised and covered the operation.

Law: Article 2 – *The circumstances in which the applicant's husband died:* The applicant alleged that her husband had been the victim of an extrajudicial execution. However, any conclusion that her husband had been killed by State agents or with their complicity was based more on conjecture and speculation than on reliable evidence. It had not been established beyond reasonable doubt that Turkey's responsibility was engaged in the murder.
Conclusion: no substantive violation (unanimously).

Alleged inadequacy of the investigation: Although the investigation had been started immediately after the death, the Turkish authorities had failed to conduct it diligently. There had been periods of unexplained inactivity in the first phase of the investigation; the public prosecutor's office had taken only one witness statement; neither the deceased's family nor their representative had been kept informed of progress in the investigation; the public prosecutor's office itself had had difficulties in verifying what point the police had reached in their preliminary inquiries; the ballistics report had failed to establish what type of weapon had been used. Although the authorities had launched a criminal investigation into the suspected perpetrators, not all the suspects had been traced. The other suspect in the murder, committed in 1994, whose name had been revealed by his accomplices, had still not been found by 2005. The criminal proceedings instituted against the persons arrested in 1998 and 2001 had still been pending at first instance several years later in 2005, without any explanation from the Government.
Consequently, the investigation by the authorities into the circumstances surrounding the death could not be considered to have been effective.
Conclusion: procedural violation (six votes to one).

Article 13 – Although the authorities had been under an obligation to carry out an effective investigation into the circumstances of the death, the investigations started several years previously into the involvement of various suspects had yet to be concluded. Consequently, the State could not be considered to have conducted an effective criminal investigation.
Conclusion: violation (six votes to one).

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

LIFE
Unlawful killing of seventeen persons by security forces when dispersing demonstrations, and effectiveness of the investigations: *violation*.

ŞIMŞEK AND OTHERS – Turkey (Nº 35072/97 and N°37194/97)
Judgment 26.7.2005 [Section II]

Facts: The applicants are the relatives of seventeen persons who were killed during demonstrations in Instanbul in 1995, in a neighbourhood where the majority of the residents belong to the Alevi sect. Following the shooting on several cafes by unidentified persons, residents of the neighbourhood gathered on the street to protest against the indifference displayed by the police officers after the shooting. The police set up barricades in the area and at one point began firing at the demonstrators. Two persons were killed after the police began firing from behind the barricades, which raised the tension and the advancement of the demonstrators towards the police barricades. During the subsequent events, fifteen other persons were killed. The events sparked widespread outrage throughout the country, and in other demonstrations which took place thereafter, more people were killed. The Government contested the version of events given by the applicants. They claimed that the crowd had attacked the police vehicles and that the security forces had verbally warned people to stop and tried to disperse them with pressurised water and batons. They also maintained that the domestic authorities had properly conducted their investigations into the events in dispute, and that the relatives of the deceased persons had been paid compensation pursuant to domestic law. The Public Prosecutor commenced an investigation in 1995 and filed an indictment against twenty police officers who had been on duty during the demonstrations. The Assize Court delivered its judgment in 2000, finding that two of the police officers were guilty for having shot and killed several persons. The Court of Cassation quashed the convictions. In a subsequent judgment, the Court of Assize maintained the sentence against one of the police officers with some rectifications and suspended that of the other.

Law: Article 2 – *Failure to protect the right to life*: The accounts of the events being disputed between the parties, the Court examined the issues at stake in the light of the documentary evidence adduced in the present case. Under this article, the use of lethal force by police officers may be justified in certain

circumstances, but it does not grant a *carte blanche.* Whilst the demonstrations had not been peaceful and the police was confronted with resistance and acts of violence, the officers had shot directly at the demonstrators without first having recourse to less life-threatening methods, such as tear gas, water cannons or rubber bullets. The principle enshrined in Turkish law that police officers can use firearms only in limited circumstances was not applied during the incidents. The police officers involved enjoyed a great autonomy of action and lacked a clear and centralised command. In such circumstances, the use of force to disperse the demonstrators, which caused the death of seventeen persons, was more than absolutely necessary within the meaning of this article.

Adequacy of the investigation: Three separate investigations concerning the incidents were initiated by the authorities, but there were striking omissions in the conduct of these inquiries. In connection with the investigation by the Assize Court which led to the conviction of two officers, one with a suspended sentence, the steps taken had been dilatory and half-hearted. The case was initiated in 1995, but transferred between domestic courts due to security reasons and jurisdictional problems. Furthermore, at no stage did the courts examine the overall responsibility of the authorities for the deficiencies in the conduct of the operation and for their inability to ensure a proportionate use of force to disperse the demonstrators. Another of the investigations was still pending. In sum, the authorities had not conducted prompt and adequate investigations into the killing of the applicants' relatives. The manner in which the criminal justice system operated in response to the tragic events failed to secure full accountability of State officials or their authorities.
Conclusion: violation (unanimously).

Article 41 – The court awarded 30,000 euros to the relatives of Dilek Şimşek, jointly, and 30,000 euros to each of the other applicants in respect of non-pecuniary damage.

LIFE
Unexplained disappearance after being summoned to show up at a police station, and effectiveness of the investigation: *violation*.

TANIŞ AND OTHERS – Turkey (N° 65899/01)
Judgment 2.8.2005 [Section IV]

Facts: The applicants are relatives of two leaders of the local branch of a political party who went missing in January 2001 under circumstances which were disputed between the parties. The Court conducted an on-site mission to establish the facts. It emerged that, prior to their disappearance, the party leaders had been subjected to harassment by the authorities. On the day of their disappearance, they were approached in the street by men dressed in civilian clothing claiming to be police officers, who told them to get into their car, which they refused to do. One of them then received a call on his mobile phone from an officer summoning him to an interview at the district gendarmerie station with the commanding officer. The national authorities made an order requiring the identity of the person who made the call to remain secret. The two men were seen entering the gendarmerie station the same day. While the Government maintained that they left the premises half an hour later, it could not be established with certainty that they left freely or were not detained subsequently. Since that time, their families, friends and colleagues have had no news of the two men. Information received subsequent to their disappearance suggesting that they were alive and in Iraq or had been killed in a vendetta was never corroborated. Following a complaint lodged by the men's relatives, a criminal investigation was launched. The applicants continued to maintain that their relatives had previously been subjected to intimidation and threats by the commanding officers of the gendarmerie and had been in fear of their lives. The judge imposed restrictions on access to the investigation file. The investigation resulted in a finding that there was no case to answer. The applicants appealed. The State Security Court observed that there had been gaps in the investigation, but no further investigation was ordered. The applicants alleged before the Court that their relatives had been victims of an extrajudicial execution during a period in police custody that had not been acknowledged by the authorities. The Court asked the respondent Government in vain for a copy of the investigation file

indicating the information that had been withheld on grounds of confidentiality following a decision by the national judicial authorities.

Law: Assessment of evidence with a view to establishing the facts: A delegation of judges visited Ankara in order to establish the facts. However, two important witnesses who had been summoned failed to appear, and information in the domestic investigation file continued to be withheld. In the Court's view when, as in the instant case, the respondent Government alone had access to the information and was solely responsible for ensuring the appearances of witnesses capable of confirming or refuting the applicants' allegations, any failings on their part without a satisfactory explanation could give rise to the drawing of inferences as to the well-foundedness of the applicants' allegations.
Furthermore, in cases where, although it had not been proven that an individual had been placed in police custody by the authorities, it had been established that the person had been summoned officially by the military or police authorities and had entered premises under military or police control and never been seen again, it was incumbent upon the Government to provide a plausible and satisfactory explanation as to what had occurred on the premises and to demonstrate that the person concerned had not been detained by the authorities but had left the premises without being deprived subsequently of his or her liberty. In the absence of such explanation, the Court could examine whether there had been a violation not just of Article 5 but also, in certain circumstances, of Article 2 of the Convention.

Article 38(1)(a) - The Government's failure to act with due diligence and grant the Court's requests for evidence which it considered necessary to enable it to examine the application, such as the investigation file indicating the information that had been withheld on grounds of confidentiality at the request of the public prosecutor's office, and the fact that the Court had been unable to hear evidence from the commanding officer of the gendarmerie or the person who had telephoned immediately before the men's disappearance and whose name had not been provided, were Not compatible with the State's obligations under Article 38(1)(a) of the Convention.
Conclusion: failure to comply with Article 38 (unanimously).

Article 2 – *The disappearances*: The decisive factor was that the two men had gone to the gendarmerie command headquarters following a call from a gendarme (who was identified by the public prosecutor) and had not been seen since. There was sufficient persuasive evidence that they had been threatened by the commanding officers of the gendarmerie on account of their political activities, and a credible witness statement had described an attempted abduction on the very day of their disappearance. Having regard to the context in which the men had disappeared, the fact that their fate was still unknown four years later and the fact that the investigation had neglected certain aspects and been based on preconceived assumptions, and in the absence of a proper investigation and a plausible explanation from the authorities with regard to what had happened, the Court was of the opinion that the State's responsibility was engaged by their disappearance.
Conclusion: violation (unanimously).

Nature of the investigation: The investigation into the disappearance of the applicants' relatives had been inadequate.
Conclusion: violation (unanimously).

Article 5 - Such an unexplained disappearance represented a particularly grave violation of the right to liberty and security of person.
Conclusion: violation (unanimously).

Article 3 - The anxiety of the applicants (father, brother and wives of the men) was attested by the numerous steps they had taken in order to find out what had happened to their relatives. However, the slowness and ineffectiveness of the investigation and the decision to classify certain documents in the investigation file as confidential had denied them access to documents in the investigation file and prevented them from participating in the domestic proceedings. Noting that the applicants' distress had not been relieved, the Court considered that the men's disappearance amounted to inhuman and degrading treatment, contrary to Article 3 of the Convention, in respect of the applicants themselves.

Conclusion: violation (unanimously).

Article 13 – The authorities had failed to conduct an effective investigation into the disappearance of the applicants' relatives.
Conclusion: violation (unanimously).

Article 41 – The Court made an award to the wife of one of the men and to the wife and partner of the other in respect of loss of earnings. It awarded the applicants specified sums in respect of non-pecuniary damage and costs and expenses.

ARTICLE 3

INHUMAN OR DEGRADING TREATMENT
Pre-trial detention in solitary confinement of a drug-trafficking suspect – later acquitted – who subsequently developed a mental illness: *Nº violation*.

ROHDE – Denmark Nº 69332/01)
Judgment 21.7.2005 Section I]

Facts: The applicant was arrested and charged with drug trafficking in relation to an importation of papaya fruits in which 5.684 kg of cocaine were found. The City Court decided that the applicant be placed in solitary confinement on 14 December 1994. The measure was prolonged on several occasions given the lack of reasonable explanations on the applicant's involvement in the importation of the drugs. It was lifted on 28 November 1995, when the applicant confirmed that he had had been involved in the importation of the fruits, but under the belief that the smuggling concerned diamonds. Thereafter, the applicant was kept under Normal pre-trial detention conditions until 14 May 1996, when the High Court sitting with a jury acquitted the applicant of the drug offences. Subsequently, the applicant instituted court proceedings claiming compensation. During the proceedings medical reports were procured which revealed that the applicant had shown no signs of mental suffering before his detention, but that at the time of the examination, that is, at the end of 1997 the applicant's sense of reality was lacking to such an extent that he could be characterised as psychotic, most likely suffering from a paranoid psychosis. Moreover, taking the applicant's distinct personality and mental vulnerability into account, it was found probable that the outbreak and the progress of his illness were linked to the fact that he was solitary confined during a longer period. By a final judgment of 5 September 2000 the Supreme Court granted the applicant compensation in the amount of 1,109,600 Danish kroner (DKK), covering pecuniary damage for disablement and loss of working capacity. The applicant's claim for compensation for non-pecuniary damage was refused since the court found that the applicant himself to a significant extent gave rise to the measures taken against him, notably by having changed explanation several times and actively having opposed the investigation of the drug case by construing a "cover story". Moreover, the Supreme Court found that there was no reason to assume that the applicant had not been treated in a proper manner during his detention on remand and that accordingly the case disclosed no appearance of a violation of Article 3 of the Convention.

Law: Article 3 – *Whether the duration of the isolation had been excessive*: The Court reiterated that solitary confinement was not in itself in breach of Article 3. Whilst prolonged removal from association with others was undesirable, whether such a measure fell within the ambit of Article 3 depended, inter alia, on the particular conditions, stringency, duration and effects of the measure on the person concerned. Moreover, the Court noted that in the more recent reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) concerning Denmark, solitary confinement featured prominently as an issue in the ongoing dialogue between the CPT and the Danish authorities. The CPT had stressed that all forms of solitary confinement without appropriate mental or physical stimulation were likely in the long term to have damaging effects, resulting in deterioration of mental faculties and social abilities. In the present case, the length of the solitary confinement had lasted

eleven months and fourteen days. Whilst such a length could give rise to concern, in making its assessment the Court took into account the applicant's conditions of detention and the extent of his social isolation. He had been in a cell of around eight square metres in which there was a television and had access to newspapers. Although he was excluded from association with other inmates, the applicant had regular contact with prison staff, and received weekly language lessons and visited the prison chaplain. He was regularly attended by doctors, nurses and physiotherapists, and received visits from his family and friends under supervision. In these circumstances, the Court found that the period of solitary confinement had not amounted to treatment contrary to Article 3.

Whether the applicant's mental health had been effectively monitored: The Court noted that the very day of his arrest the applicant had expressed contemplation of suicide. Moreover, in mid-January 1995 he went on a hunger strike, during which he was monitored every day by doctors, and once by a psychiatrist. On the basis of the medical notes submitted, the Court considered it established that the applicant had been regularly attended to by medical staff, and that the latter had reacted promptly and increased their observation of the applicant when he had shown changes in mood or behaviour. Moreover, the Court recalled the statements of the Chief Consultant of the Copenhagen Prisons before the domestic courts underlining that none of the highly qualified and well-trained doctors and nurses attending the applicant had noted any signs of mental disorder in the applicant. Hence, it could not share the applicant's view that the monitoring carried out had not been as such adequate and sufficient. Admittedly, the applicant was not automatically or regularly examined by a psychologist or a psychiatrist, however such a general obligation could not be imposed on the authorities. Finally, as to the testimonies of the applicant's mother, cousin, the prison chaplain and teacher that his behaviour during his detention in isolation should have given rise to the authorities providing more specialised medical monitoring, none of these witnesses had expressed their concerns to the courts or to the prison personnel, which would have been highly appropriate. In these circumstances, the Court concluded there had been no lack of effective medical monitoring.
Conclusion: no violation (4 votes to 3).

INHUMAN OR DEGRADING TREATMENT

Living conditions of, and discrimination against, Roma villagers following the killing of fellow Roma and the destruction of homes: *violation.*

MOLDOVAN AND OTHERS (N° 2) – Romania (Nos. 41138/98 and 64320/01)
Judgment 12.7.2005 [Section II]
(see Article 14, below)

INHUMAN OR DEGRADING TREATMENT
Psychological suffering of family members of missing persons: *violation*.

TANIŞ and Others – Turkey (N° 65899/01)
Judgment 2.8.2005 [Section IV]
(see Article 2, above)

EXPULSION
Impending expulsion to Eritrea of alleged deserter: *violation.*

SAID – The Netherlands (N° 2345/02)
Judgment 5.7.2005 [Former Section II]

The applicant, an Eritrean national, arrived in the respondent State in May 2001 and applied for asylum, claiming hat he had served as a soldier fighting in the war against Ethiopia. Although the war had ended

in June 2000, the troops had not been demobilised until considerably later because the Eritrean authorities had feared further military incursions from the Ethiopians. In August 2000 a meeting had been held with the applicant's battalion, at which the commanders had told the soldiers they had not fought well. The applicant had spoken out at the meeting, complaining that the commanders had forced the soldiers, who were hungry, thirsty and tired, to continue fighting and that this had resulted in casualties. He had said his unit should be replaced or strengthened. Other soldiers had supported him and an argument had ensued. In December 2000 he had been accused of inciting the soldiers, ordered to hand over his weapons and detained in an underground cell for almost five months without being interviewed, charged or brought before a military tribunal. In April 2001 he had been put into a jeep, with a driver and a guard who were armed. He had been neither handcuffed nor bound. While driving, they had passed a military vehicle which had had an accident. Both the driver and the guard had left the car to see if they could help, leaving the applicant, who had escaped through the back of the car. The applicant had made his way to Sudan and, after passing through various other countries, to the Netherlands. In May 2001 the Deputy Minister of Justice, applying an accelerated procedure, rejected the applicant's request for asylum. His failure to submit any document capable of establishing his identity, his nationality or his travel itinerary was held to affect the credibility of his statements. The Deputy Minister also considered the applicant's account of his alleged escape to be implausible. The applicant appealed unsuccessfully.

Law – Article 3*:* The applicant's statements had been consistent and he had provided information to refute the Government's claim that his account lacked credibility. Even though the material submitted was of a general nature, it was difficult to see what additional evidence the applicant could reasonably have been expected to produce in support of his version of events. A strong indication that he was a deserter lay in the fact that he had applied for asylum in the Netherlands in May 2001, a year before demobilisation begun. Although the war had ended in June 2000, the information available suggested that the Eritrean authorities had not demobilised their troops quickly and were eager to keep their army at full strength. In the overall circumstances it was difficult to imagine by what means other than desertion the applicant might have left the army. Even if the account of his escape might have appeared somewhat remarkable, the Court considered that it did not detract from the overall credibility of the applicant's claim that he was a deserter. As to whether he would risk ill-treatment if returned the Court noted various country reports describing the treatment of deserters in Eritrea which constituted inhuman treatment. The applicant had maintained that he had already been arrested and detained by Eritrean military authorities after he had spoken out at the battalion meeting. In the overall circumstances substantial grounds had been shown for believing that, if expelled at the present time, the applicant would be exposed to a real risk of being treated or punished in violation of Article 3.
Conclusion: violation (unanimously).

EXPULSION
Impending expulsion to the Democratic Republic of Congo of an alleged collaborator of former President Mobutu: *violation.*

N. – Finland (N° 38885/02)
Judgment 26.7.2005 [Former Section IV]

Facts: The applicant arrived in Finland in 1998 and immediately applied for asylum, stating that he had left the Democratic Republic of Congo ("the DRC") in May 1997, when Laurent-Désiré Kabila's rebel troops had seized the power from President Mobutu. He alleged in essence that his life was in danger in the DRC on account of his having belonged to the President's inner circle, Notably by forming part of his special protection force (*Division Spéciale Présidentielle*) located on the presidential compound. In 2001 the Directorate of Immigration ordered the applicant's expulsion, having found his account not credible and considering that he had failed to prove his identity. As far as the Directorate was aware, only higher-ranking officials who had been abusing their office risked prosecution by the Kabila regime. That regime, however, had actually been quite accepting of officials having worked for Mobutu and many such officials of senior rank had already returned to the country. The regime in the DRC had changed again in 2001 as a result of a further *coup d'état*, following which the general situation in the country had

improved. In 2002 the Administrative Court refused the applicant's appeal, noting that he had been appearing under different names, *inter alia* as an asylum seeker in the Netherlands in 1993, and not being convinced of his general credibility. In 2003 the Supreme Administrative Court refused his further appeal, noting that his true identity and ethnic origin had remained unclear, which had weakened the credibility of his account, including as regards his whereabouts between his expulsion from the Netherlands in 1995 and his arrival in Finland in 1998.
Another asylum-seeker from the DRC, K.K., arrived in Finland in 2002, claiming to have been a soldier in the DSP arrested following the murder of President Laurent-Désiré Kabila in 2001. In 2004 the Administrative Court upheld the initial asylum refusal but instructed the Directorate of Immigration to issue her with a residence permit. In a letter to the European Court in 2003 K.K. affirmed, in support of the applicant's case, that the applicant had been a military official dealing with security matters in the DSP.

Law – Article 3*:* In order to assess the applicant's credibility two Delegates of the Court took oral evidence from the applicant himself, his common-law wife, K.K. and a senior official in the Directorate of Immigration. Having regard to the overall impression formed by the Delegates, the Court found K.K. to be a credible witness whose testimony clearly supported the applicant's own account of his having worked in the DSP and having formed part of President Mobutu's inner circle. While retaining doubts about the credibility of some of the applicant's testimony, the Court found that his account of his background in the DRC on the whole had to be considered sufficiently consistent and credible. In particular, although the applicant was not senior in military rank, he could be considered to have formed part of the President's and the DSP commander's inner circle and to have taken part, as a DSP official, in various events during which dissidents seen as a threat to President Mobutu were singled out for harassment, detention and possibly execution. The Finnish authorities and courts, while finding the applicant's account generally not credible, did not appear to have excluded the possibility that he might have been working for the DSP. Neither had the authorities had any opportunity to hear K.K.'s testimony. It could not be said therefore that the position of the Court contradicted in any respect the findings of the Finnish courts. Neither was there any indication that the initial asylum interview was in any way rushed or otherwise conducted in a superficial manner.
As to the alleged risk of treatment contrary to Article 3, the Court noted that as the applicant had left the DRC eight years ago it could not be excluded that the current DRC authorities' interest in detaining and possibly ill-treating him due to his past activities in President Mobutu's special protection force may have diminished with the passage of time, including a further *coup d'état* in 2001. While according to his own account he had never been in direct contact with President Mobutu and had not attained any senior military rank when forced to leave the country, UNHCR and other reports indicated, in respect of former army members, that factors other than rank – such as the soldier's ethnicity or connections to influential persons – could also be of importance when considering the risk he or she might be facing if returned to the DRC. Decisive regard nevertheless had to be had to the applicant's specific activities as an infiltrator and informant in President Mobutu's special protection force, reporting directly to very senior-ranking officers close to the former President. The risk of ill-treatment to which he would be exposed in the DRC at this moment in time might not necessarily emanate from the current authorities but from relatives of dissidents who may seek revenge on the applicant for his past activities in the service of President Mobutu. In the specific circumstances there was reason to believe that the applicant's situation could be worse than that of most other former Mobutu supporters, and that the authorities would not necessarily be able or willing to protect him against the threats referred to. His case therefore differed from *Vilvarajah and Others v. the United Kingdom* (Series A N° 215) and *H.L.R. v. France (Reports of Judgments and Decisions* 1997-III). Accordingly, the enforcement of the expulsion order would violate Article 3 for as long as the risk of his being ill-treated persisted.
Conclusion: violation (six votes to one).

Article 41*:* The finding that the applicant's expulsion to the DRC at this moment in time would amount to a violation of Article 3 constituted in itself sufficient just satisfaction in respect of any non-pecuniary damage suffered.

EXPULSION
Expulsion to Uganda of an asylum seeker suffering from HIV, currently receiving active treatment for her symptoms in the United Kingdom: *communicated*.

N. – United Kingdom (Nº 26565/05)
[Section IV]

The applicant, a Ugandan national, entered the United Kingdom in 1998. She was seriously ill, and admitted to hospital. Some months later she was diagnosed as suffering two AIDS illnesses, and being extremely advanced from an HIV point of view. A medical report stated that "without active treatment her prognosis was appalling, and that her life expectancy would be less than twelve months if forced to return to Uganda, where there was no prospect of her getting adequate therapy". Her asylum application was refused on grounds of credibility and because treatment for AIDS was available in Uganda, where major anti-viral drugs were available at highly subsidised prices. An adjudicator dismissed the applicant's appeal against the asylum refusal, but allowed the appeal on Article 3 grounds, finding that her case fell within the scope of those where exceptional leave to remain in the United Kingdom was justified on grounds of "credible medical evidence that return would reduce the applicant's life expectancy and subject him/her to acute physical and mental suffering, due to the medical facilities in the country concerned". The Secretary of State appealed, and in subsequent court decisions it was concluded that the applicant's removal would not be contrary to Article 3. The House of Lords, relying on Strasbourg jurisprudence, found that the test of exceptional circumstances required under Article 3 was Not met, as the applicant's medical condition had not reached such a critical state that there were compelling humanitarian grounds for non-removal. Rule 39 applied.
Communicated under Article 3.

ARTICLE 4

OBLIGATION POSITIVE
Applicant who was subject to a state of domestic servitude: *violation.*

SILIADIN – France (Nº 73316/01)
Judgment 26.7.2005 [Section II]

Facts: The applicant is a Togolese national who, after being brought to France by a relative of her father before she had reached the age of sixteen, was made to work as an unpaid servant. As an impecunious illegal immigrant in France, whose passport had been confiscated, she was forced against her will and without respite to work for Mr and Mrs B., doing housework and looking after their three, and later four, young children. The applicant worked from 7 a.m. until 10 p.m. every day and had to share the children's bedroom. The exploitation continued for several years, during which time Mr and Mrs B. led the applicant to believe that her immigration status would soon be regularised. Finally, after being alerted by a neighbour, the Committee against Modern Slavery reported the matter to the prosecuting authorities. Criminal proceedings were brought against the couple, who were acquitted of the criminal charges. Proceedings continued in respect of the civil aspect of the case and resulted in the couple's being convicted and ordered to pay compensation in respect of non-pecuniary damage to the applicant for having taken advantage of her vulnerability and dependent situation by making her work without pay.

Law: Article 4 – Article 4 imposed positive obligations on States, consisting in the adoption and effective implementation of criminal-law provisions making the practices set out in Article 4 a punishable offence. In accordance with modern standards and trends in relation to the protection of human beings from slavery, servitude and forced or compulsory labour, States were under an obligation to penalise and punish any act aimed at maintaining a person in a situation incompatible with Article 4.
In the instant case the applicant had worked for years for Mr and Mrs B., without respite, against her will and without being paid. She had been a minor at the relevant time, unlawfully present in a foreign country

and afraid of being arrested by the police. Indeed, Mr and Mrs B. had maintained that fear and led her to believe that her status would be regularised. Hence the applicant had, at the least, been subjected to forced labour within the meaning of Article 4 of the Convention. The Court had then to determine whether the applicant had also been held in slavery or servitude within the meaning of Article 4.
With regard to slavery, although the applicant had been deprived of her personal autonomy, the evidence did not suggest that she had been held in slavery in the proper sense, in other words that Mr and Mrs B. had exercised a genuine right of ownership over her, thus reducing her to the status of an object. Accordingly, it could not be considered that the applicant had been held in slavery in the traditional sense of that concept. As to servitude, that was to be regarded as an obligation to provide one's services under coercion, and was to be linked to the concept of slavery. The forced labour imposed on the applicant (see above) lasted almost 15 hours a day, seven days a week. Brought to France by a relative of her father, she had not chosen to work for Mr and Mrs B. As a miNor, she had no resources and was vulnerable and isolated, and had no means of subsistence other than in the home of Mr and Mrs B., where she shared the children's bedroom. The applicant was entirely at Mr and Mrs B.'s mercy, since her papers had been confiscated and she had been promised that her immigration status would be regularised, which never happened. Nor did the applicant, who was afraid of being arrested by the police, have any freedom of movement or free time. In addition, as she had not been sent to school, despite the promises made to her father, the applicant had no prospect of seeing any improvement in her situation and was completely dependent on Mr and Mrs B. In those circumstances, the Court considered that the applicant, a minor at the relevant time, had been held in servitude within the meaning of Article 4.
Slavery and servitude were not as such classified as criminal offences in French criminal law. Mr and Mrs B. had been prosecuted under articles of the Criminal Code which did not make specific reference to the rights secured by Article 4. Having been acquitted, they had not been convicted under criminal law. Hence, despite having been subjected to treatment contrary to Article 4 and having been held in servitude, the applicant had not seen the perpetrators of those acts convicted under criminal law. In the circumstances, the Court considered that the criminal-law legislation in force at the material time had not afforded the applicant specific and effective protection against the actions of which she had been a victim. Consequently, the French State had Not fulfilled its positive obligations under Article 4.
Conclusion: violation (unanimously).

Article 41 – The Court awarded the applicant the sum claimed by her for legal costs.

Article 4(1)

SERVITUDE
Minor placed against her will into a situation of dependence which forced her to work without rest and payment: *violation*.

SILIADIN – France (N° 73316/01)
Judgment 26.7.2005 [Section II]
(see above)

Article 4(2)

FORCED LABOUR
Foreign minor without residence papers, forced to work against her will: *violation*.

SILIADIN – France (N° 73316/01)
Judgment 26.7.2005 [Section II]
(see above)

ARTICLE 5

Article 5(1)

SECURITY OF PERSON
Unexplained disappearance after having been seen for the last time entering a police station: *violation*.

TANIŞ AND OTHERS – Turkey (N° 65899/01)
Judgment 2.8.2005 [Section IV]
(see Article 2, above)

ARTICLE 6

Article 6(1) [civil]

CIVIL RIGHTS AND OBLIGATIONS
Prohibition on the right to fish in water areas owned by the applicants but which ownership, the State argued, did not afford them the right to fish certain species: *Article 6 § 1 applicable.*

ALATULKKILA AND OTHERS – Finland (N° 33538/96)
Judgment 28.7.2005 [Section III]
See below

ACCESS TO COURT
Refusal of lawyers Bar to take into account the instructions of the cassation jurisdiction in the context of a cassation appeal with an application for the discharge of the case: *violation*.

TURCZANIK – Poland (N° 38064/97)
Judgment 5.7.2005 [Section II]

Facts: The Bar Council had registered the applicant on its regional list of practising lawyers, but refused to register his office address. As this was a prerequisite for being allowed to practise as a lawyer, the applicant applied to have his office registered at the address he had given. The application was dismissed by both the Regional and the National Bar Council. The Supreme Administrative Court set the decision aside on the ground that no valid reason had been given for refusing to register the applicant's office at the address he had indicated. The court issued legally binding directions regarding decisions on the subject, but the Bar Councils failed to comply with them, despite further judgments setting their decisions aside. Under domestic law, decisions by the Bar Council regarding the registration of lawyers' office addresses are administrative decisions. The opinion expressed by the Supreme Administrative Court is binding.

Law: Article 6(1) – *Access to a court*: Unlike the *Hornsby* case, the instant case did not concern an enforceable decision bringing proceedings to a close, but rather a series of judgments in the same set of administrative proceedings setting aside repeatedly the decisions of a lower court which had refused to comply with the directions of the higher judicial authority. The Court considered that those decisions formed an integral part of the "trial" within the meaning of Article 6. A further difference lay in the fact that the Bar Councils did not have the status of administrative authorities within the domestic legal system. The fact remained that their decision regarding the registered address of a lawyer was of an administrative nature and fell clearly within the jurisdiction of the Supreme Administrative Court. The decisions of that court had given clear indications as to the aspects to be taken into account by the Bar Councils in re-examining the case. The Bar Councils had refused to comply, and the applicant had not had an effective remedy enabling him to compel them to comply with the decision of the highest administrative court in the country.
Conclusion: violation (unanimously).
N.B. The Court also considered that the length of the administrative proceedings concerning the registration of the applicant's office address had been contrary to Article 6(1), and that there had been no violation of Article 13 as to the alleged absence of a remedy in that regard.

Article 41 – The Court awarded specified sums for non-pecuniary damage and costs and expenses.

ACCESS TO COURT
Refusal of authorities to enforce court judgments' ordering the halt of thermal-power plants: *violation*.

OKYAY AND OTHERS – Turkey (N° 36220/97)
Judgment 12.7.2005 [Section II]

Facts: The applicants, who live in a city located approximately 250 kilometres from three thermal-plants, called on the relevant administrative authorities requesting that they halt the operation of these plants as they constituted a threat to public health and the environment. The authorities did not reply, which amounted to a refusal of the applicants' request. The applicants subsequently instituted proceedings in the Administrative Court against the authorities. Reports of experts, which were submitted to the court, noted the considerable emission of toxic fumes and the absence of the mandatory chimney filters. In June 1996, the court issued an injunction for the suspension of the power plants' operation, finding that they had been operating without requisite permits for construction, gas emissions and discharge of waste water. As their continued operation could give rise to irreparable harm to members of the public, it ruled that the administrative decision refusing to halt the plants' operation had been unlawful. These findings were confirmed in judgments of the Administrative Court in December 1996, and by the Supreme Administrative Court in June 1998. Despite the administrative courts' judgments, the Council of Ministers decided that the thermal-power plants should continue to operate, as their closure would give rise to energy shortages and loss of employment.

Law: Article 6(1) – *Applicability*: The applicants had not suffered any economic or other loss. However, their right to live in a healthy environment was recognised by Turkish law, which entitled them to protection against environmental damage caused by hazardous activities. It followed that there existed a genuine and serious "dispute" for which the applicants had standing before the courts to seek the suspension of the plants' activities. Accordingly, the proceedings before the administrative courts, taken as a whole, could be considered to relate to the applicants' civil rights, and Article 6(1) applied.

Compliance: The authorities had failed to comply with the injunction suspending the plants' activities and to enforce the subsequent judgments of the administrative courts within the prescribed time-limits. The decision of the Council of Ministers to continue operating the plants had no legal basis and was unlawful. It was tantamount to circumventing the judicial decisions, a situation which adversely affected the principle of a law-based State. In conclusion, the failure of the authorities to comply with the judgments of the administrative courts had deprived this article of any useful effect.
Conclusion: violation (unanimously).

Article 41 – The Court awarded each of the applicants 1,000 euros in respect of non-pecuniary damage.

ACCESS TO COURT
Scope of review of the Supreme Administrative Court in annulment proceedings concerning fishing prohibition imposed by Finnish-Swedish Frontier Rivers Commission: *no violation*.

ALATULKKILA AND OTHERS – Finland (N° 33538/96)
Judgment 28.7.2005 [Section III]

Facts: The applicants were owners of water areas, or fishermen, and also represented various fishing co-operatives or associations for joint ownership. In 1996 the Finnish-Swedish Frontier Rivers Commission prohibited *inter alia* all fishing of salmon and sea trout in specified water areas during the 1996 and 1997 seasons. The restrictions were based on a fishing regulation and subsequent instruments issued following the enactment of legislation incorporating the Finnish-Swedish Frontier Rivers Agreement which authorised the Frontier Rivers Commission to restrict fishing in order to preserve the species in question. Some of the applicants (professional fishermen fishing in a specific area) received compensation paid out of the supplementary State budget for 1996 with a view to covering economic losses which they suffered during the 1996 fishing season due to the restrictions.
In 1998 the Supreme Administrative Court dismissed a request lodged by, among others, the associations represented by some of the applicants, and whereby they sought to have the Frontier Rivers Commission's decision of 1996 annulled. The associations had argued that the decision was contrary to the Constitution and ordinary law (including Article 6 of the Convention and Article 1 of Protocol N° 1 as incorporated). Furthermore, the Commission had allegedly failed to hear the associations in a matter affecting the civil rights of individual owners of fishing waters as well as of fishermen affected by the restriction. In its decision the Supreme Administrative Court considered that all the applicants for annulment had been made aware of the plans to restrict the fishing in question and had had the opportunity to make known their opinions on the matter before the Frontier Rivers Commission had issued the restriction. The restriction had sought to strengthen fish stocks and thus ensure fishing opportunities in the future. The decision of the Frontier Rivers Commission could not be held to be contrary either to Article 6 of the European Convention or of the Constitution. In sum, the decision sought to be annulled had not been based on manifestly incorrect application of the law, nor had a procedural error occurred that might have fundamentally affected the decision.

Law – Applicability of Article 6 § 1: The Government had contested the applicability on the basis that the right to fish salmon and sea trout in the water areas owned by the applicants had belonged to the State independently of that ownership, on the basis of a restricted right in rem as a matter of public law. Hence domestic law did not recognise that the applicants had any "right" to fish those two species, although they did enjoy rights in respect of other types of fish. The Court noted that it had not been disputed that the applicants were owners of water areas and enjoyed rights to fish those waters. Neither had the Government disputed that the applicants had been fishing salmon and sea trout prior to the 1996 prohibition. It had not been asserted that the applicants had carried out fishing under lease granted by a state authority or under any express agreement or that they had made any payment to the state authorities in respect of any catches. Notwithstanding the restricted right *in rem* over salmon and sea trout vested in the State relied on by the Government, the applicants could claim to have exerted rights over the fishing stocks in general linked to their ownership of the waters that arguably gave rise to a "right" which was civil in nature. This view was reinforced by the fact that some of the applicants had received compensation for loss of income arising from their inability to continue to fish the species in question. Since the Frontier Rivers Commission's decisions had impinged on the previously exercised fishing rights of the applicants, a genuine and serious dispute had arisen over the existence and scope of the applicants' civil right to fish for certain species within their waters arose.

Compliance with Article 6 § 1: In *Posti and Rahko v. Finland (*N° 27824/95, ECHR 2002-VII) the Court had already had occasion to consider whether access to court concerning disputes about fishing rights had been provided. It had found that a claim for damages in tort would only succeed against the State if the

applicants succeeded in showing that a representative of the executive branch had failed in his or her duty to take a measure or perform a task that could have reasonably been required in the light of the nature and purpose of the activity in question. No prospect of such a possibility existed where the impugned measures were undoubtedly based on statutory law. The same considerations applied in the present case. Some of the applicants had nevertheless contested the decision of the Frontier Rivers Commission before the Supreme Administrative Court in the context of an application for annulment. While the examination of an annulment or reopening request will not generally satisfy the requirements of Article 6 § 1 where such is an extraordinary remedy with limited scope of review and not involving an examination of the merits, a certain respect had to be accorded to decisions taken by administrative authorities in particular in specialised areas of the law, such as planning which involved the exercise of discretion involving a multitude of local factors inherent in the choice and implementation of policies. Similar considerations arose in the field of environmental protection, where there were important conflicting considerations and interests and, as in this case, a wider international context in the form of a co-operation agreement with a neighbouring State. In the present case the Supreme Administrative Court had considered the lawfulness of the fishing prohibition and its conformity with the Constitution as well as Article 6 of the Convention. While Not expressly referring to Article 1 of Protocol N° 1, the reasoning had given attention to the fairness of the procedure, finding that the applicants had been given an adequate opportunity to put their objections to the Frontiers River Commission. The Supreme Administrative Court had also considered the necessity and proportionality of the prohibition in reaching the conclusion that it had been necessary for safeguarding fish stocks. It had not at any point declined jurisdiction in answering the applicants' points. Having regard to the context – the implementation of an international agreement geared to the general preservation of fishing stocks over an extensive area – the proceedings available before the Supreme Administrative Court had provided the applicants with effective access to court for review of their claims.
Conclusion: no violation (unanimously).

Article 1 of Protocol N° 1 in isolation: The applicants had enjoyed fishing rights linked to their ownership of the waters. The limitation of those rights through the decision of the Frontier Rivers Commission had amounted to a control of the use of their possessions. This interference with the applicants' property rights had been justified, being lawful and pursuing, by means proportionate to that aim, the legitimate and important general interest in protecting the fish stocks. Noting the margin of appreciation accorded to Contracting States in such matters, the Court had no reason to doubt that the state of fish stocks required conservation measures and that the timing and application of the measures had been geared to local conditions. Moreover, the interference had not completely extinguished the applicants' right to fish in the relevant waters. Professional fishermen, whose livelihood had been affected by the ban, had been able to apply for compensation and some of the applicants had made use of this. Insofar as compensation had not been available for loss of leisure or sporting possibilities, the national authorities had to enjoy a wide margin of appreciation in determining not only the necessity of the measure of control concerned but also the types of loss resulting from the measure for which compensation was to be made. It had not been unreasonable for the authorities to distinguish between losses linked to livelihood and the effects on enjoyment of property which had not been so connected. Accordingly, the control of use had been compatible with the requirements of Article 1 of Protocol N° 1.
Conclusion: no violation (unanimously).

Article 1 of Protocol N° 1 read in conjunction with Article 14 of the Convention: The complaint that the fishing prohibition had discriminated against the applicants in comparison with fishermen in adjacent waters fell within the ambit of Article 1 of Protocol N° 1. However, on the material submitted, the Court did not doubt that there had been sufficient justification for the different timing of restrictions applied in the various water areas as well as for differing prohibitions of fishing gear in particular locations, namely to take into account the spawning routes of the salmon and the more confined nature of coastal, estuary and river waters. To the extent therefore that the applicants had been treated differently from those with fishing rights in other areas, it could be regarded as having objective and reasonable justification. For the reasons given with regard to Article 1 of Protocol N° 1, the principle of proportionality had also been respected.
Conclusion: no violation (unanimously).

INDEPENDENT AND IMPARTIAL TRIBUNAL
Examination of a constitutional complaint by a judge who had previously acted as legal counsel of the applicants' opponents in the principal proceedings: *violation*.

MEŽNARIĆ – Croatia (Nº 71615/01)
Judgment 15.7.2005 [Section I]

Facts: The applicant was the defendant party in civil proceedings brought against him by two plaintiffs which sought damages for breach of contract. The domestic courts, at two instances, gave judgment for the plaintiffs. The applicant appealed to the Supreme Court and subsequently submitted a constitutional complaint. Both complaints were dismissed. One of the judges sitting on the Constitutional Court's panel which delivered the court's decision had shortly acted as legal counsel of the plaintiffs in the early stages of the proceedings. His daughter, who had taken over her father's law practice, later replaced him as the applicants' counsel.

Law: Article 6(1) – Concerning the subjective impartiality test, there was nothing to indicate personal bias on the part of the judge who had represented the applicants' opponents at an earlier stage. In considering whether there were legitimate reasons to fear lack of impartiality as being objectively justified, it was necessary to recall the fact that a judge which had acted in different capacities in the same case could in certain circumstances compromise a tribunal's impartiality. The impugned judge's previous involvement in the case had been minor and remote, as he had represented the applicant's opponents for only two months and almost nine years before the decision of the Constitutional Court. However, he had carried out a dual role in the case: first, as counsel to the plaintiffs in the principal proceedings, and, subsequently, adjudicating on the constitutionality of the applicant's complaint. This dual role in a single set of proceedings, reinforced by his daughter's involvement also as counsel to the plaintiff's, created a situation which was capable of raising legitimate doubts as the judge's impartiality.
Conclusion: violation (unanimously).

Article 41 – The finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant. The Court also made an award for costs and expenses.

INDEPENDENT AND IMPARTIAL TRIBUNAL
Alleged lack of independence and impartiality of district and circuit judges in proceedings against the Lord Chancellor's Department: *inadmissible*.

CLARKE – United Kingdom (Nº 23695/02)
Decision 25.8.2005 [Section IV]

Judgment was given against the applicant in an action he had brought against a local authority and an insurance company, and costs were ordered against him. The applicant never met the judgment debt and he was declared bankrupt. The applicant subsequently brought proceedings against the Lord Chancellor's Department in respect of a form which the courts had supplied him in his original action which he claimed had misled him. The claim was dismissed in first and second instance by a district and circuit judge, respectively, on grounds that it had no real prospect of success, despite acknowledging that the issued form was ambiguous and to a certain extent incorrect. Leave to appeal was granted on a number of points, principally on the "point of constitutional importance" concerning the position of circuit and district judges in cases against the Lord Chancellor or his department.

Inadmissible under Article 6: The central question was whether the district and circuit judges which determined the applicant's action at first and second instance against the Lord Chancellor's Department were "independent and impartial", as they had been appointed by the Lord Chancellor. Bearing in mind that the appointment procedures had been, *inter alia*, competitive, involved an interview and consultations with the legal profession, as well as being full-time appointments until retirement, the Court accepted that the manner of appointment of both these judges had been compatible with the requirements of Article 6.

Moreover, there being no hierarchical or organisational connection between the judges and the Lord Chancellor's Department, there was no reason for concern or risk of any outside pressures for these judges to decide cases in a particular way. Concerning the subjective impartiality test, there was no claim in the case that either judge was animated by personal prejudice or bias. As to whether there were any elements which could give rise to an objective appearance of lack of independence, although the Lord Chancellor had power to remove circuit and district judges, any such removal was subject to judicial review. Moreover, there had been no cases where the power of removal had affected impartiality, and, in fact, practically no instances of removal of district or circuit judges had existed as such (only one case of removal of a district court judge). Thus, an objective observer would have no cause for concern about the removability of a judge in the circumstances of the present case: manifestly ill-founded.

Article 6(1) [criminal]

FAIR HEARING
Confession statement of applicant and statements of witnesses, obtained under torture, and used by the courts as evidence in criminal proceedings against the applicant: *communicated*.

HARUTYUNYAN – Armenia (Nº 36549/03)
Decision 5.7.2005 [Section III]

The applicant, who had been drafted to the army, was suspected of having shot a co-serviceman. He was taken, together with two other servicemen that had been in the area at the time of the killing, to a military police station where they were tortured to confess to the murder. Two days later, one of the servicemen confessed that he had eye-witnessed how the applicant had shot their co-serviceman. The other serviceman, who was with him at the time of the events, was coerced to make the same statement. The applicant continued to be tortured for over a month until he confessed he had accidentally shot the victim. At first instance criminal proceedings the applicant's co-servicemen confirmed their initial statements as witnesses before the courts, but at a later stage of the proceedings revoked these arguing that they had made them under the influence of ill-treatment. The first-instance court convicted the applicant on the basis of his own confession, circumstantial hearsesay witness statements, an expert opinion and some other evidence. The conviction was upheld in appeal and cassation proceedings, despite the submissions made by the other servicemen that they had not seen who had shot the victim. In the meantime, proceedings were opened against the military police officers who had tortured the applicant and his co-servicemen. The court found it established that ill treatment had been committed and convicted the police officers of abuse of power.
Communicated under Article 6.

REASONABLE TIME
Calculation of length of proceedings – resumption of criminal proceedings after charges had been dismissed: *violation*.

STOIANOVA AND NEDELCU – Romania (Nº 77517/01 and Nº 77722/01)
Judgment 4.8.2005 [Section III]

Facts: The applicants having been arrested and prosecuted, the prosecutor found that there was no case to answer. A year and a half later the prosecution service, in the exercise of its discretionary powers, ordered that the proceedings be reopened, on the basis that the decision had contradicted some of the evidence in the case file and that the initial investigation had been incomplete. The proceedings were closed six years later.

Law: Article 6(1) (reasonable time) – While the criminal proceedings against the applicants comprised two distinct phases, they constituted a single period for the purposes of the reasonable-time requirement.

The decision that there was no case to answer could not be regarded as having brought the proceedings against the applicants to a close, given that it did not constitute a final domestic decision, since the prosecution service had the power to set aside a decision that there was no case to answer and reopen criminal proceedings without being subject to any time-limit. Furthermore, unlike in *Withey v. the United Kingdom* (ECHR 2003-X), the prosecution service had been able to reopen the criminal proceedings without being obliged to seek authorisation from any domestic court. Nor had the Government done anything to demonstrate that the resumption of criminal proceedings closed by order of the prosecutor was an exceptional occurrence. The Court also took account of the fact that Romanian prosecutors, since they acted as members of the Prosecutor-General's Department, did not satisfy the requirement of independence from the executive (*Pantea v. Romania,* n° 33343/96, §§ 238-239, ECHR 2003-VI). Finally, the reopening of the proceedings had been ordered as the result of omissions on the part of the authorities which, in so far as they were not attributable to the applicants, should not have placed them at a disadvantage.
The Court concluded unanimously that there had been a violation of Article 6(1).

IMPARTIAL TRIBUNAL
Military judge on the bench of a state security court during part of the trial: *inadmissible*.

CEYLAN – Turkey (N° 68953/01)
Decision 30.8.2005 [Section II]

In March 1999 the applicant was charged with being a member of and assisting the PKK. Prior to June 1999, a military judge participated in hearings of the State Security Court. The first hearing was devoted to purely procedural matters. During the second hearing the trial judges confined themselves to reading out the indictment and checking the validity of the lawyers' authorities to act. During the final hearing in which the military judge participated, the judges took note of the joining of the applicant's case file and of its content, before informing the new defendants of all the procedural steps performed up to that point and reading out the documents from the case file to the parties, including earlier statements from some of the accused implicating the applicant. The applicant and his counsel contested all the prosecution evidence contained in the case file, including those statements, and submitted their written observations, which were added to the case file. No other decisive steps were taken that day. Following the constitutional reform preventing military judges from sitting on the bench of the State Security Court, the military judge was replaced at the next hearing by a civilian judge. The first task performed on that occasion was the re-reading of the transcripts of all the previous hearings. The applicant received a prison sentence.

Inadmissible under Article 6(1) – The fact that the military judge had been replaced by a civilian judge during the criminal proceedings was Not in itself sufficient to overcome the institutional problem raised in the instant case (cf. *İmrek v. Turkey* (dec.), N° 57175/00, 28 January 2003). It was necessary to establish that the doubts concerning the regularity of the proceedings as a whole had been sufficiently dispelled by the change in the composition of the bench (see *Öcalan v. Turkey* [GC], judgment of 12 May 2005, Information Note N° 75). According to that judgment, there was a need first to examine the nature of the procedural steps taken in the presence of the military judge, making a distinction between steps of a preliminary nature and those relating to the merits of the case. Next, it was necessary to assess whether those procedural steps relating to the merits had been properly repeated after the military judge had been replaced. In the instant case, unlike the *Öcalan* case, the military judge had not been involved in important interlocutory decisions. The most significant step performed in his presence had been the reading out of the depositions of some of the accused and of the indictment accompanying the case file which had recently been joined. On that occasion, the applicant had challenged the contents of the documents and lodged his defence pleadings, which had been examined during the part of the proceedings following the appointment of the civilian judge. In short, the procedural steps in which the military judge had participated in the instant case had not been such as to require that they be taken afresh by the new bench: manifestly ill-founded.

Article 6(2)

PRESUMPTION OF INNOCENCE
Examining magistrate who compared the accused to two historical serial killers: *admissible*.

PANDY – Belgium (N° 13583/02)
Decision 5.7.2005 [Section I]

In the course of a criminal investigation into the applicant for several counts of murder, the investigating judge made remarks during a public hearing to the effect that the applicant should be comparing himself not with Dreyfus, but with Landru and Dr Petiot (two notorious serial killers). The applicant's request for the judge to be withdrawn was dismissed. The appeal court found that the investigating judge had delivered an objective report on a difficult investigation and that the impugned remarks had been of minimal importance. The applicant was committed for trial before an assize court. The indictment was released to the press by a prosecution service spokesperson, as permitted by the law (the case was the subject of intense media interest), and was served on the applicant the same day, a few weeks ahead of the commencement of the proceedings before the assize court. The applicant was sentenced to life imprisonment for, among other offences, the murder of his two wives and four of his children and the rape and indecent assault of several of his daughters.

Admissible under Article 6(1) and (2) as to the impugned remarks of the investigating judge.

Inadmissible under Article 6 with respect to the release of the indictment to the press. The indictment, in accordance with the legislation in force, had contained a list of the offences of which the applicant stood accused, a description of the facts and the progress of the investigation and, in its final part, a description of the charges on which the assize court was due to deliver judgment some three weeks later. The communication had been aimed solely at informing the public, via the press, of the subject of the forthcoming assize proceedings in a case which had attracted intense media interest: manifestly ill-founded.

ARTICLE 8

PRIVATE AND FAMILY LIFE
Authorities' general attitude, including their repeated failure to put an end to breaches of Roma applicants' rights, perpetuating their feelings of insecurity: *violation.*

MOLDOVAN AND OTHERS (N° 2) – Romania (N° 41138/98 and 64320/01)
Judgment 12.7.2005 [Section II]
(see below, Article 14)

HOME
Authorities' general attitude, including their repeated failure to put an end to breaches of Roma applicants' rights, perpetuating their feelings of insecurity: *violation.*

MOLDOVAN AND OTHERS (N° 2) – Romania (N° 41138/98 and 64320/01)
Judgment 12.7.2005 [Section II]
(see below, Article 14)

ARTICLE 10

FREEDOM OF EXPRESSION
Criticism of an author's work in a local newspaper, and refusal of the newspaper to publish the reply of the author: *inadmissible*.

MELNYCHUK – Ukraine (Nº 28743/03)
Decision 5.7.2005 [Section II]

The applicant is an author whose works were criticised by a local newspaper in two articles which underlined, *inter alia*, the dubious literary and linguistic quality of his books. The applicant sent a reply to the newspaper harshly criticising the person that had written the reviews, who was also a writer. The newspaper rejected to publish his reply. The applicant then instituted proceedings claiming compensation for the material and moral damage caused by the publication of the articles. The courts, at three instances, found against the applicant as the articles had been written in the form of a book review in which the author expressed his personal opinion about the quality of the applicant's literary work. Moreover, the newspaper's refusal to publish the applicant's objections had been justified because the applicant's reply had contained obscene and abusive remarks on the reviewer. The applicant complained that the newspaper's refusal to publish his reply raised an issue under Article 10.

Inadmissible under Article 10: The Court considered that the right of reply, being an important element of freedom of expression, fell within the scope of this provision. However, this article gave no unfettered right to have access to the media. Whilst as a general principle private media should be free to exercise editorial discretion in deciding whether to publish or not letters of private individuals, there could be exceptional circumstances in which a newspaper could legitimately be required to publish a retraction or apology. In the present case, the applicant was able to submit his reply to the newspaper but he went beyond simply replying to the criticism by making obscene and abusive remarks about the critic. Moreover, it appeared that the applicant had been invited to modify his reply but had failed to do so. The applicant also had the opportunity of establishing his right of reply before the domestic courts. The Court had not found any element of arbitrariness in the decisions of the domestic courts. Accordingly, there had been no failure on the part of the authorities to comply with its positive obligation to protect the applicant's freedom of expression and the exercise of his right of reply: manifestly ill-founded.

ARTICLE 13

EFFECTIVE REMEDY
Effectiveness of a new remedy concerning length of judicial proceedings: *no violation*.

KRASUSKI – Poland (Nº 61444/00)
Judgment 14.6.2005 [Section IV]

Facts: In February 1996, the applicant lodged a claim with the courts against a construction company seeking compensation due to the alleged damage caused to his house by this company. The proceedings terminated with a judgment of the Court of Appeal in June 2002.

Law: Article 6(1) – The period to be considered was 6 years and nearly 5 months. The hearings had been held at regular intervals and the only, not inordinate, delays had occurred in connection with the taking of expert evidence. Hence, the authorities had displayed due diligence in handling the applicant's case.
Conclusion: no violation (six votes to one).

Article 13 – Under this provision a remedy is considered "effective" concerning a complaint on length of proceedings if it can be used either to expedite a decision by the courts or provide the litigant with

adequate redress. In the present case, following the entry into force of the 2004 Law on complaints about a breach of the right to a trial within a reasonable time (the so-called "Kudla Law"), the possibility of seeking damages under the relevant article of the Civil Code for such complaints now had an explicit legal basis. The mere doubts which the applicant had concerning the newly created statutory remedy did not absolve him from having recourse to it, and it could not be assumed that the Polish courts would not have given proper effect to the new provision. Hence, the Court considered that from the date of entry into force of the 2004 Act, an action for damages based on the relevant provision of the Civil Code had acquired a sufficient level of certainty to become an "effective remedy".
Conclusion: no violation (unanimously).

ARTICLE 14

DISCRIMINATION (Article 2)
Alleged racist motives in shooting of two Roma fugitives by military police during attempted arrest: *no violation* – Failure to investigate possible racist motives: *violation.*

NACHOVA AND OTHERS – Bulgaria (N^{os} 43577/98 and 43579/98)
Judgment 6.7.2005 [Grand Chamber]
(for the Chamber judgment, see Information Note N^{o} 61).

Facts: Two men of Roma origin, relatives of the applicants, were conscripts serving compulsory military service in an army division dealing with the construction of apartments. They were in detention for repeated absences without leave when they escaped from the construction site where they were confined and took refuge in the house of the grandmother of one of them, situated in a Roma district of a village. Neither of the two was armed. Some days later, a military police unit was informed where they were hiding and dispatched four military police officers, under the command of Major G., to the village. They had instructions to arrest the fugitives using all the means and methods dictated by the circumstances. G. was armed with a handgun and a Kalashnikov automatic rifle. Having noticed the military vehicle in front of their house, the fugitives tried to escape. While running away they were shot by G. after he had given them a warning to stop. Both men died on their way to hospital. One neighbour claimed that several of the policemen had been shooting and that at one stage G. had pointed his gun at him in a brutal manner and had insulted him saying "You damn Gypsies".
The autopsy report found that both men had died from gunfire wounds, fired from an automatic rifle from a distance. Mr Petkov had beens shot in the chest and Mr Angelov in the back. The military investigation report concluded that G. had acted in accordance with the regulations and had tried to save the fugitives' lives by warning them to stop and not shooting at their vital organs. The military prosecutor accepted the conclusions and closed the investigation. The applicants' subsequent appeals were dismissed.

Law: Article 2 of the Convention (substantive aspect) – The deaths of Mr Angelov and Mr Petkov: The Grand Chamber noted as a matter of grave concern that the regulations on the use of firearms by the military police effectively had permitted lethal force to be used when arresting a member of the armed forces for even the most minor offence. Not only had the regulations not been published, they had contained no clear safeguards to prevent the arbitrary deprivation of life. Such a legal framework was fundamentally deficient and fell well short of the level of protection "by law" of the right to life that was required by the Convention in present-day democratic societies in Europe. Accordingly, there had been a general failure by Bulgaria to comply with its obligation under Article 2 to secure the right to life by putting in place an appropriate legal and administrative framework on the use of force and firearms by military police.

The planning and control of the operation: The Grand Chamber endorsed the Chamber's finding that the authorities had failed to comply with their obligation to minimise the risk of loss of life since the arresting officers had been instructed to use all available means to arrest Mr Angelov and Mr Petkov, despite the fact that they were unarmed and posed no danger to life or limb. The absence of a clear legal and

regulatory framework had permitted a team of heavily armed officers to be dispatched to arrest the two men without any prior discussion of the threat, if any, they posed or clear warnings on the need to minimise any risk to life. In short, the manner in which the operation had been planned and controlled betrayed a deplorable disregard for the pre-eminence of the right to life.

The actions of the arresting officers: In the circumstances of the case any resort to potentially lethal force was prohibited by Article 2, regardless of any risk that Mr Angelov and Mr Petkov might escape. In addition, the conduct of Major G., the officer who shot the victims, called for serious criticism in that he had used grossly excessive force. Other means could have been used to arrest the men. Although he also carried a handgun, G. had chosen to use his automatic rifle and switched it to automatic mode making it impossible to take aim with any reasonable degree of precision. Lastly, there was no plausible explanation for the fact that Mr Petkov had been wounded in the chest, and the possibility that he had turned to surrender at the last minute but had nevertheless been shot could not be excluded.
In conclusion, Bulgaria had failed to comply with its obligations under Article 2 in that the relevant legal framework on the use of force was fundamentally flawed and Mr Angelov and Mr Petkov had been killed in circumstances in which any use of firearms to carry out their arrest was incompatible with the said provision. Furthermore, grossly excessive force had been used.
Conclusion: violation (unanimously).

Article 2 of the Convention (procedural aspect) – Whether the investigation was effective: The Grand Chamber agreed with the Chamber that the fact that the investigation had validated the use of force in the circumstances of the case only served to confirm the fundamentally defective nature of the regulations and their disregard of the right to life. The investigating authorities' failure to examine relevant matters in the file meant that there had been no strict scrutiny of all the material circumstances. A number of indispensable and obvious investigative steps had not been taken and the investigating authorities had ignored significant facts without seeking any proper explanation, preferring instead to accept Major G.'s statements and terminate the investigation. The investigator and the prosecutors had thus effectively shielded G. from prosecution. The Grand Chamber endorsed the Chamber's view that such conduct on the part of the authorities – which had already been remarked on by the Court in previous cases against Bulgaria – was a matter of grave concern, as it cast serious doubt on the objectivity and impartiality of the investigators and prosecutors involved. In sum, there had been a violation by Bulgaria of its obligation under Article 2 to investigate the deprivation of life effectively.
Conclusion: violation (unanimously).

Article 13 of the Convention: Like the Chamber, the Grand Chamber found that no separate issue arose under this provision.

Article 14 of the Convention (substantive aspect) – Whether the killings had been racially motivated: The applicants had advanced various arguments which they maintained showed that the killings had been racially motivated. The Grand Chamber did not, however, find them convincing. It noted that the use of firearms in circumstances such as those at issue had regrettably not been prohibited by the relevant domestic regulations. The military police officers carried their automatic rifles "in accordance with the rules" and had been instructed to use all necessary means to carry out the arrest. The possibility that Major G. had simply been adhering strictly to the regulations and would have acted as he did in any similar context, regardless of the ethnicity of the fugitives, could not therefore be excluded. While the relevant regulations were fundamentally flawed and fell well short of the Convention requirements on the protection of the right to life, there was nothing to suggest that G. would not have used his weapon in a non-Roma neighbourhood.
Departing from the Chamber's approach, the Grand Chamber did not consider that the authorities' alleged failure to carry out an effective investigation into the alleged racist motive for the killing should shift the burden of proof to the respondent Government with regard to the alleged violation of Article 14 taken in conjunction with the substantive aspect of Article 2. In sum, the Court did not find it established that racist attitudes had played a role in Mr Angelov's and Mr Petkov's deaths.
Conclusion: no violation of Article 14, taken together with Article 2 (eleven votes to six).

Article 14 of the Convention (procedural aspect) – Whether there had been an adequate investigation into possible racist motives: The investigating authorities had had before them the statement of a neighbour of the victims who said that immediately after the shooting Major G. had shouted: "You damn Gypsies" while pointing a gun at him. That statement, seen against the background of the many published accounts of the existence in Bulgaria of prejudice and hostility against Roma, called for verification. Any evidence of racist verbal abuse having being uttered by law-enforcement agents in an operation involving the use of force against persons from an ethnic or other minority was highly relevant to the question whether or not unlawful, hatred-induced violence had taken place. Where such evidence came to light in the investigation, it had to be verified and – if confirmed – a thorough examination of all the facts had to be undertaken in order to uncover any possible racist motives. Furthermore, the fact that Major G. had used grossly excessive force against two unarmed and non-violent men also called for careful investigation. In sum, the investigator and the prosecutors involved in the case had had before them plausible information sufficient to alert them to the need to carry out an initial verification and, depending on the outcome, an investigation into possible racist overtones in the events that had led to the death of the two men. However, they had done nothing to verify the neighbour's statement, or the reasons it had been considered necessary to use such a degree of force. They had disregarded relevant facts and terminated the investigation, thereby shielding Major G. from prosecution.
It followed that the authorities had failed in their duty under Article 14, taken together with Article 2, to take all possible steps to investigate whether or not discrimination may have played a role in the events.
Conclusion: violation of Article 14, taken together with Article 2 (unanimously).

Article 41: the Grand Chamber upheld the awards to the applicants in the amounts of 25,000 and 22,000 euros, respectively, on all heads of damage. It also made an award for costs.

DISCRIMINATION
Length and result of domestic proceedings brought by Roma villagers following the killing of fellow Roma and the destruction of homes: *violation.*

MOLDOVAN AND OTHERS (N° 2) – Romania (N° 41138/98 and 64320/01)
Judgment 12.7.2005 [Section II]

Facts: The case originally involved 25 applicants, of whom 18 agreed to a friendly settlement of their case (see *Moldovan and Others v. Romania (N° 1)*, judgment of 5 July 2005). In 1993 a row broke out between three Roma men and a non-Roma villager that led to the villager's son, who had tried to intervene, being stabbed in the chest by one of the Roma men. The three Roma men fled to a nearby house. A large, angry crowd gathered outside, including the local police commander and several officers. The house was set on fire. Two of the Roma men managed to escape from the house, but were pursued by the crowd and beaten to death. The third man was prevented from leaving the building and burnt to death. The applicants alleged that the police had encouraged the crowd to destroy more Roma property in the village. By the following day, 13 Roma houses had been completely destroyed including the homes of all seven applicants (in one case, the home of a mother). Much of the applicants' personal property was also destroyed. One applicant alleged that when she had tried to return to her home, rocks had been thrown at her. Another applicant alleged that she had been beaten by police officers who had also sprayed pepper in her face. A further applicant alleged that his pregnant wife had been beaten and that their baby had been born with a brain damage.
The Roma residents of the village lodged a criminal complaint against those allegedly responsible, including six police officers. In 1995 all charges against the police officers were dropped. In 1997 a criminal trial, in conjunction with a civil case for damages, began against 11 villagers before a county court. Various witnesses testified that police officers had instigated the incident and had allowed the three Roma men to be killed and houses to be destroyed. During the trial, all the civilian defendants stated that police officers had encouraged the crowd to set fire to the houses and had undertaken to cover up what had happened. The court established that the villagers, with the authorities' support, had set out to have the village "purged of Gypsies". In its judgment the county court stated, *inter alia*, that the Roma community

had marginalised itself, shown aggressive behaviour and deliberately denied and violated the legal norms acknowledged by society.
Five villagers were convicted of extremely serious murder and 12 villagers, including those five, were convicted of other offences. The court sentenced them to between one and seven years' imprisonment. The appellate court convicted a sixth villager of extremely serious murder and increased the sentence of one of the defendants; the other defendants had their sentences reduced. In November 1999 the Supreme Court upheld the convictions for the destruction of property but reduced the charge of extremely serious murder to one of serious murder for three of the defendants. In 2000 two of the convicted villagers received a presidential pardon.
The Romanian Government subsequently allocated funds for the reconstruction of the destroyed or damaged houses. Eight were reconstructed, though the applicants submitted photographs showing that those houses were uninhabitable, with large gaps between the windows and the walls and incomplete roofs. Three houses had not been rebuilt, including those belonging to two of the applicants. According to an expert report submitted by the Government, two applicants' houses had not been repaired, whereas two further applicants' houses had been rebuilt, but remained unfinished.
The applicants submitted that, following the 1993 events, they had been forced to live in hen-houses, pigsties, windowless cellars or in extremely cold and over-crowded conditions, which had lasted for several years and in some cases were still continuing. As a result, many applicants and their families fell seriously ill.
The regional court awarded the applicants pecuniary damage in relation to the houses destroyed in amounts ranging from EUR 17 to EUR 3,745. The widow of one of the deceased victims was awarded only half the minimum amount applicable as a maintenance allowance for her child on the ground that the deceased had provoked the crimes committed. Finally, the court rejected all applicants' requests for non-pecuniary damages. In 2004, however, the court of appeal awarded six of the applicants compensation for non-pecuniary damage, ranging from EUR 575 to EUR 2,880.

Law – Article 8*:* The Court could not examine the complaints about the destruction of houses and possessions or the applicant's alleged expulsion from their village as those events had taken place before the ratification of the Convention by Romania in 1994. However, it was clear from the evidence submitted by the applicants as well as from the civil court judgments that police officers had been involved in the burning of the Roma houses and had tried to cover up the incident. Having been hounded from their village and homes, the applicants had been obliged to live, and some of them still were still living, in crowded and unsuitable conditions and had been obliged to move in with friends or family, causing severe overcrowding. Having regard to the direct repercussions of the acts of State agents on the applicants' rights, the Government's responsibility was engaged with regard to the applicants' living conditions. The question of those conditions fell within the scope of the applicants' right to respect for their family and private life as well as for their homes.
Despite the involvement of State agents in the burning of the applicants' houses the Public Prosecutors' Office had failed to institute criminal proceedings against them, preventing the domestic courts from establishing the responsibility of those officials and punishing them; the domestic courts had refused for many years to award pecuniary damages for the destruction of the applicants' belongings and furniture; only ten years after the events had compensation been awarded for the destroyed houses, though not for the loss of belongings; in the judgment in the criminal case against the accused villagers, discriminatory remarks about the applicants' Roma origin had been made; the applicants' requests for non-pecuniary damages had been rejected at first instance; the regional court had decided to award only half of the maintenance allowance for a widow's minor child on the ground that the deceased victims had provoked the crimes; three houses had not been rebuilt by the authorities and those which supposedly had been rebuilt remained uninhabitable; most of the applicants had not returned to their village and were scattered throughout Romania and Europe. Those elements taken together indicated a general attitude on the part of the Romanian authorities which had perpetuated the applicants' feelings of insecurity after June 1994 and affected their rights to respect for their private and family life and their homes. That attitude, and the repeated failure of the authorities to put a stop to breaches of the applicants' rights, amounted to a serious violation of Article 8 of a continuing nature.
Conclusion: violation (unanimously).

Article 3*:* The applicants' living conditions over the last ten years, and its detrimental effect on their health and well-being, combined with the length of the period during which they had had to live in such conditions and the general attitude of the authorities, must have caused them considerable mental suffering, thus diminishing their human dignity and arousing in them feelings of humiliation and debasement. In addition, the remarks concerning the applicants' honesty and way of life made by some authorities dealing with the case appeared to be purely discriminatory. As discrimination based on race could of itself amount to degrading treatment within the meaning of Article 3 such remarks should be taken into account as an aggravating factor in the examination of the applicants' complaint under that provision. The applicants' living conditions and the racial discrimination to which they had been publicly subjected by the way in which their grievances had been dealt with by the various authorities, had constituted an interference with their human dignity which, in the special circumstances of the case, had amounted to "degrading treatment" within the meaning of Article 3.
Conclusion: violation (unanimously).

Article 6 § 1 – *Access to court:* It had not been shown that it had been possible for the applicants to bring an effective civil action for damages against the police officers in the particular circumstances of the case. The Court was not therefore able to determine whether the domestic courts would have been able to adjudicate on the applicants' claims had they, for example, brought a tort action against individual members of the police. However, the applicants lodged a civil action against the civilians who had been found guilty by the criminal court, claiming compensation for the destruction of their homes. That claim was successful and effective, the applicants having been granted compensation. In those circumstances, the Court considered that the applicants could not claim an additional right to a separate civil action against the police officers allegedly involved in the same incident.
Conclusion: no violation (five votes to two).

Right to a fair hearing within a reasonable time: The period under consideration had lasted more than 11 years.
Conclusion: violation (unanimously).

Article 14*:* The attacks were directed against the applicants because of their Roma origin. Whilst not able to examine the actual burning of the applicants' houses and the killings, the Court observed that the applicants' Roma ethnicity appeared to have been decisive for the length and the result of the domestic proceedings. It took particular note of the repeated discriminatory remarks made by the authorities throughout the whole case and their blank refusal until 2004 to award non-pecuniary damages for the destruction of the family homes. The Romanian Government had provided no justification for the difference in treatment of the applicants.
Conclusion: violation of Article 14 taken in conjunction with Articles 6 and 8 (unanimously).

Article 41*:* The Court awarded each applicant compensation for pecuniary and non-pecuniary damage in global amounts ranging from 11,000 to 95,000 euros.

ARTICLE 38

Article 38(1)(a)

FURNISH ALL NECESSARY FACILITIES
Omission of the Government to furnish pieces of evidence in its possession, and non-appearance before the Court delegates of two State agents: *failure to fulfil obligations*.

TANIŞ AND OTHERS – Turkey (N° 65899/01)
Judgment 2.8.2005 [Section IV]
(see Article 2, above)

ARTICLE 1 OF PROCOTOL Nº 1

POSSESSIONS
Impossibility under relevant legislation for a grandchild to inherit grandparents' estate as his parent was still alive: *struck out*.

TWGS – United Kingdom (Nº 5385/02)
Decision 5.7.2005 [Section IV]

The applicant's father murdered his parents (the applicant's grandparents) and was imprisoned. Due to a rule of public policy, the applicant's father ceased to qualify to inherit his parents' estate, which amounted to 360,540 pounds sterling (GBP). The applicant instituted proceedings claiming that the estates of his grandparents be devolved on him or that the estate was devolved on the Crown as *bona vacantia*. The High Court ruled that the estate be devolved on the applicant's great aunt (his grandfather's sibling) because the relevant legislation stated that a grandchild could Not inherit while the parent was still alive. The applicant's appeal to the Court of Appeal was rejected. His complaints to the Court under Article 1 of Protocol Nº 1 and Article 8, both alone and in conjunction with Article 14, were communicated to the Government. By letters of 8 June 2005 the parties notified the Court that they had reached a friendly settlement on the basis of a payment to the applicant of GBP 150,000, plus GBP 15,000 for legal costs: struck out of the list.

DEPRIVATION OF PROPERTY
Applicants' property sold by the State before judge had decided on the ongoing dispute concerning the person entitled to the right of ownership: *violation*.

STRĂIN AND OTHERS – Romania (Nº 57001/00)
Judgment 21.7.2005 [Section III]

Facts: The applicants' house was nationalised in 1950 and converted into four flats to be let out. The applicants brought an action for recovery of possession of the house in 1993, arguing that the nationalisation had been unlawful. While the proceedings were still pending, the tenants indicated that they wished to purchase the flats. Having been informed that an action for recovery of possession was pending, the State-owned company which managed the property refused the offers to purchase with one exception, selling the flat in question to an internationally renowned football player. At the close of the proceedings the domestic judge held that the nationalisation of the property had been unlawful and that the applicants therefore continued to be the lawful owners of the entire property. However, the judge dismissed the action for recovery of possession of the flat sold by the State, finding that the sale had been valid.

Law: Article 1 of Protocol Nº 1 – The applicants had been the owners of "possessions": their right of ownership, including ownership of the flat sold during the proceedings, had been recognised retrospectively, and was irrevocable. The fact that the applicants' ownership rights over all the apartments had been recognised, but their application to recover possession of one of the apartments had been refused, had amounted to a deprivation of property. While the interference with their rights had been designed to protect the rights of the purchaser acting in good faith, having regard to the principle of legal certainty, there was no provision under domestic law for property owners to be paid compensation in such cases. The respondent Government, however, had not cited any exceptional circumstances justifying the total lack of compensation. Furthermore, the State had sold the property despite the fact that the applicants had brought an action against it on the ground that the nationalisation had been wrongful, and despite its refusal to sell the other flats in the same building. Such conduct could not be justified on any public-interest grounds, whether of a political, social or financial nature, or in the interests of society as a whole. Not only had it given rise to discrimination between the various tenants wishing to purchase their flats, it had also been likely to undermine the effectiveness of the courts to which the applicants had applied for

protection of the property rights they claimed in respect of the building in question. Given the manner in which the taking of their property had interfered with the fundamental principles of non-discrimination and the rule of law which underpinned the Convention, the total lack of compensation meant that the applicants had had to bear a disproportionate and excessive burden.
Conclusion: violation (six votes to one).

Article 41 – The Court held that, if it did not return the property, the Government would have to pay the applicants a sum corresponding to its current value. The Court made awards in respect of non-pecuniary damage and costs and expenses.

CONTROL OF THE USE OF PROPERTY
Fishing prohibitions allegedly violating property rights: *no violation.*

ALATULKKILA AND OTHERS – Finland (N° 33538/96)
Judgment 28.7.2005 [Section III]
See Article 6 § 1 [civil], above.

ARTICLE 1 OF PROCOTOL N° 6

ABOLITION OF THE DEATH PENALTY
Extradition to Syria of an applicant who alleged risk of facing the death penalty if returned: *inadmissible*.

AL-SHARI AND OTHERS – Italy (N° 57/03)
Decision 5.7.2005 [Section III]

The first applicant, a Syrian national, left Syria in 1982 after being charged with belonging to an illegal Islamic group, membership of which exposed him to the death penalty. He took refuge in Iraq. In 2002 he arrived with his wife and children, also Syrian nationals, at Milan airport carrying false identity papers. The family was placed in a holding area in the airport pending deportation. Five days later, they were deported to Syria. The first applicant was arrested and imprisoned and subsequently released. He complained that criminal proceedings had been brought against him for membership of the aforementioned illegal Islamic group and for carrying a false passport.

Inadmissible under Article 1 of Protocol N° 6: Where there were substantial and proven grounds for believing that an individual ran a real risk of being subjected to the death penalty in violation of Article 1 of Protocol N° 6 if returned to the country in question, the authorities would be obliged under that provision not to extradite the person to that country. However, anyone claiming to face such a risk, if he or she was extradited to a particular country, had to substantiate such a claim by means of prima facie evidence. In the instant case, it had not been proved that the applicants had told the Italian authorities that they wished to apply for refugee status or, most importantly, that they had expressed fears at any point that the first applicant faced the death sentence if he was deported to Syria. After returning to Syria, the applicants had not provided any factual evidence - relating to the period before or after their return - suggesting that there was a real risk to the life of the first applicant. Regarding the criminal proceedings against the first applicant in Syria, the applicants had given no indication as to the charges he faced or the risks referred to. Consequently, it had not been proved that Italy had failed to fulfil its obligations under Article 1 of Protocol N° 6: manifestly ill-founded.
The applicants complained under Article 3 about the decision to deport them, referring to the risk of being subjected to torture or inhuman or degrading treatment in Syria and to the conditions in which they had been held in the holding area of Milan airport. They further complained under Article 13 about the procedure for requesting asylum before the Italian authorities and the lack of any opportunity to challenge the decision to deport them: manifestly ill-founded.

Other judgments delivered in July-August

Lomaseita Oy and others - Finland (Nº 45029/98), 5 July 2005 [Section IV]
Uner - Netherlands (Nº 46410/99), 5 July 2005 [Section II (former)]
Exel - Czech Republic (Nº 48962/99), 5 July 2005 [Section II]
Ivanoff - Finland (Nº 48999/99), 5 July 2005 [Section IV] (friendly settlement)
S.B. and H.T. - Turkey (Nº 54430/00), 5 July 2005 [Section II]
Marie-Louise Loyen - France (Nº 55929/00), 5 July 2005 [Section II]
Krumpel and Krumpelova - Slovakia (Nº 56195/00), 5 July 2005 [Section IV]
Agrotehservis - Ukraine (Nº 62608/00), 5 July 2005 [Section II]
Moldovan and others - Romania (Nº 1) (Nº 41138/98 and Nº 64320/01), 5 July 2005 [Section II (former)]
Colin - France (Nº 75866/01), 5 July 2005 [Section II]
Osvath - Hungary (Nº 20723/02), 5 July 2005 [Section II]
Geyer - Austria (Nº 69162/01), 7 July 2005 [Section III]
Mihajlovic - Croatia (Nº 21752/02), 7 July 2005 [Section I]
Malinovskiy - Russia (Nº 41302/02), 7 July 2005 [Section I]
Shpakovskiy - Russia (Nº 41307/02), 7 July 2005 [Section I]
Soner Onder - Turkey (Nº 39813/98), 12 July 2005 [Section II]
Guneri and others - Turkey (Nº 42853/98, Nº 43609/98 and Nº 44291/98), 12 July 2005 [Section II]
Jonasson - Sweden (Nº 59403/00), 12 July 2005 [Section II] (friendly settlement)
Muslum Gunduz - Turkey (Nº 2) (Nº 59997/00), 12 July 2005 [Section II]
Solodyuk - Russia (Nº 67099/01), 12 July 2005 [Section IV]
Contardi - Switzerland (Nº 7020/02), 12 July 2005 [Section IV]
Munari - Switzerland (Nº 7957/02), 12 July 2005 [Section IV]
Asenov - Bulgaria (Nº 42026/98), 15 July 2005 [Section I]
De Landsheer - Belgium (Nº 50575/99), 15 July 2005 [Section I]
Leroy - Belgium (Nº 52098/99), 15 July 2005 [Section I]
Yesiltas and Kaya - Turkey (Nº 52162/99), 15 July 2005 [Section III]
Kececi - Turkey (Nº 52701/99 and Nº 53486/99), 15 July 2005 [Section III]
Caplik - Turkey (Nº 57019/00), 15 July 2005 [Section III]
Mehmet Salih Aslan - Turkey (Nº 59237/00), 15 July 2005 [Section III]
Mehmet Celik - Turkey (Nº 61650/00), 15 July 2005 [Section III]
Feyyaz Yilmaz - Turkey (Nº 62319/00), 15 July 2005 [Section III]
Capone - Italy (Nº 62592/00), 15 July 2005 [Section I]
La Rosa and others - Italy (Nº 63240/00), 15 July 2005 [Section I]
Donati - Italy (Nº 63242/00), 15 July 2005 [Section I]
La Rosa and others - Italy (Nº 63285/00), 15 July 2005 [Section I]
Carletta - Italy (Nº 63861/00), 15 July 2005 [Section I]
Colacrai - Italy (Nº 2) (Nº 63868/00), 15 July 2005 [Section I]
Nastou - Greece (Nº 16163/02), 15 July 2005 [Section I]
Yilmaz and Gumus - Turkey (Nº 28167/02), 15 July 2005 [Section III]
Kurucu - Turkey (Nº 28174/02), 15 July 2005 [Section III]
Kahveci - Turkey (Nº 853/03), 15 July 2005 [Section III]
Seynep Sahin - Turkey (Nº 2203/03), 15 July 2005 [Section III]
Salih Kaplan - Turkey (Nº 6071/03), 15 July 2005 [Section III]
Salih Kaplan - Turkey (Nº 2) (Nº 6073/03), 15 July 2005 [Section III]
Cafer Kaplan - Turkey (Nº 6759/03), 15 July 2005 [Section III]
P.M. - United Kingdom (Nº 6638/03), 19 July 2005 [Section IV]
Reyhan - Turkey (Nº 38422/97), 21 July 2005 [Section III]
Pembe and others - Turkey (Nº 49398/99), 21 July 2005 [Section III]
Yildiz and others - Turkey (Nº 52164/99), 21 July 2005 [Section III]

Mihailov - Bulgaria (Nº 52367/99), 21 July 2005 [Section I]
Karabas - Turkey (Nº 52691/99), 21 July 2005 [Section III]
Levent Can Yilmaz - Turkey (Nº 53497/99), 21 July 2005 [Section III]
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Desrues - France (Nº 77098/01), 21 July 2005 [Section I]
Gerasimova - Russia (Nº 24077/02), 21 July 2005 [Section I]
Fadil Yilmaz - Turkey (Nº 28171/02), 21 July 2005 [Section III]
Mustafa and Mehmet Toprak - Turkey (Nº 28176/02), 21 July 2005 [Section III]
Mustafa Toprak - Turkey (Nº 1) (Nº 28177/02), 21 July 2005 [Section III]
Mustafa Toprak - Turkey (Nº 2) (Nº 28178/02), 21 July 2005 [Section III]
Mehmet Yigit - Turkey (Nº 2) (Nº 28182/02), 21 July 2005 [Section III]
Huseyin Yigit - Turkey (Nº 28183/02), 21 July 2005 [Section III]
Mehmet Yigit - Turkey (Nº 3) (Nº 28184/02), 21 July 2005 [Section III]
Mehmet Yigit - Turkey (Nº 4) (Nº 28185/02), 21 July 2005 [Section III]
Salih Yigit - Turkey (Nº 1) (Nº 28186/02), 21 July 2005 [Section III]
Salih Yigit - Turkey (Nº 2) (Nº 28187/02), 21 July 2005 [Section III]
Mehmet Yigit - Turkey (Nº 5) (Nº 28188/02), 21 July 2005 [Section III]
Kendirci - Turkey (Nº 28190/02), 21 July 2005 [Section III]
Seyit Ahmet Ozdemir and others - Turkey (Nº 28192/02), 21 July 2005 [Section III]
Yavorivskaya - Russia (Nº 34687/02), 21 July 2005 [Section I]
Amassoglou - Greece (Nº 40775/02), 21 July 2005 [Section I]
Grinberg - Russia (Nº 23472/03), 21 July 2005 [Section I]
Atmatzidi - Greece (Nº 2895/03), 21 July 2005 [Section I]
Podbielski and PPU Polpure - Poland (Nº 39199/98), 26 July 2005 [Section IV]
Mild and Virtanen - Finland (Nº 39481/98 and Nº 40227/98), 26 July 2005 [Section IV]
Dost and others - Turkey (Nº 45712/99), 26.7.2005 [Section IV]
Kniat - Poland (Nº 71731/01), 26 July 2005 [Section IV]
Jedamski and Jedamska - Poland (Nº 73547/01), 26 July 2005 [Section IV]
Mezotur-Tiszazugi Vizgazdalkodasi Tarsulat - Hungary (Nº 5503/02), 26 July 2005 [Section II]
Chernyayev - Ukraine (Nº 15366/03), 26 July 2005 [Section II]
Scutari - Moldova (Nº 20864/03), 26 July 2005 [Section IV]
Von Hannover - Germany (Nº 59320/00), 28 July 2004 [Section III (former)] (just satisfaction - friendly settlement)
Rosenzweig and Bonded Warehouses Ltd. - Poland (Nº 51728/99), 28 July 2005 [Section III]
Cima - Italy (Nº 55161/00), 28 July 2005 [Section III]
Molteni and Ghisi - Italy (Nº 67911/01), 28 July 2005 [Section III]
Stornelli and others - Italy (Nº 68706/01), 28 July 2005 [Section III]
Gamberini Mongenet - Italy (Nº 68707/01), 28 July 2005 [Section III]
SciortiNº - Italy (Nº 69834/01), 28 July 2005 [Section III]
Czarnecki - Poland (Nº 75112/01), 28 July 2005 [Section III]
Kolu - Turkey (Nº 35811/97), 2 August 2005 [Section IV]
Tas and others - Turkey (Nº 46085/99), 2 August 2005 [Section II]
Karapinar - Turkey (Nº 49394/99), 2 August 2005 [Section II]
Onder and Zeydan - Turkey (Nº 53918/00), 2 August 2005 [Section IV]
Zeciri - Italy (Nº 55764/00), 4 August 2005 [Section III]
Ouattara - France (Nº 57470/00), 2 August 2005 [Section II]
Ozdemir - Turkey (Nº 61441/00), 2 August 2005 [Section IV]
Dattel - Luxemburg (Nº 13130/02), 4 August 2005 [Section I]
Agatianos - Greece (Nº 16945/02), 4 August 2005 [Section I]
Loumidis - Greece (Nº 19731/02), 4 August 2005 [Section I]
Ioannidis - Greece (Nº 5072/03), 4 August 2005 [Section I]
Vozinos - Greece (Nº 5076/03), 4 August 2005 [Section I]

Gavalas - Greece (Nº 5077/03), 4 August 2005 [Section I]
Spyropoulos - Greece (Nº 5081/03), 4 August 2005 [Section I]
Tsaras - Greece (Nº 5085/03), 4 August 2005 [Section I]
Koutrouba - Greece (Nº 27302/03), 4 August 2005 [Section I]

Referral to the Grand Chamber

Article 43(2)

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

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

The case concerns the impossibility for the applicant to recover property or obtaining adequate rent from her tenants. Having regard, in particular, to the consequences which the operation of the rent-control scheme in question had entailed for the exercise of the applicant's right to the peaceful enjoyment of her possessions, a Chamber of the Court held that the authorities had imposed a disproportionate and excessive burden on her. The applicant's case had been chosen by the Court as a pilot case for determining the compatibility with the Convention of a rent-control scheme affecting some 100,000 landlords. The scheme originated in laws adopted under the former communist regime and imposed a number of restrictions on landlords' rights such as a very low ceiling on rent levels.

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)

Monory - Romania and Hungary (N° 71099/01)
Kimran - Turkey (N° 61440/00)
Ali Hidir Polat - Turkey (N° 61446/00)
Varanitsa - Ukraine (N° 14397/02)
Katsyuk - Ukraine (N° 58928/00)
Afanasyev - Ukraine (N° 38722/02)
Zichy Galeria - Hungary (N° 66019/01)
Judgments 5.4.2005 [Section II]

Volkova - Russia (N° 48758/99)
Judgment 5.4.2005 [Section IV]

Calleja - Malta (N° 75274/01)
Alija - Greece (N° 73717/01)
Jarnevic and Profit - Greece (N° 28338/02)
Dimitrellos - Greece (N° 75483/01)
Makris - Greece (N° 43841/02)
Jancikova - Austria (N° 56483/00)
Judgments 7.4.2005 [Section I]

Karalevicius - Lithuania (N° 53254/99)
Uzkureliene and others - Lithuania (N° 62988/00)
Rainys and Gasparavicius - Lithuania (Nos. 70665/01 and 74345/01)
Dragne and others - Romania (N° 78047/01)
Judgments 7.4.2005 [Section III]

Herbst et al. - Czech Republic (N° 232853/03)
Erturk - Turkey (N° 15259/02)
Judgments 12.4.2005 [Section II]

Whitfield et al. - United Kingdom (Nos. 46387/99, 48906/99, 57410/00 and 57419/00)
Judgment 12.4.2005 [Section IV]

Tore - Turkey (N° 48095/99)
Hattatoglu - Turkey (N° 48719/99)
Judgments 14.4.2005 [Section III]

Sharko - Ukraine (N° 72686/01)
Dolgov - Ukraine (N° 72704/01)
Shcherbakov - Ukraine (N° 75786/01)
Piryanik - Ukraine (N° 75788/01)
Nazarchuk - Ukraine (N° 9670/02)
Judgments 19.4.2005 [Section II]

Lo Tufo - Italy (N° 64663/01)
Judgment 21.4.2005 [Section I]

Koroniotis - Germany (s/o) (N° 66046/01)
Yuusuf - Netherlands (s/o) (N° 42620/02)
Judgments 21.4.2005 [Section III]

Plastarias - Greece (N° 5038/03)
Kollias - Greece Nn° 5957/03)
Koufougiannis - Greece (N° 5967/03)
Kabetsis - Greece (N° 5973/03)
Tsamou - Greece (N° 9673/03)
Basoukou - Greece (N° 3028/03)
Sflomos - Greece (N° 3257/03)
Judgments 21.4.2005 [Section I]

Muslim - Turkey (N° 53566/99)
Demir+Democracy Party - Turkey (N° 39210/98 and N° 39974/98)
Judgments 26.4.2005 [Section IV]

Parsil - Turkey (N° 39465/98)
Ozdes - Turkey (N° 42752/98)
Chodecki - Poland (N° 49929/99)
Mehmet Ozel - Turkey (N° 50913/99)
Balcik - Turkey (N° 63878/00)
Falakaoglu - Turkey (N° 77365)
Duveau - France (s/o) (N° 77403/01)
Sokur - Ukraine (N° 29439/02)
Judgments 26.4.2005 [Section II]

I.D. - Bulgaria (N° 43578/98)
Kolev - Bulgaria (N° 50326/99)
De Staerke - Belgium (N° 51788/99)
Urukalo and Nemet - Croatia (N° 26886/02)
Judgments 28.4.2005 [Section I]

Albina - Romania (N° 57808/00)
A.L. - Germany (N° 72758/01)
Buck - Germany (N° 41604/98)
Judgments 28.4.2005 [Section III]

Hadjidjanis - Greece (N° 72030/01)
Korre - Greece (N° 37249/02)
Kolybiri - Greece (N° 43863/02)
Dumont - Belgium (N° 49525/99)
Robyns de Schneidauer - Belgium (N° 50236/99)
Reyntiens - Belgium (N° 52112/99)
Judgments 28.4.2005 [Section I]

Vasilenkov - Ukraine (N° 19872/02)
Demchenko - Ukraine (N° 35282/02)
Grishechkin et al. - Ukraine (N° 26131/02)
Strannikov - Ukraine (N° 49430/99)
Judgments 3.5.2005 [Section II]

Eko-Energie - Czech Republic (N° 65191/01)
Guez - France (N° 70034/01)
Chizhov - Ukraine (N° 6962/02)
Judgments 17.5.2005 [Section II]

Mazgutova - Slovakia (N° 65998/01)
Z.M. and K.P. - Slovakia (N° 50232/99)
Judgments 17.5.2005 [Section IV]

Vigroux - France (N° 62034/00)
Le Duigou - France (N° 61139/00)
Stamos - Greece (N° 14127/03)
Diamantides - Greece (N° 2) (N° 71563/01)
Makedonopoulos - Greece (N° 16106/03)
Moisidis - Greece (N° 16109/03)
Manolis - Greece (N° 2216/03)
Kaggali - Greece (N° 9733/03)
Judgments 19.5.2005 [Section I]

M.O. - Turkey (N° 26136/95)
Turhan - Turkey (N° 48176/99)
Tore - Turkey (N° 50744/99)
Steck-Risch - Liechtenstein (N° 63151/00)
Judgments 19.5.2005 [Section III]

Suheyla Aydin - Turkey (N° 25660/94)
Ozden - Turkey (N° 42141/98)
Eksinozlugil - Turkey (N° 42667/98)
Tiryakioglu - Turkey (N° 45436/99)
Buzescu - Romania (N° 61302/00)
Tunc - Turkey (N° 54040/00)
Berkouche - France (N° 71047/01)
Rimskokatolicka - Czech Republic (N° 65196/01)
Dereci - Turkey (N° 77845/01)
Judgments 24.5.2005 [Section II]

Dumbraveanu - Moldova (N° 20940/03)
Sildedzis - Poland (N° 45214/99)
Judgments 24.5.2005 [Section IV]

Debelic - Croatia (N° 2448/03)
Peic - Croatia (N° 16787/02)
Zadro - Croatia (N° 25410/02)
Judgments 26.5.2005 [Section I]

Costin - Romania (N° 57810/00)
Judgment 26.5.2005 [Section III]

I.R.S. - Turkey (j/s) (N° 26338/95)
Vetter - France (N° 59842/00)
Gultekin - Turkey (N° 52941/99)
Kayatepe - Turkey (N° 57375/00)
Acunbay - Turkey (N° 61442/00 and 61445/00)
Dinler - Turkey (N° 61443/00)
Judgments 31.5.2005 [Section II]

Dumont-Maliverg - France (N° 57547/00 and 68591/01)
T.K. and S.E. - Finland (N° 38581/97)
Judgments 31.5.2005 [Section IV]

Article 44(2)(c)

On 6 July 2005 the Panel of the Grand Chamber rejected requests for referral of the following judgments, which have consequently become final:

Mayzit - Russia (N° 63378/00)
Judgment 20.1.2005 [Section I]
(see Information Note N° 71)

Crowther - United Kingdom (N° 53741/00)
Judgment 1.2.2005 [Section IV]

Partidul Comunistilor - Roumanie (N° 46626/99)
Judgment 3.2.2005 [Section III]
(see Information Note N° 72)

Lacas - France (N° 74587/01)
Judgment 8.2.2005 [Section II]

Andrianesis - Greece (N° 21824/02)
Judgment 10.2.2005 [Section I]

K.A. and A.D. - Belgium (N° 42758/98)
Judgment 17.2.2005 [Section I]
(see Information Note N° 72)

Kallitsis (N° 2) - Greece (N° 38688/02)
Judgment 17.2.2005 [Section I]

Khashiyev and Akayeva - Russia (N° 57942/00)
Isayeva and others - Russia (N° 57947/00)
Isayeva - Russia (N° 57950/00)
Poznakhirina - Russia (N° 25964/02)
Judgments 24.2.2005 [Section I]
(see Information Note N° 72)

Budmet Sp.Z.O. - Poland (N° 31445/96)
Judgment 24.2.2005 [Section III]

Jankauskas - Lithuania (N° 59304/00)
Judgment 24.2.2005 [Section III]

Meriakri - Moldova (striking out) (N° 53487/99)
Judgment 1.3.2005 [Section IV]
(see Information Note N° 73)

Lloyd et al. - United Kingdom (N° 29798/96)
Beet et al. - United Kingdom (N° 47676/99)
Judgments 1.3.2005 [Section IV]

Yakovlev - Russia (N° 72701/01)
Judgment 15.3.2005 [Section IV]

Goffi - Italy (N° 55984/00)
Judgment 24.3.2005 [Section III]

F.W. - France (N° 61517/00)
Judgment 31.3.2005 [Section I]

Statistical information[1]

Judgments delivered	July	2005
Grand Chamber	1(2)	5(8)
Section I	24	183(190)
Section II	17(20)	145(149)
Section III	44(45)	104(106)
Section IV	14(15)	95(143)
former Sections	5(7)	23(25)
Total	**105(113)**	**555(621)**

Judgments delivered	August	2005
Grand Chamber	0	5(8)
Section I	9	192(199)
Section II	3	148(152)
Section III	2(3)	106(109)
Section IV	4	99(147)
former Sections	0	23(25)
Total	**18(19)**	**573(640)**

Judgments delivered in July 2005					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	1(2)	0	0	0	1(2)
Section I	24	0	0	0	24
Section II	16(19)	1	0	0	17(20)
Section III	44(45)	0	0	0	44(45)
Section IV	13(14)	1	0	0	14(15)
Former Section II	3(4)	1(2)	0	0	4(6)
Former Section III	0	0	0	1	1
Total	**101(108)**	**3(4)**	**0**	**1**	**105(113)**

Judgments delivered in August 2005					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	0	0	0	0	0
Section I	9	0	0	0	9
Section II	3	0	0	0	3
Section III	2(3)	0	0	0	2(3)
Section IV	4	0	0	0	4
Total	**18(19)**	**0**	**0**	**0**	**18(19)**

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

Judgments delivered in 2005					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	5(8)	0	0	0	5(8)
former Section I	6	0	0	1	7
former Section II	6(7)	1(2)	0	0	7(9)
former Section III	8	0	0	0	8
former Section IV	0	0	0	1	1
Section I	186(193)	4	2	0	192(199)
Section II	133(136)	11(12)	3	1	148(152)
Section III	94(97)	7	3	2	106(109)
Section IV	93(141)	3	2	1	99(147)
Total	**531(596)**	**26(28)**	**10**	**6**	**573(640)**

Decisions adopted		**July**	**2005**
I. Applications declared admissible			
Grand Chamber		0	0
Section I		10	170(172)
Section II		8	130(135)
Section III		4(5)	114(120)
Section IV		6	70(74)
Total		**29**	**484(501)**
II. Applications declared inadmissible			
Grand Chamber		1	2(4)
Section I	- Chamber	1	45(46)
	- Committee	400	3683
Section II	- Chamber	2	50
	- Committee	159	2915
Section III	- Chamber	3	53
	- Committee	419	3158
Section IV	- Chamber	6	90(93)
	- Committee	179	3160
Total		**1171**	**13156(13162)**
III. Applications struck off			
Section I	- Chamber	0	32
	- Committee	5	39
Section II	- Chamber	10	46
	- Committee	9	51
Section III	- Chamber	0	17
	- Committee	5	81
Section IV	- Chamber	3	28
	- Committee	1	67
Total		**33**	**361**
Total number of decisions[1]		**1233**	**14001(14024)**

1. Not including partial decisions.

Applications communicated	July	2005
Section I	14	313
Section II	36	529
Section III	20	266
Section IV	24	180(181)
Total number of applications communicated	**94**	**1288(1289)**

Decisions adopted		August	2005
I. Applications declared admissible			
Grand Chamber		0	0
Section I		6	176(178)
Section II		24	154(159)
Section III		0	114(120)
Section IV		3	73(77)
Total		**33**	**517(534)**
II. Applications declared inadmissible			
Grand Chamber		0	2(4)
Section I	- Chamber	1	46(47)
	- Committee	0	3683
Section II	- Chamber	3	53
	- Committee	172	3087
Section III	- Chamber	0	53
	- Committee	87	3245
Section IV	- Chamber	8	98(101)
	- Committee	92	3252
Total		**363**	**13519(13525)**
III. Applications struck off			
Section I	- Chamber	2	34
	- Committee	0	39
Section II	- Chamber	3	49
	- Committee	1	52
Section III	- Chamber	0	17
	- Committee	2	83
Section IV	- Chamber	5	33
	- Committee	0	67
Total		**13**	**375**
Total number of decisions[1]		**409**	**14410(14443)**

1. Not including partial decisions.

Applications communicated	August	2005
Section I	19	332
Section II	64	577
Section III	0	266
Section IV	42	223
Total number of applications communicated	**125**	**1398**

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	:	N° 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 N° 1

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

Protocol N° 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 N° 6

Article 1	:	Abolition of the death penalty

Protocol N° 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