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

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

CONTENTS

Note: Summaries of the Court's judgments in the cases of Sidabras and Dziautas v. Lithuania and Slimani v. France will be included in Case-law report No. 67 (August/September).

ARTICLE 1

JURISDICTION OF STATES
Responsibility of Russia in respect of acts of the "Moldavian Republic of Transdniestria".

ILAŞCU and others - Moldova and Russia (Nº 48787/99)
Judgment 8.7.2004 [Grand Chamber]

Facts: Following the dissolution of the Soviet Union, the Moldovan Parliament adopted a declaration of independence in 1991. Separatists in the Transdniestrian region of Moldova had already proclaimed the "Moldavian Republic of Transdniestria" (MRT), which has not been recognised by the international community. Violent clashes broke out, during which the separatists obtained weapons from troops of the Soviet Union (subsequently the Russian Federation) which had remained in Moldovan territory, some of whom joined the separatists. In July 1992 a ceasefire agreement was reached between Moldova and the Russian Federation, providing for the withdrawal of the two sides and the creation of a security zone. A further agreement providing for the withdrawal of Russian troops was signed in 1994 but was never ratified by the Russian Federation. In 1997 the President of Moldova and the President of the MRT signed a memorandum laying down the basis for the normalisation of relations. Since then, further negotiations have taken place.
The four applicants were arrested in June 1992 and accused of anti-Soviet activities, fighting by illegal means against the State of Transdniestria and other offences, including murder. They were ill-treated while in custody. Three of them were taken to the garrison of the Russian army, where they claim they were guarded and tortured by soldiers of that army. They had no access to the outside world and were held in cells which had no toilets, water or natural light, with only 15 minutes of outdoor exercise each day. The applicants were subsequently held at a police headquarters. The cells had no natural light and the applicants were not permitted to send or receive mail, had no access to a lawyer and received family visits only on a discretionary basis. The applicants were convicted in December 1993 by the Supreme Court of the MRT, which sentenced the first applicant to death and the others to lengthy terms of imprisonment. The Supreme Court of Moldova examined the judgment of its own motion and quashed it, ordering the applicants' release, but the MRT authorities did not respond to this judgment. Following their conviction, the applicants were held in single cells with no natural light. The conditions of their detention led to their health deteriorating but they did not receive proper medical treatment. The conditions of their detention worsened after their application was lodged with the Court. The first applicant was released in May 2001; the others remained in prison.

Law: Article 1 – (i) Whether the applicants came within the jurisdiction of Moldova. The presumption that "jurisdiction" is exercised throughout a State's territory may be limited in exceptional circumstances, in particular when the State is prevented from exercising its authority over part of its territory. In order to establish whether such a situation exists, the Court must examine both the objective facts and the State's conduct, since the State has positive obligations to take appropriate steps to ensure respect for human rights within its territory. Moreover, in exceptional circumstances the acts of a State which take place or produce effects outside its territory may also amount to the exercise of "jurisdiction" and where a State exercises overall control in an area outside its territory its responsibility extends to acts of the local administration which survives by virtue of its support. In addition, acquiescence in the acts of a private individual may also engage the State's responsibility, in particular in the case of recognition by the State of the acts of self-proclaimed authorities not recognised by the international community.

In the present case, the Moldovan Government, the only legitimate one under international law, did not exercise authority over the part of its territory under the control of the MRT. However, the Government still had a positive obligation to take the measures within its power to secure the applicants' rights. Where a State is prevented from exercising its authority over the whole of its territory, it does not cease to have "jurisdiction", although the factual situation reduces the scope of that jurisdiction, so that the State's undertaking under Article 1 must be considered only in the light of its positive obligations. These obligations, in the present case, related both to the measures needed to re-establish control over Transdniestria and to measures to ensure respect for the applicants' rights, including attempts to secure their release. The obligation to re-establish control required Moldova to refrain from supporting the MRT regime and to take all the measures at its disposal to re-establish its control. In that respect, the Moldovan authorities had never stopped complaining of the "aggression" and had rejected the MRT declaration of independence but there was little they could do against a regime sustained by a power such as the Russian Federation. Moldova had continued to take steps both internally and internationally after the 1992 ceasefire and after ratifying the Convention in 1997, in particular at the diplomatic level. While cooperation with MRT authorities had been established in a number of areas, these acts represented an affirmation of the desire to re-establish control and could not be regarded as support for the regime. As regards the situation of the applicants, a number of measures had been taken prior to ratification of the Convention, including the quashing of their convictions by the Moldovan Supreme Court, and measures to secure their release had also been taken after ratification. However, there was no evidence that since the release of the first applicant effective measures had been taken to put an end to the continuing infringements of the other applicants' rights. Indeed, no mention had been made of them in the continuing negotiations, although it was within the power of the Moldovan Government to raise the matter in that context. Consequently, Moldova's responsibility was capable of being engaged on account of its failure to discharge its positive obligations with regard to the acts complained of which occurred after May 2001.

(ii) Whether the applicants came within the jurisdiction of the Russian Federation. The Russian Federation had supported the separatist authorities during the conflict by their political declarations and had subsequently signed the ceasefire agreement as a party. Its responsibility was thus engaged in respect of the unlawful acts committed by the separatists, regard being had to the support it gave and to the participation of its military personnel in the fighting. Moreover, it continued to provide military, political and economic support after the ceasefire agreement. The applicants were arrested with the participation of Russian troops and three of them were detained and ill-treated on their premises. The applicants thus came within the jurisdiction of the Russian Federation, although the Convention was not at that time applicable: the events had to be considered to include not only the acts in which its agents participated but also the transfer of the applicants into the hands of the MRT regime and their subsequent ill-treatment, since the agents of the Russian Federation were fully aware that they were handing the applicants over to an illegal and unconstitutional regime and knew, or should have known, the fate which awaited them. It remained to be determined whether that responsibility remained engaged after ratification of the Convention in May 1998. In that respect, the Russian army remained stationed on Moldovan territory and in view of the level of weapons stocks there the importance of that military presence persisted. Significant financial support was also provided. Thus, the MRT remained under the effective authority, or at the very least the decisive influence, of the Russian Federation, and there was a continuous link of responsibility for the applicants' fate, since after ratification no attempt had been made to put an end to their situation. The applicants therefore came within the jurisdiction of the Russian Federation and its responsibility was engaged.

The Court's jurisdiction *ratione temporis*: Article 6 – As the applicants' trial took place prior to ratification of the Convention by the respondent States, the Court did not have jurisdiction *ratione temporis* to examine their complaints of unfairness.

Articles 3, 5 and 8 – While the events began in 1992 with the detention of the applicants, they were still going on and the Court therefore had jurisdiction.
Article 2: The death sentence imposed on the first applicant had not been set aside when respondent States ratified the Convention and the Court therefore had jurisdiction.

Article 2 – While the death sentence imposed on the first applicant had been set aside by the Moldovan Supreme Court in 1994, that judgment had had no effect. The Court was not in a position to establish the exact circumstances of his release or whether the death sentence had been commuted, but since the applicant was now living in Romania as a Romanian national the risk of enforcement was more hypothetical than real. He must have suffered on account of the sentence and the conditions of detention but it was more appropriate to examine that under Article 3.
Conclusion: not necessary to examine (unanimously).

Article 3 – (i) While the Convention is only binding on States in respect of events subsequent to its entry into force, the Court could take into consideration the whole period during which the first applicant had been detained under sentence of death in order to assess the effect of his conditions, which remained essentially the same throughout that time. The applicant had lived in constant fear of execution, unable to exercise any remedy, and his anguish was aggravated by fact that the sentence had no legal basis or legitimacy, in view of the patently arbitrary nature of the circumstances in which the applicants were tried. The conditions in which the first applicant was held had a deleterious effect on his health and he did not receive proper medical care or nutrition. Moreover, the discretionary powers in relation to correspondence and visits were arbitrary and had made the conditions of detention even harsher. There had been a failure to observe the requirements of Article 3 and the treatment to which the first applicant had been subjected amounted to torture. The Russian Federation was responsible for that treatment, whereas since Moldova's responsibility was engaged only after the time of his release there had been no violation by Moldova.
Conclusion: violation by the Russian Federation (16 votes to 1); no violation by Moldova (11 votes to 6).
(ii) The treatment of the third applicant and the conditions in which he had been kept, denied proper food and medical care, amounted to torture. As he remained in these conditions, the responsibility of both States was engaged as from the respective dates of ratification.
Conclusion: violation by the Russian Federation (16 votes to 1); violation by Moldova (11 votes to 6).
(iii) The other two applicants had been kept in extremely harsh conditions which amounted to inhuman and degrading treatment and the responsibility of both States was engaged.
Conclusion: violation by the Russian Federation (16 votes to 1); violation by Moldova (11 votes to 6).

Article 5(1)(a) – The Court did not have jurisdiction to rule whether the proceedings against the applicants had breached Article 6 of the Convention but in so far as the applicants' detention continued after ratification by the respondent States it had jurisdiction to determine whether they were lawfully detained after conviction by a competent court. In view of the arbitrary nature of the proceedings, none of the applicants had been convicted by a "court" and the prison sentences imposed on them could not be regarded as "lawful detention" ordered "in accordance with a procedure prescribed by law". This conduct was imputable to the Russian Federation in respect of all the applicants, whereas the responsibility of Moldova was engaged only in respect of the second, third and fourth applicants.
Conclusion: violation by the Russian Federation (16 votes to 1); violation by Moldova (11 votes to 6) in respect of three applicants, no violation by Moldova in respect of the first applicant (11 votes to 6).

Article 8 – The Court considered unanimously that it was not necessary to examine the complaints concerning correspondence and visits, which had been taken into account in the context of Article 3.

Article 1 of Protocol No. 1 – Even supposing the Court had jurisdiction *ratione temporis* to examine the applicants' complaint that their property had been confiscated following their trial, the complaint had not been substantiated.
Conclusion: no violation (15 votes to 2).

Article 34 – The applicants claimed that they had not been able to apply to the Court and that their wives had had to do so on their behalf. Moreover, they had been threatened and the conditions of their detention had deteriorated after their application was lodged. Such acts constituted an improper and unacceptable form of pressure which hindered exercise of the right of petition. In addition, the Russian Federation had apparently requested Moldova to withdraw certain observations submitted to the Court. Such conduct was capable of seriously hindering the Court's examination of the application and there had therefore been a breach by the Russian Federation of its obligations under Article 34. Furthermore, remarks by the Moldovan President following the first applicant's release, making an improvement in the applicants' situation dependent on withdrawal of the application represented direct pressure intended to hinder exercise of the right of petition and amounted to a breach of Article 34 by Moldova.
Conclusion: failure by Moldova to discharge obligations (16 votes to 1); failure by the Russian Federation to discharge obligations (16 votes to 1).

Article 41 – The Court awarded, in respect of pecuniary and non-pecuniary damage, 180,000 euros to the first applicant and 120,000 euros to each of the other applicants. It also awarded each applicant 7,000 euros in respect of the breach of Article 34. It further made an award in respect of costs and expenses.

JURISDICTION OF STATES
Positive obligations of the State with regard to parts of its territory over which it has no control.

ILAŞCU and others - Moldova and Russia (Nº 48787/99)
Judgment 8.7.2004 [Grand Chamber]
(see above).

ARTICLE 2

POSITIVE OBLIGATIONS
Absence of provision in criminal law to sanction involuntary termination of pregnancy: *no violation*.

VO - France (Nº 53924/00)
Judgment 8.7.2004 [Grand Chamber]

Facts: Owing to a mix-up caused by the fact that two patients attending the same hospital department shared the same surname, a doctor carried out a medical act, intended for another person, on the applicant, despite the fact that she was pregnant. As a result of this error the applicant was obliged to undergo a therapeutic abortion. The foetus, which was healthy, was

at that stage aged between 20 and 21 weeks. The applicant had intended to carry her pregnancy to term. She lodged a criminal complaint for unintentional physical injury to herself and homicide against her unborn child. The offence against the applicant was covered by an amnesty. With regard to the foetus, the Court of Cassation held that the fact of a doctor causing the death *in utero* of a human foetus which was not yet viable through carelessness or negligence did not constitute the offence of involuntary homicide, as the foetus was not considered as a human being entitled to the protection of the criminal law. The applicant considered that the lack of protection for her unborn child under French criminal law was unsatisfactory and constituted a violation of Article 2 of the Convention.

Law: Article 2 – There was no clear legal definition in French law of the unborn child or a European consensus on the status of the embryo. The Court did not rule on whether the unborn child was a person for the purposes of Article 2. Noting in the instant case that the dispute concerned an involuntary fatal injury to the unborn child, counter to the mother's wishes and at the cost of considerable suffering to her, the Court held that the interests of the foetus and its mother overlapped. Accordingly, it examined the protection available to the applicant from the angle of the adequacy of the mechanisms in place for proving the doctor's negligence in the loss of her child *in utero* and obtaining redress for the forced termination of her pregnancy. As the case concerned an involuntary infringement of her right to physical integrity, the positive obligation in procedural matters which derived from Article 2 did not necessarily require a criminal-law remedy. The applicant could have brought an action for damages against the authorities on account of the doctor's negligence. Such an action would have had good prospects of success and the applicant would have been able to obtain an order obliging the hospital to pay damages. That was clear from the findings of the expert reports drawn up as part of the criminal proceedings, which had indicated malfunctioning of the hospital department concerned and gross negligence by the doctor. Furthermore, in the circumstances of the case, the four-year limitation period applicable to actions for damages before the administrative courts did not, in the Court's opinion, appear unduly short, although it had recently been extended to ten years by legislation. Consequently, even assuming that Article 2 of the Convention was applicable in the instant case, the action for damages against the authorities on account of the doctor's alleged negligence could be viewed as an effective remedy available to the applicant.
Conclusion: no violation (fourteen votes to three).

ARTICLE 3

TORTURE
Ill-treatment of detainees and conditions of detention : *violation*.

ILAŞCU and others - Moldova and Russia (Nº 48787/99)
Judgment 8.7.2004 [Grand Chamber]
(see Article 1, above).

INHUMAN TREATMENT
Alleged ill-treatment by police during arrest – subsequent conviction for "obstruction of police officer in the course of his duties": *admissible*.

MATKO - Slovenia (Nº 43393/98)
Decision 8.7.2004 [Section III]

The applicant alleges that in April 1995 he was driving through a city centre when two police cars overtook him and forced him to stop. He claims to have been tied up, beaten, threatened and taken to a police station for having failed to stop his car. The police dispute this version of the events, and claim that the applicant refused to stop his vehicle for a routine check. As he then attempted to escape, they were obliged to handcuff him and knock him down in the process. About four hours after his arrest the applicant was released and went to a hospital, where he stayed overnight and part of the next day. The medical reports drawn up indicated the applicant had suffered several injuries (right eye, nose, left shoulder, thorax, right ear, left thigh, and a presumed fracture of the right temporal bone). Several documents and newspaper clippings in the file indicate that the arrest was part of a larger-scale action undertaken by the police against a criminal syndicate. In May 1995, the applicant lodged a criminal complaint against unidentified police officers, which was dismissed by the public prosecutor. The same day, the prosecutor requested the opening of a judicial investigation against the applicant, on the basis of proceedings which the police had instituted against him in April 1995. The applicant was initially acquitted of the charge of "attempting to obstruct a public officer in the course of his duties", but the judgment was subsequently overturned and the applicant was convicted on this count in a final decision in May 2001. He did not appeal on points of law.

Admissible under Articles 3, 5 and 6 (length of proceedings). The Government's preliminary objections on non-exhaustion of domestic remedies and compliance with the six month rule were joined to the merits.

DEGRADING TREATMENT
Ill-treatment by police, and adequacy of investigation: *violation*.

BALOGH - Hungary (Nº 47940/99)
Judgment 20.7.2004 [Section II]

Facts: The applicant, who is of Roma ethnic origin, worked by selling coal from a truck with some companions. The police took him in for questioning after receiving a complaint from a group of persons to whom he had agreed to sell coal. The applicant alleges that during the police interrogation, which lasted two hours, one of the officers repeatedly slapped him across the face and left ear. Two days after his release, on his return to his home, the applicant consulted a doctor about his injury and was operated on for a reconstruction of his ear drum. Criminal proceedings were opened against the police officers on the basis of a medical certificate submitted by the applicant. The Investigation Office heard the applicant's witnesses, as well as the police officers that had been on duty. In the absence of direct witnesses and the inconclusive medical opinion, which could not determine whether the injury had been caused before, during or after the applicant's interrogation, the proceedings were discontinued. Although the applicant did not file a complaint against the discontinuation order, "the Legal Defence Bureau for National and Ethnic Minorities" (NEKI), whom he had appointed to represent him, subsequently requested the reopening of the proceedings on the basis of an additional medical report. The Public Prosecutor's Office concluded that the case should nonetheless be discontinued, since it was impossible to prove the allegations.

Law: Government's preliminary objection (non-exhaustion): Although the applicant had not used the ordinary remedy invoked by the Government against the order discontinuing the criminal proceedings, his legal representative, on the basis of new evidence, had requested that the proceedings be continued under another provision of the Code of Criminal Procedure: objection dismissed.

Article 3 – The injury which the applicant had suffered was sufficiently serious to amount to ill-treatment within the scope of this article. The applicants' witnesses, who were other detainees at the police station, had stated that he had displayed signs of having been hit when leaving the police station. This contradicted the Government's version of the events, which relied on an alleged remark by the applicant during questioning that he was afraid of "something untoward happening to him from his companions". However, the applicant's companions had not been questioned about such a remark and it was not a persuasive explanation for the cause of the injury. Whilst the applicant had not sought medical help immediately after the alleged incident and had waited until he was back in his home town, decisive importance could not be attributed to such a delay or undermine his case under Article 3. Notwithstanding the fact that an independent investigation into the applicant's allegations had been carried out and contradictory statements had been confronted, the authorities had not provided a plausible explanation for the injuries nor had they satisfactorily established that these had been caused otherwise than by treatment in police custody.
Conclusion: violation (4 votes to 3).

Article 13 – Three prosecution instances had examined the applicant's complaints, and the investigations conducted had been thorough and capable of leading to the identification and punishment of any State agent found to be responsible.
Conclusion: no violation (unanimously).

Article 14 – There was no substantiation of the applicant's allegation that he had been discriminated against on account of his ethnic origin.
Conclusion: no violation (unanimously).

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

ARTICLE 5

Article 5(1)(a)

COMPETENT COURT
Detention on the basis of conviction by the court of a regime not recognised in international law: *violation*.

ILAŞCU and others - Moldova and Russia (Nº 48787/99)
Judgment 8.7.2004 [Grand Chamber]
(see Article 1, above).

Article 5(3)

JUDGE OR OTHER OFFICER
House arrest on order of investigator: *violation*.

VACHEV - Bulgaria (N° 42987/98)
Judgment 8.7.2004 [Section I]

Facts: The applicant was the executive director of a state-owned company. In May 1997, criminal proceedings were opened against him on charges of abuse of office and making false documents. In June 1997 the applicant was placed under house arrest by an investigator. Despite his appeals against this measure, he was only released from house arrest on bail in December 1997. In the meantime, the criminal proceedings against the applicant continued and charges against him were amended on a number of occasions. The prosecution referred the case back for additional investigation on several occasions, and there were different opinions between the prosecution and investigators on the charges on which to indict the applicant. A plea bargain agreement between the applicant and the prosecution was reached in February 2003, and shortly thereafter the criminal proceedings were discontinued. The applicant complained about the measure placing him under house arrest without the necessary procedural guarantees as well as of the length of the criminal proceedings against him.

Law: Article 5(3) – The applicant's house arrest had represented a deprivation of liberty within the meaning of Article 5. However, as the investigator who had ordered the house arrest could not be considered as a sufficiently independent and impartial officer for the purposes of this provision, there had been a violation of the applicant's right to be brought before a "judge or other officer authorised by law to exercise judicial power".
Conclusion: violation (unanimously).

Article 5(4) – The Government argued that the applicant had not exhausted domestic remedies since he could have applied to a court relying directly on the Convention. Whilst the Convention was incorporated in Bulgarian law and directly applicable, the Government had not furnished any example of a judicial decision in which a person under house arrest had successfully relied on Article 5(4) of the Convention to apply for release. Given the uncertainty of this remedy and the fact that at the material time Bulgarian law did not provide for judicial review of house arrest, the Government's preliminary objection was dismissed and there had been a violation of this provision.
Conclusion: violation (unanimously).

Article 5(5) – Bulgarian law did not afford the applicant an enforceable right to compensation for his deprivation of liberty in conditions contrary to Article 5(3) and (4). Only persons placed in "pre-trial detention", not house arrest as had been the applicant's case, could seek compensation.
Conclusion: violation (unanimously).

Article 6(1) – The proceedings against the applicant had lasted approximately five years and nine months and had remained at a preliminary investigation stage. Whilst the case was legally and factually complex, there had been several periods of inactivity, poor coordination between the bodies involved (as evidenced by the numerous reformulations of the charges) and many remittals of the case from the prosecution to the investigation authorities, which had contributed to the delay.
Conclusion: violation (unanimously).

Article 41 – The Court awarded the applicant 3,000 euros in respect of non-pecuniary damage. It also made an award in respect of costs and expenses

ARTICLE 6

Article 6(1) [civil]

RIGHT TO A COURT
Jurisdiction to examine merits of claim declined by both civil and administrative judges: *violation*.

BENEFICIO CAPPELLA PAOLINI - San Marino (N° 40786/98)
Judgment 13.7.2004 [Section II]

Facts: Land belonging to the applicant association was lawfully expropriated in 1985 and was to be used for public works in the following two years. Only part of the land had been used for that purpose by 1987. The Government refused to return to the applicant those parts of the land that were not used. The applicant association applied to a civil court of first instance to recover possession of those assets that had been expropriated but not used by the State. Faced with a ruling that that court did not have jurisdiction, it brought an action on appeal to establish land title and recover possession of the above-mentioned assets. The applicant association had also lodged a claim for restitution with the administrative courts. By a final decision, the administrative court stated that the legislation conferred a genuine right to apply to the civil courts to obtain a ruling that expropriation orders had lapsed in cases where the period fixed for completion of work to be carried out on land was not respected. Four years later the civil appeal court ruled that it had no jurisdiction, assigning the matter to the administrative court. None of the courts ruled on the merits of the applicant association's case.

Law: Article 6(1) (right to a court) – It was not for the Court to examine whether or not the civil and administrative courts could determine the merits of the case, especially in view of the applicable legislation. It noted that the applicant had had access to those courts, but that none of them had determined the question of whether the applicant was entitled to restitution of the land that had been expropriated but not used. In the Court's opinion, such a situation amounted to a denial of justice which had impaired the very essence of the right to a court guaranteed by Article 6(1) of the Convention.
Conclusion: violation (six votes to one).

Article 1 of Protocol No. 1 – The continued decision not to return the land, despite, firstly, the contradictory outcomes of the two sets of proceedings instituted by the applicant and, secondly, the fact that the land in question had still not been used for public-works projects, had upset the fair balance that ought to exist between the requirements of the general interest and the need to protect individual rights for the purpose of Article 1 of Protocol No. 1 (see the *Motais de Narbonne* judgment of 2 October 2002, concerning land that had not been employed for the purpose used to justify its expropriation).
Conclusion: violation (six votes to one).
The Court further held that there had been a violation of the right to proceedings within a "reasonable time", within the meaning of Article 6(1).

Article 41 – The Court made an award in respect of non-pecuniary damage and of costs and expenses. As to the alleged pecuniary damage, the Court reserved the question of the application of this Article.

RIGHT TO A COURT
Failure to enforce final decision of a Georgian court ordering Russian authority to pay a debt : *communicated*.

MONASSELIDZE - Russia (N° 71696/01)
[Section III]

The applicant, a Georgian national, was chairperson of two companies which were responsible during the Soviet era for constructing housing for the Russian army, then stationed in Georgia. The Russian army failed to pay the sum due for the construction work. The applicant applied to the Georgian arbitration courts to obtain reimbursement of the actual value of the debt. By a decision of September 1995, the High Court of Arbitration ordered that the applicant be paid a certain amount in roubles. The applicant attempted unsuccessfully to have this decision enforced against his debtor. The Russian authorities, contacted by their Georgian counterparts, stated that they would enforce the 1995 decision only under the circumstances provided for in the Minsk Convention on Legal Assistance and Legal Relations in Civil Cases, which had been ratified by both countries. Under the Russian Code of Civil Procedure applicable at the material time, the procedures for enforcement on the territory of the Russian Federation of decisions given by foreign courts were set out in the international treaties signed by the USSR. The above-mentioned Code stated that it was first of all for the Georgian authorities to settle the procedural aspects of the case. The Russian High Court of Arbitration stated that it did not have jurisdiction to entertain the application for enforcement. It further noted that the applicant had not satisfied the requirements of the Russian Code of Civil Procedure.
Communicated under Article 6(1).

EQUALITY OF ARMS
Immediate application of a new law to pending proceedings: *admissible*.

MAURICE and others - France (N° 11810/03)
Decision 6.7.2004 [Section II]
(see Article 14, below).

REASONABLE TIME
Inactivity of parties to civil proceedings: *no violation*.

PATRIANAKOS - Greece (Nº 19449/02)
Judgment 15.7.2004 [Section I]

Extracts: Article 6(1) – "With regard to the parties' conduct, the Court notes that the latter's failure to appear lay behind all the adjournments of the case before the Athens Court of First Instance, with the exception of the hearing scheduled for 15 October 1981, which was postponed on account of parliamentary elections. Those adjournments, coupled with the excessive delays with which the parties on each occasion requested that a new hearing date be fixed, were the cause of a delay of more than fourteen years for which the State cannot be held responsible. In particular, the Court notes that so long as the applicants showed no

interest in resuming the proceedings before the Athens Court of First Instance and the Court of Appeal, those courts had no room for manoeuvre. According to the principles governing the organisation of proceedings and the responsibility of the parties, set out in Articles 106 and 108 of the Code of Criminal Procedure, progress in proceedings depends entirely on the parties' diligence; if the latter abandon the proceedings temporarily or definitively, the courts cannot of their own motion oblige them to resume proceedings. This situation cannot be compared with the case of ongoing proceedings, where the courts must ensure that they follow the proper course by, for example, acting attentively when asked to agree to a request for adjournment, hear witnesses or monitor the time-limits established for the preparation of an expert's report. In addition, the Court notes that the applicant took a year and more than two months to appeal on points of law; the Government cannot be held responsible for that delay.

As to the conduct of the judicial authorities, the Court considers that they cannot be criticised for periods of inactivity or unjustified delay. The Court notes that on each occasion that the applicants asked for a new hearing date, the relevant courts fixed a date without undue delay. Furthermore, the Court of First Instance gave judgment within seven months and five days of the date on which the applicant requested a new date for a hearing, which he attended. As to the proceedings before the court of appeal, those lasted one year, one month and eleven days; finally, the Court of Cassation ruled within a period of one year, three months and twenty-one days. In the Court's opinion, those times are far from being unreasonable."

REASONABLE TIME

Length of time taken to enforce a writ of execution: *inadmissible*.

GRISHCHENKO - Russia (Nº 75907/01)

Decision 8.7.2004 [Section I]

The applicant was the holder of a State commodity bond under which the Government undertook to give her a specific Russian-made passenger car. Another car was offered to her, which she refused because it was cheaper than the one to which she was entitled. The applicant instituted proceedings against the Government in February 2001. The courts allowed her claim and awarded her a sum of money for the value of the car. The applicant appealed, complaining about the insufficiency of the amount she had been awarded, but the judgment was upheld by the Supreme Court in April 2001. Shortly afterwards, the applicant submitted to the authorities a writ of execution which was returned because the debtor's name was incorrectly indicated. She submitted a new writ and payment was credited to her bank account in May 2002.

Inadmissible under Article 6 and Article 1 of Protocol No. 1 (concerning both the length of the enforcement proceedings and the alleged failure to provide a car): Given the amendments introduced in the relevant legislation, the State was no longer obliged to provide a car and the debt could be settled by paying a sum in money. As regards the length of the execution proceedings, whilst there had been formal defects which could have been identified by the authorities in a more diligent manner, the overall duration of the enforcement stage (one year, one month and 20 days) had not been excessive: manifestly ill-founded.

REASONABLE TIME
Adjournment of civil proceedings pending outcome of parallel criminal proceedings : *violation*.

REZETTE - Luxembourg (N° 73983/01)
Judgment 13.7.2004 [Section IV]

Extract (Article 6): "The outcome of the criminal proceedings is capable of affecting the outcome of the dispute before the [civil] courts and is thus to be taken into account in calculating the relevant period [in the civil proceedings]. The Court accepts that the fact of ruling in civil proceedings before the criminal proceedings are terminated could be incompatible with the principle of the proper administration of justice. Nonetheless, the adjournment of civil proceedings pending the outcome of the criminal proceedings has had the consequence of prolonging the civil proceedings for more than eight years, and the Court reiterates that it is for the national authorities to organise their judicial systems in such a way that the reasonable time requirement provided for in Article 6 is guaranteed for everyone. The [civil] proceedings began on 11 March 1996. On 30 June 1999 the court of appeal adjourned the proceedings … in application of the principle that 'criminal proceedings take precedence over civil proceedings'. The proceedings … have already lasted more than eight years. Such a lapse of time seems *a priori* too long.…"

IMPARTIAL TRIBUNAL
Examination of a request for a retrial by judges who had previously dealt with the merits of the case on appeal: *violation*.

SAN LEONARD BAND CLUB - Malta (Nº 77562/01)
Judgment 29.7.2004 [Section I]

Facts: The applicant company occupied premises in a tenement. In 1986, the Housing Secretary issued a requisition order which protected the applicant's occpancy. The owners of the tenement brought civil proceedings against the Housing Secretary and the applicant, which were rejected at first instance but subsequently granted by the Court of Appeal. The requisition order was thus annulled and the owners were reinstated in the possession of the premises. Following the Court of Appeal judgment, the applicant company requested a retrial on the basis of an alleged misinterpretation of the law. At the time of filing its submissions, the applicant in addition requested that the judges of the Court of Appeal abstain from the case, as they were the same judges who had composed the bench which delivered the impugned judgment. The applicant's plea challenging the judges was rejected, as was, subsequently, the request for a new trial. The Constitutional Court recalled that retrial was not a third instance procedure and that the court which had pronounced the judgment was in the best position to identify any mistakes which might have been committed. It also found that there were reasons to believe that the applicant's request for a retrial was an attempt to prolong the proceedings in order to delay the release of the premises.

Law: Article 6(1) – As there was no third instance in the Maltese legal system such as a Court of Cassation, the sole possibility for a person dissatisfied with an appeal judgment was to apply for a "new trial" procedure. The ground invoked by the applicant for a "new trial" had been "wrong application of the law", which was in substance similar to an appeal on points of law before a Court of Cassation, a remedy to which Article 6 has constantly been held to be applicable. Had the applicant's plea that the law had been wrongly applied been accepted, the impugned judgment would have been quashed. Thus, the outcome of the new trial procedure would have been decisive for the applicant's "civil rights and obligations" and Article 6(1) was therefore applicable. As regards the subjective test for assessing whether the Court of

Appeal was an impartial tribunal within the meaning of Article 6(1), nothing showed that the judges composing the court had any personal prejudice. As to the objective test, the Court of Appeal judges were essentially called upon to decide whether or not they themselves had committed an error of legal interpretation or application in their previous judgment, being in fact requested to judge themselves on their own ability to apply the law. Such circumstances were sufficient to hold the applicant's fears as to the lack of impartiality of the Court of Appeal to be objectively justified.
Conclusion: violation (unanimously).

Article 41 – No claim for just satisfaction had been submitted.

ARTICLE 8

PRIVATE LIFE
Alleged inactivity of the authorities with regard to the use of a toxic process in a mine located close to residences : *communicated*.

TATAR - Romania (N° 67021/01)
[Section II]

The two applicants live near a plant for gold extraction. They complain of the use, since June 1999, of an extraction process which uses sodium cyanide, a substance which is allegedly dangerous for human health and for the environment. In particular, they allege that this process is at the origin of the bronchial asthma suffered by the second applicant since 2001. His father, the first applicant, lodged several complaints with a view to obtaining suspension of the mine's operating licence and instituting proceedings against those responsible. In 2002 he complained unsuccessfully about the absence of an operating licence. In 2003 the administrative authorities informed him that the impugned process had been considerably improved and that the mine's operations were now perfectly safe and posed no danger to the environment or to public health. The criminal authorities found that no offence had been committed or declared that they had no jurisdiction. It appears from official sources that the substance in question has toxic effects, may be absorbed by the body and may be dangerous for the environment. At the beginning of 2000 water containing sodium cyanide leaked from the mine in question, the Aurul mine.
Communicated under Article 8.

FAMILY LIFE
Taking of children into care and imposition of restrictions on visiting rights and residential access; measures taken by the authorities to reunite parent and children : *no violation*.

COUILLARD MAUGERY - France (N° 64796/01)
Judgment 1.7.2004 [Section I]

Facts: The applicant experienced difficulties in looking after her young son, who had been abandoned by his father, and, subsequently, her daughter, who was very young at the material time. Her son and daughter, aged six-and-a-half and a few months respectively, were the subject of care orders in 1994 and 1995. Those care orders were extended annually on the basis of judicial decisions which reassessed the need for such extensions and provided, where appropriate, for arrangements that would allow for the gradual resumption of contact between the children and their mother. The reports and expert assessments carried out at the judicial authorities' request all noted behaviour on the mother's part that was not in the interests of the

children, who had refused to meet her on several occasions or had exhibited signs of distress after having met or contacted her. Taking into consideration both the mother's personality and disturbing behaviour and the two children's interests, health and psychological balance, the judicial authorities granted the mother regulated visiting rights, temporary residential rights and telephone or written contact, depending on the situation at the time of each review. The mother's visiting rights were temporarily suspended at certain periods, in particular following requests to that effect by her son.

Law: Article 8 – The interference with the "family life" of the applicant and her two children, prescribed by law, pursued a legitimate aim, both with regard to the provisions of the national legislation and the reasons relied on by the domestic courts, namely that of protecting the children's rights and freedoms. As to the "necessity" in a democratic society of the placement orders in respect of the applicant's children, the Court considered that the different courts had ruled on a very consistent basis, giving carefully reasoned and detailed decisions which had taken into account the various elements of the situation and any developments. That being so, and in view of the obviously paramount benefit in the children being placed in an environment that provided the best conditions for their development, the Court considered that the care orders were not contrary to the requirements of Article 8.
As to the "necessity" in a democratic society of the restrictions on meetings and contacts between the applicant and her children, numerous decisions had been taken at regular intervals over the years on the basis of psychological and psychiatric assessments, and the courts had taken due account of a large number of reports by the social services as well as concerns and desires expressed by the children themselves. The social services were consistently concerned with the children's wellbeing and interests and made numerous proposals to the applicant that would enable her to see her children. A number of meetings or contacts had not taken place for reasons attributable to the applicant herself, who had, moreover, rejected the various forms of assistance offered to her and had displayed hostility towards the social workers. Although a lack of co-operation by the parent concerned did not constitute an absolutely decisive factor, since it did not relieve the authorities from the duty to implement such measures as would be apt to enable the family link to be maintained, it could nonetheless only be noted that, in the instant case, which concerned a particularly complex and sensitive situation in psychological and psychiatric terms, the relevant authorities had made all the efforts that could reasonably be expected of them in order to enable family ties to be maintained, an aim which they had constantly borne in mind. They had undertaken a precise and meticulous analysis of the dangers facing the children, whose health, safety and upbringing might have appeared to be in jeopardy. In short, the authorities had taken all the measures that could reasonably be expected of them in order to enable the applicant and her children to be reunited. Furthermore, family ties had not been broken, as the mother and her two children had become significantly closer over the years.
Conclusion: no violation (unanimous).

FAMILY LIFE
Inheritance by an adopted child through his father of property belonging to a grandmother who had died prior to the adoption: *Article 8 applicable*.

PLA and PUNCERNAU - Andorra (N° 69498/01)
Judgment 13.7.2004 [Section IV]
(see Article 14, below).

EXPULSION
Deportation to Iran following conviction for an aggravated narcotics offence: *inadmissible*.

NAJAFI - Sweden (Nº 28570/03)
Decision 6.7.2004 [Section IV]

The applicant, who is an Iranian national, entered Sweden for the first time in 1977. He unsuccessfully applied for a residence permit on several occasions. During the following ten years he spent most of his time in Iran but also resided in Sweden at intervals (with a temporary residence permit for two periods but at other times illegally). The applicant married a Swedish citizen in 1984, and on that basis was granted a permanent residence permit in 1988. Two sons were born from his relationship with his wife, from whom he was subsequently divorced. In 1997, the applicant was convicted of an aggravated narcotics offence (attempted importation of two kilos of heroin). He was sentenced to ten years' imprisonment and expulsion from Sweden with a life-long ban on returning there. The Court of Appeal upheld the judgment and leave to appeal to the Supreme Court was refused. Whilst the applicant was serving the prison sentence, his children visited him on a total of 36 occasions. The applicant filed several petitions for the revocation of the expulsion order, claiming it would be detrimental to his children, the youngest of whom was already experiencing psychological difficulties. He was nevertheless deported to Iran in February 2004.

Inadmissible under Article 8: There was no doubt that expulsion would have serious implications for the applicant's family life. However, as the applicant had been convicted of an aggravated narcotics offence, and prior to that of three other criminal offences, such implications for his family life had to be balanced against other relevant interests, namely public safety and the prevention of disorder and crime. The Swedish authorities had not failed, within their margin of appreciation, to strike a fair balance, and the expulsion order had thus been justified: manifestly ill-founded.

HOME
Termination of special protected tenancy of a flat on account of absence during armed conflict: *no violation*.

BLECIC - Croatia (Nº 59532/00)
Judgment 29.7.2004 [Section I]

Facts: The applicant was the holder of a specially protected tenancy of a flat in Zadar, Croatia. In June 1991, she left the flat to visit her daughter abroad. Before leaving, she made appropriate arrangements for its maintenance in her absence. The time during which the applicant was away coincided with intensified armed conflict in the region and constant shelling of Zadar. Upon her return, in May 1992, the applicant attempted to recover the flat, but in the meantime the municipal authorities had brought an action for the termination of her tenancy on grounds of an unjustified absence of more than six months. Moreover, a family of displaced persons had moved into the apartment. The applicant alleged that she had been unable to return earlier given the war conditions in the area, her poor health to travel and also because the authorities had stopped paying her pension in October 1991. The first instance court found that the applicant's absence had not been justified by the war or by any of the other reasons advanced by her. It thus granted the municipal authority's claim and terminated the applicant's special protected tenancy. The judgment was quashed in appeal proceedings, but subsequently upheld by both the Supreme Court and the Constitutional Court.

Law: Article 8 – The applicant had lived continuously in the flat since 1953. When she visited her daughter abroad she had left all her furniture and personal belongings in the flat and had not intended abandoning it. In such circumstances, the flat could be regarded as the applicant's home for the purposes of this provision and the termination of her specially protected tenancy by the courts had constituted an interference. Such an interference had a basis in domestic law and pursued a legitimate social policy aim, namely the satisfaction of the housing needs of citizens. As to whether the interference had been "necessary in a democratic society", the Court was satisfied that the contested decisions of the domestic courts had been based on relevant and sufficient reasons and, recalling the wide margin of appreciation afforded to authorities in implementing social and economic policies, found that the decisions had remained within that margin. Even if alternative solutions might have been used by the authorities, for instance, the mere temporary allocation of the flat to another person, this did not *per se* render the termination of the tenancy unjustified. Such an interpretation would amount to reading a test of strict necessity into Article 8, which was not warranted in the circumstances. Moreover, as the applicant had been able to present her arguments both orally and in writing throughout the proceedings, the procedural requirements implicit in Article 8 had been complied with.
Conclusion: no violation (unanimously).

ARTICLE 9

FREEDOM OF RELIGION
Unpunished attack on a meeting of Jehovah's Witnesses : *admissible*.

97 members of the CONGREGATION OF JEHOVAH'S WITNESSES IN GLDANI and others - Georgia (N° 71156/01)
Decision 6.7.2004 [Section II]

The applicants are members of a congregation of Jehovah's Witnesses. In October 1991 the congregation was attacked during a religious meeting by a group of Orthodox believers, headed by an excommunicated priest. The applicants were struck, beaten, trampled on and insulted. Some of them were hospitalised and their medical records confirm serious injuries and trauma, especially to the head, eyes and back. The assailants stole personal effects belonging to the applicants and religious literature, which was burned in front of the victims. No police officer intervened. Film recordings of the attack, made by the media, confirm the violence and indicate that the excommunicated priest had the police on his side. Some of the victims lodged complaints but no steps were taken in response. The Supreme Court noted that the Jehovah's Witnesses' meeting had not been forbidden by the authorities and was not contrary to public policy. The community had allegedly been the target of numerous violent attacks by the excommunicated priest's supporters. Legal action had been taken against that individual since March 2001 further to numerous collective acts of violence. None of the complaints had been seriously investigated.
Admissible under Articles 3 and 9, taken in conjunction with Articles 13 and 14, and under Articles 10 and 11.

ARTICLE 10

FREEDOM OF EXPRESSION
Conviction of a publisher/editor for publishing a series of articles criticising a Supreme Court judge: *violation*.

HRICO - Slovakia (Nº 49418/99)
Judgment 20.7.2004 [Section IV]

Facts: The applicant, who was the publisher/editor-in-chief of a weekly, published a number of articles in his weekly concerning the conviction by the Supreme Court of a well-known poet in defamation proceedings (see *Feldek v. Slovakia*, no 29032/95, judgment of 12 July 2001). The articles generally supported the statements which the poet had made against a former Minister, considering them as facts, and expressed regret about his conviction by the Supreme Court. The judgment was questioned and strong criticism was in particular expressed towards the Supreme Court judge who had presided the case. The Supreme Court judge filed an action against the applicant claiming an interference with his personality rights. The District Court found that the applicant had exceeded the limits of objective and acceptable criticism by using strong language and terms such as "shameful judgment", "legal farce", "strange reasoning" etc., and ordered him to publish an apology in the weekly and to pay the judge compensation. The Regional Court overturned the first instance judgment in appeal proceedings. However, that decision was subsequently quashed by the Supreme Court, and in a new decision the Regional Court upheld the judge's claim, ordering the applicant to pay compensation but not obliging him to publish an apology.

Law: Article 10 – As it was not disputed that the interference was prescribed by law and pursued the legitimate aim of maintaining the authority of the judiciary and the protection of the reputation of the judge concerned, the only point at issue was whether the interference had been necessary in a democratic society. Given that the judge was an electoral candidate of the Christian-Social Union party, a party which had a clear stance on matters which were related to the case the Supreme Court was examining, the view expressed in the applicant's weekly that the judge should have withdrawn from the case could be seen as a value judgment on a matter of public interest, which was not devoid of a factual basis. Admittedly, the terms employed had been strong, but the limits of acceptable criticism were wider in respect of a judge who was involved in politics. Moreover, journalistic freedom also covered possible recourse to a degree of exaggeration. As a whole, it could not be said that the purpose of the statements had been to offend, humiliate or discredit the criticised judge. In these circumstances, the reasons adduced by the domestic courts to justify the interference could not be regarded as "sufficient".
Conclusion: violation (unanimously).

Article 41 – The Court awarded the applicant 2,500 euros under both heads of damage. It also made an award for costs and expenses.

ARTICLE 14

DISCRIMINATION (Article 8)
Rights of succession of an adopted child – exclusion from inheritance rights following judicial interpretation of the deceased's will: *violation*.

PLA and PUNCERNAU - Andorra (N° 69498/01)
Judgment 13.7.2004 [Section IV]

Facts: The applicants' respective adoptive father and husband was the beneficiary of his mother's will and heir to her property. In that will, dated 1939, the mother had stipulated that her son and heir was to pass on his inheritance to a "child or grandchild from a legitimate and canonical marriage". If those conditions were not met, the estate was to pass to other descendants. In 1969 the beneficiary of the will contracted a canonical marriage with the second applicant and they adopted the first applicant, assuming full parental responsibility. In 1995, by an act done in private, the first applicant's adoptive father bequeathed to him the property he had inherited, the life-interest being awarded to his wife. The estate passed to the heirs in November 1996. Taking the view that, as an adopted child, the applicant could not benefit from the will drawn up by the testator in 1939, two of the latter's great granddaughters – who were also potential beneficiaries – brought civil proceedings. Their action sought primarily to have declared void and without effect the private document of July 1995 and to obtain an order to the effect that the applicants were to hand over to them all the assets making up their great-grandmother's estate. The court of first instance dismissed the action. It considered that the testator's wishes were to be inferred from the words used in the will. In the light of that circumstance and of the conditions in force when those wishes were expressed, the court concluded that the testator had not intended to exclude adopted or non-biological children from her estate, since, had that been her intention, she would have expressly stated it. Accordingly, the private document of 1995 was consistent with the will dictated in 1939. In May 2000 the High Court of Justice quashed the impugned judgement. It decided to interpret the testator's wishes. Basing its assessment on various factors in force at the time when the testator was alive, the High Court ruled that she had not wished to include adopted children as beneficiaries of the estate. Accordingly, the High Court cancelled the 1995 private document, declared that the great granddaughters were the legitimate heirs of their great grandmother's estate and ordered the applicants to restore the assets in question. Further appeals by the applicants were also dismissed.

Law: Article 14 in conjunction with Article 8 – *Applicability* (preliminary objection): Inheritance rights between grandchildren and grandparents fell within the category of "family life", even if the testator had died before her grandson's adoption.
With regard to the interpretation of an eminently private instrument such as a clause in a person's will, an issue of interference with private and family life could only arise if the national court's assessment of the facts or domestic law were manifestly unreasonable or arbitrary or blatantly inconsistent with the fundamental principles of the Convention. The High Court of Justice had considered that the concept of "child" inserted in the 1939 will concerned only biological children. The Court could not accept that conclusion, since it considered that a reading of the will did not warrant a conclusion that the testator wished to exclude from the succession any adopted grandchildren. Since she could have done so, but did not, the only possible and logical conclusion was that that was not her intention. The High Court of Justice's interpretation of the clause in question was contrary to the general legal principle that where a statement was unambiguous there was no need to examine the intention of the person who made it. Since the testamentary provision, as worded by the testator, made

no distinction between biological and adopted children, it was unnecessary to interpret it in that way. Any such interpretation amounted to judicial deprivation of an adopted child's inheritance rights. The Court did not discern any legitimate aim pursued by the distinction thus made nor any objective and reasonable justification on which it might be based. In the Court's opinion, an adopted child, especially where the adoption entailed the assumption of full parental responsibility, was in the same legal position as a biological child of his or her parents in all respects: relationships and consequences related to his or her family life, and the resulting patrimonial rights. In addition, there was nothing to suggest that the distinction was required for public policy reasons. Even supposing that the clause in question did require an interpretation by the domestic courts, such an interpretation could not be made exclusively in the light of the social conditions prevailing in 1939 and 1949. The national court could not overlook the fact that a period of 57 years had elapsed between the date on which the will was drawn up and the date on which the estate passed to the heirs, during which profound social, economic and legal changes had occurred.
Conclusion: violation (five votes to two).

Article 41 – The Court reserved the question of the application of this Article.

DISCRIMINATION (Article 1 of Protocol No. 1)
Amount of compensation paid to parents of child born with a handicap undetected during pregnancy as a result of an error in diagnosis : *admissible*.

MAURICE and others - France (N° 11810/03)
Decision 6.7.2004 [Section II]

The applicants, a married couple, were acting both on their own behalf and in the capacity of legal representatives of their underage children. The first applicant, who had already given birth to a disabled child a few years previously, gave birth to a second child, C., who was subsequently discovered to suffer from the same incapacitating illness, even though the prenatal diagnosis requested by the parents had attested that the unborn child was healthy. A report by the head of the analysis laboratory stated that the error in the prenatal diagnosis had resulted from a mix-up of the analysis results for the applicants' family and those of another family, caused by the inversion of two flasks. As the erroneous diagnosis had prevented them from opting to terminate the pregnancy voluntarily if the child had been diagnosed as disabled *in utero*, the applicants lodged a complaint seeking compensation for the non-pecuniary and pecuniary damage sustained as a result of C.'s disability. The court expert concluded that there had been no fault in the prenatal diagnosis carried out at the laboratory, but that there had been "negligence in the service's organisation and operations, leading to the inversion of the results of two families which had been tested at the same time". In an order of December 2001 the urgent applications judge at the Paris Administrative Court ordered the public hospital service to pay an interim amount in respect of the damage cited. In a judgment of 2002 the Paris Administrative Court awarded interim compensation only in respect of non-pecuniary damage. Applying new legal provisions (Law of 4 March 2002) which were applicable to pending disputes, it ruled that the award should be limited solely to compensation in respect of the damage resulting from the negligence committed in inversing the flasks, and should not include the harm arising from the disability itself, since that had not been a direct consequence of the negligence. In February 2003 the *Conseil d'Etat* upheld this approach and fixed the interim award, payable on account of the damage sustained by the applicants as a result of the analysis laboratory's aggravated negligence, at 50,000 euros (EUR). As to the merits, the Paris Administrative Court awarded the applicants, in application of the new law, compensation for non-pecuniary damage alone (the erroneous diagnosis having deprived them of the option of terminating the pregnancy), and stated that, in accordance with the legislation, the amounts claimed for alterations to their home and for the purchase of equipment and other costs arising from the child's disability could not be taken

into account in those proceedings. The applicants complained that the Law of 4 March 2002 made a distinction between, on the one hand, the parents of children who were born disabled on account of medical or third-party negligence, who could obtain compensation for all of the damage by bringing an action for damages, and, on the other, the parents of disabled children whose disability had not been detected prior to birth due to erroneous diagnosis, who, in bringing the same judicial action, could obtain compensation only for their personal damage, since the damage arising from the child's disability was covered by a procedure for national solidarity.

Admissible under Articles 6(1) (equality of arms), 8 and 13 and Article 1 of Protocol No. 1, alone and in conjunction with Article 14. The Court dismissed the respondent Government's objections of non-exhaustion of domestic remedies and lack of "victim" status.
[N.B. A similar application was declared admissible on 6 July 2004 (*Draon v. France*, No. 1513/03. The Chamber suggested that it relinquish jurisdiction for these two applications in favour of the Grand Chamber.]

ARTICLE 34

HINDER EXERCISE OF THE RIGHT OF PETITION
Deterioration of prison conditions following introduction of application : *failure to comply with obligations.*

ILAŞCU and others - Moldova and Russia (Nº 48787/99)
Judgment 8.7.2004 [Grand Chamber]
(see Article 1, above).

ARTICLE 35

Article 35(1)

EFFECTIVE DOMESTIC REMEDY (Italy)
Effectiveness of cassation appeal to contest amount of compensation paid under the Pinto law in respect of non-pecuniary damage.

DI SANTE - Italy (N° 56079/00)
Decision 24.6.2004 [Section I]

The applicant brought an action on the basis of the "Pinot Act", complaining of the excessive length of compensation proceedings brought by him more than ten years previously. The court of appeal dealing with the case found that a "reasonable time" had been exceeded. It dismissed the applicant's request for compensation in respect of pecuniary damage and, deciding on an equitable basis, awarded compensation in respect of non-pecuniary damage and an amount for costs and expenses. The applicant did not appeal on points of law. In four judgments, the text of which was deposited with the Registry on 26 January 2004, the Italian Court of Cassation, sitting as a full court, established the principle that, when ruling on "Pinto appeals", courts of appeal were to determine the amounts of non-pecuniary damage with reference to awards made by the Strasbourg Court in similar cases. The applicant complained of the amount awarded by the court of appeal in respect of non-pecuniary damage.

Admissible under Article 6(1): In its *Scordino* decision (see the summary in Case-Law Report No. 53 of May 2003), the Court considered that where the applicant complained only about the amount of compensation awarded under the "Pinot Act", he or she was not obliged to exhaust the remedy of an appeal on points of law against the appeal court decision which had determined the disputed amount. Given the recent departure from the case-law introduced in January 2004 by the Italian Court of Cassation sitting as full court, appeals on points of law now fulfil the requirements in order for their use to be mandatory for the purposes of Article 35(1). The judgments of January 2004 could no longer be disregarded by the public as of 26 July 2004, the date from which applicants were obliged to use that form of appeal for the purposes of Article 35(1) before applying to the Court. In the instant case, the time-limit available to the applicant for appealing on points of law had expired by that date. The respondent Government's objection in the instant case of non-exhaustion of domestic remedies was thus dismissed.

EFFECTIVE DOMESTIC REMEDY (Italy)
Non-application of the Pinto law remedy by an applicant who was not party to the inter-state enforcement proceedings: *preliminary objection rejected*.

K. - Italy (N° 38805/97)
Judgment 20.7.2004 [Section II]

Extract (Article 6) : "(…) the terms of Article 1 of Law n° 89 of 2001 are sufficiently wide to demonstrate the existence of a remedy before the civil courts for the undue length of proceedings. By availing themselves of this remedy, applicants may obtain a ruling as to the compatibility of the proceedings at issue with the reasonable time requirement of Article 6 § 1 of the Convention and, if need be, to obtain just satisfaction.
However, in the Court's opinion, the Government have not shown that an applicant, who is not a party to the domestic proceedings, albeit concerned by them, could effectively apply to the Court of Appeal. Moreover, it would appear that it is mainly for the Receiving Agency, within the meaning of the aforementioned UN Convention [on the recovery abroad of maintenance], to enforce the special procedure in the interests of the applicant. The Court concludes, therefore, that the applicant was dispensed from the obligation to exhaust the remedy suggested by the Government."

ARTICLE 1 OF PROTOCOL No. 1

PEACEFUL ENJOYMENT OF POSSESSIONS
Virtual extinction of guarantor's claim as a result of court-approved debt adjustment: *no violation*.

BÄCK - Finland (N° 37598/97)
Judgment 20.7.2004 [Section IV]

Facts: The applicant agreed by contract to guarantee a bank loan in favour of another person. When this person was unable to meet the reimbursement conditions, the applicant had to pay off part of the bank loan for which was guarantor. The debtor later applied for debt adjustment, in accordance with an Act of 1993 on the Adjustment of Debts of a Private Individual. The applicant opposed this request, as it could adversely affect his claim against the debtor; in the alternative, he requested that the adjustment be postponed. The District Court, considering that the debtor's solvency had been significantly weakened due to his previous unemployment and unsuccessful business activities, granted debt adjustment and

adopted a payment schedule. Although the applicant's claim was reduced by the debt adjustment, the court found that such a reduction was possible under the 1993 Act, and hence, that the payment schedule could not be postponed. The decision was upheld by the Court of Appeal.

Law: Article 1 of Protocol No. 1 – It was not disputed that the applicant's claim against the debtor constituted a "possession", based on his right of recourse as guarantor, and that the 1993 Act had interfered with his property rights. As it was not possible to examine the interference solely under the angle of "deprivation" or "control of property", the Court examined it under the general rule of "peaceful enjoyment of property". The legislative framework in place which permitted debtors the possibility of seeking debt adjustment could be seen to be in the "public interest": it served legitimate social and economic policies and was not therefore *ipso facto* an infringement of Article 1 of Protocol No. 1. Whilst the debt adjustment had caused the applicant significant detriment in monetary terms, by entering the guarantee agreement the applicant had taken upon himself a risk of financial loss. The District Court had heard the applicant and there was no indication that it had arbitrarily failed to consider his arguments. The proceedings as a whole had afforded the applicant the opportunity to put his case to the authorities. Moreover, the applicant's claim was already precarious prior to the debt adjustment. In such circumstances, the burden imposed on the applicant by the 1993 Act could not be regarded as excessive.
Conclusion: no violation.

DEPRIVATION OF PROPERTY
Annulment of recent titles to property of a foundation formed under the Ottoman Empire : *admissible*.

FENER RUM ERKEK LISESI VAKFI - Turkey (N° 34478/97)
Decision 8.7.2004 [Section III]

The applicant association is a foundation set up under the Ottoman Empire which, once transferred to the Turkish Republic, had been obliged to enter its immovable property in the land register. A law of 1935 provided that the representatives of foundations transferred in this way were required to submit a statement indicating the nature and sources of their incomes and expenditure. In 1936 the applicant association's representatives accordingly submitted a statement indicating the foundation's aims and its immovable property. In 1952 and 1958 the applicant association acquired co-ownership of two buildings on the basis of permits granted by the State. In 1992, referring to a 1974 change in the Court of Cassation's case-law concerning foundations transferred from the Ottoman Empire, the Treasury applied for those property titles to be removed from the land register. The national courts ruled that the applicant association's entry as co-owner was to be removed from the land register and ordered that the property titles be re-entered under the name of the former owners. In application of the 1974 case-law, the 1936 statement was to be considered as the applicant association's founding document, setting out its articles of association. Since the foundation had not indicated in that document that it had the capacity to acquire immovable property, its possessions amounted only to those listed in its 1936 statement, which was to be considered as its authoritative articles of association. The applicant association unsuccessfully requested authorisation to amend its articles of association. The authorities stated that, in application of the 1974 case-law, the 1936 statement was equivalent to the applicant association's 'founding document' and held that, on public policy grounds, those articles of association could not be amended.
Admissible under Article 1 of Protocol No. 1, taken alone and in combination with Article 14.

DEPRIVATION OF PROPERTY
Obligation to reimburse lawfully acquired revenue : *violation*.

KLIAFAS and others - Greece (N° 66810/01)
Judgment 8.7.2004 [Section I]

Facts: The applicants, who were accountants by profession, received a fixed monthly salary in their capacity as officials of the college of auditors. When, in a move intended to liberalise the profession, that body was replaced by the college of chartered accountants, a law of 1993 authorised them to continue working on accounts accepted before the introduction of the new system and to collect the receipts thus obtained as personal income. In 1994 a new law repealed the previously cited law and the applicants were ordered to return to the college of auditors the sums that they had already lawfully collected. The applicants unsuccessfully appealed to the Supreme Administrative Authority. Under pain of seizure of their possessions, they were obliged to reimburse the receipts collected to the college of auditors, after deduction of those sums paid in respect of income tax.

Law: Article 1 of Protocol No. 1 – The applicants had suffered a "deprivation" of property as a result of the 1994 law. They had challenged its constitutionality but the Supreme Administrative Authority had held that the law complied with the Constitution. The interference was "prescribed by law". The aim of the legislation was to ensure that the profession of chartered accountant was properly organised, which was "in the public interest". However, the applicants had been obliged, under the threat of seizure of their assets in execution, to reimburse revenue earned by their labour, which had been lawfully obtained and declared to the tax authorities. Although the amounts paid in respect of income tax had been deducted from the sums to be reimbursed, the fair balance which must be struck between protection of property and the requirements of public interest had been upset in the instant case.
Conclusion: violation (unanimously).

Article 41 – The Court awarded the applicants the totality of the sums which they had reimbursed in accordance with the 1994 law, plus simple interest at an annual rate of 6% for the period from the day on which the disputed sums were paid to the date of delivery of the Court's judgment. The Court also made an award in respect of costs and expenses.

DEPRIVATION OF PROPERTY
Refusal to return property validly expropriated 20 years earlier but not used for the purpose for which it was expropriated: *violation*.

BENEFICIO CAPPELLA PAOLINI - San Marino (N° 40786/98)
Judgment 13.7.2004 [Section II]
(see Article 6(1) [civil], above.)

ARTICLE 3 OF PROTOCOL No. 1

VOTE
Disenfranchisement following the imposition of a police supervision order: *violation*.

SANTORO - Italy (Nº 36681/97)
Judgment 1.7.2004 [Section III]
(see Article 2 of Protocol No. 4, below).

ARTICLE 2 OF PROTOCOL No. 4

Article 2(1) of Protocol No. 4

FREEDOM OF MOVEMENT
Unlawful prolongation of a police supervision order: *violation*.

SANTORO - Italy (Nº 36681/97)
Judgment 1.7.2004 [Section III]

Facts: The applicant, against whom a number of criminal complaints had been lodged in relation to his involvement in cases of stolen goods, was placed under police supervision for one year in March 1994. The order imposing this preventive measure was served on him in May 1994. However, it was not until over a year later, in July 1995, that the police drafted a document setting out the concrete obligations and movement restrictions which the applicant had to comply with during the preventive measure. As one year had already passed since the order had been served on him, the applicant requested the courts for a declaration that the preventive measure had expired. The District Court, and subsequently the Court of Appeal, considered that the order had not ceased to apply since its implementation had only started in July 1995 (when the police had drafted the document with specific obligations for the applicant). On the contrary, the Court of Cassation found that the period of special supervision had begun to run on the date when the order had been served on the applicant, and, consequently, that the special supervision had ceased to apply in May 1995. Moreover, as a result of the imposition of the special supervision order, the applicant had been taken off the electoral register in January 1995, which had prevented him from taking part in elections for the Regional Council and for the national Parliament.

Law: Article 2 of Protocol No. 4 – It was hard to understand why there had been a delay of more than one year in drafting the obligations which arose from an order which was immediately enforceable and concerned the applicant's fundamental right of freedom of movement. Although the Court of Cassation had declared that the order had ceased to apply in May 1995, it had not provided the applicant with any redress for the damages he had suffered as a result of the unlawful prolongation of the special supervision order. In such circumstances, the interference with the applicant's liberty of movement after May 1995 had not been "in accordance with law" or necessary.
Conclusion: violation (unanimously).

Article 3 of Protocol No. 1 – As Regional Councils can enact laws and the powers vested on them by the Constitution are wide enough to make them a "constituent part of the legislature",

this provision was applicable to the applicant's disenfranchisement in respect of these elections as well as those for the national Parliament. Given the delay of more than nine months between the date the order was imposed and the applicant's actual disenfranchisement by the Electoral Committee, for which no explanation had been provided by the Government, the applicant had been adversely affected in his right to vote in both such elections. Had the disenfranchisement been applied in due time and for the statutory period of one year, the measure would have ceased before the holding of such elections.
Conclusion: violation (unanimously)

Article 41 – The Court awarded the applicant 2,000 euros in respect of non-pecuniary damage. It. also made an award in respect of costs.

ARTICLE 1 OF PROTOCOL No. 7

EXPULSION OF AN ALIEN
Forced deportation on the basis of an administrative sanction later declared unlawful: *admissible*.

BOLAT - Russia (Nº 14139/03)
Decision 8.7.2004 [Section I]

The applicant, who is a Turkish national of ethnic Kabardinian origin, lived in the Kabardino-Balkaria Republic on the basis of a long-term residence permit. In 2000, his permit was lost or stolen. He obtained a new one with validity until 2004, although the security services had recommended to grant him only a short-term permit as the circumstances surrounding the loss had not been clear enough. In December 2002, the applicant was spending the night at a friend's house. The police entered the flat and took him to a police station, where he was charged with the offence of not residing at his registered place of residence and a fine was imposed on him. The applicant complained to the courts, which found he had not committed an administrative offence. However, following the quashing by the Supreme Court of the original judgment, the sanction was confirmed. In May 2003 the prosecutor, on the basis of the sanction (and a previous breach of residence regulations by the applicant) requested that the applicant's residence permit be annulled and that he be expelled. In August 2003, despite the fact that the execution of the expulsion order had been stayed pending a decision on supervisory review, members of the security services wearing face masks handcuffed the applicant and placed him on a flight to Istanbul. In October 2003, the Supreme Court found that the sanction had been unlawfully imposed on the applicant and confirmed that he could reside in Russia on lawful grounds. The applicant has requested measures to remedy the violations but has received no response to date.

Admissible under Article 2 of Protocol No. 4 and Article 1 of Protocol No. 7: Despite the Supreme Court's decision of October 2003, the applicant had not been afforded adequate redress in terms of monetary compensation nor had his forceful removal from Russia been examined by the Russian courts. He could therefore still claim to be a victim.
Inadmissible under Articles 5, 6 and Article 4 of Protocol No. 7.

ARTICLE 4 OF PROTOCOL No. 7

NE BIS IN IDEM
Supervisory review of a final acquittal: *no violation*.

NIKITIN - Russia (Nº 50178/99)
Judgment 20.7.2004 [Section II]

Facts: The applicant, a former navy officer, undertook work for a Norwegian non-governmental organisation to prepare a report on the Russian Northern Fleet and Sources of Radioactive Contamination. In October 1995, the security services instituted criminal proceedings against the applicant on charges of treason through espionage for having disclosed information on accidents of Russian nuclear submarines. The trial commenced in the City Court in October 1998 but was shortly after remitted for further investigation. The applicant was acquitted by the City Court in December 1999, as it found that he had been prosecuted on the basis of secret and retroactive decrees. The Supreme Court upheld the acquittal in April 2000, which thus acquired final force. Despite this, the Prosecutor General lodged a request for a supervisory review of the acquittal with the Presidium of the Supreme Court, which rejected the request. The Presidium found that the flaws in the investigation alleged by the Prosecutor General had been within his control to redress at earlier stages of the proceedings. The applicant challenged the laws permitting supervisory review of a final acquittal in the Constitutional Court. He then complained to the Court that the very possibility of challenging his acquittal, which had entered into force, violated his right to a fair hearing and his right not to be tried again in criminal proceedings.

Law: Article 4 of Protocol No. 7 – In the event that supervisory review of the acquittal had been granted, a new decision that would have been "final" could have resulted. Nevertheless, given the extraordinary nature of a supervisory review appeal and the problems of legal certainty that a quashing of a judgment in such proceedings could create, the Court assumed that the judgment of the Supreme Court upholding the applicant's acquittal had been the "final decision" for the purposes of this provision. The applicant had not been "tried again" in the proceedings before the Presidium, nor had he been "liable to be tried again", as these proceedings were limited to the question whether or not to grant the request for review. As the Presidium was not empowered to make a new determination on the merits, it appeared that the potential for a resumption of the proceedings in this case was too remote or indirect to constitute a "liability" within the meaning of this Article. Moreover, and more importantly from a substantive point of view, had the request been granted and proceedings resumed, the ultimate effect of supervisory review would have been to annul all previous decisions and to determine a criminal charge in a new decision, which would not have represented a duplication of proceedings. Hence, supervisory review could be regarded as an attempt to reopen proceedings, which was permitted under the second paragraph of Article 4 of Protocol No. 7, and not an attempted "second trial".
Conclusion: no violation (unanimously).

Article 6(1) – The mere possibility to reopen a criminal case was *prima facie* compatible with the Convention, including the guarantees of Article 6. Nevertheless, the manner in which such a possibility was used could impair the essence of a fair trial. Whilst the prosecutor's request could be criticised as arbitrary and abusive for having invoked defects which he could have redressed before the final judgment, this had not been prejudicial for the determination of the criminal charges. A fair balance had been struck between the interests of the applicant and the need to ensure the proper administration of justice.
Conclusion: no violation (unanimously).

Other judgments delivered in July

Articles 2 and 3

A.A. and others – Turkey (Nº 30015/96)
Judgment 27.7.2004 [Section II]

suicide in police custody and lack of effective investigation – no violation/violation; ill-treatment in police custody – violation.

Articles 2, 3, 5 and 13

Ikincisoy – Turkey (Nº 26144/95)
Judgment 27.7.2004 [Section IV]

death of applicants' relative after being taken into custody and lack of effective investigation – violation; alleged ill-treatment in custody – no violation; failure to bring detainees promptly before a judge – violation/no violation.

Articles 2 and 13

Çelik – Turkey (Nº 41993/98)
Judgment 27.7.2004 [Section IV]

killing of applicants' son by security forces – friendly settlement (statement of regret, undertaking to take appropriate measures and *ex gratia* payment of 60,000 euros).

Erkek – Turkey (Nº 28637/95)
Judgment 13.7.2004 [Section II]

disappearance of applicant's brother after being taken into custody in 1992 – no violation; lack of effective investigation – violation.

M.K. – Turkey (Nº 29298/95)
Judgment 13.7.2004 [Section IV]

murder of applicant's brother by unidentified perpetrators in 1994 and effectiveness of the investigation – no violation.

E.O. – Turkey (Nº 28497/95)
Judgment 15.7.2004 [Section I]

murder of applicant's son by unidentified perpetrators in 1995 – no violation; effectiveness of the investigation – violation.

Ağdaş – Turkey (Nº 34592/97)
Judgment 27.7.2004 [Section IV]

shooting of applicant's brother by police and lack of effective investigation – no violation/violation; lack of effective remedy – violation.

Mehmet Şirin Yilmaz – Turkey (Nº 35875/97)
Judgment 29.7.2004 [Section I]

alleged shelling of village, resulting in death of applicant's wife – no violation; lack of effective investigation – violation.

Article 3

Bakbak – Turkey (Nº 39812/98)
Judgment 1.7.2004 [Section III]

ill-treatment in custody of Danish national of Turkish origin – violation.

Mehmet Emin Yüksel – Turkey (Nº 40154/98)
Judgment 20.7.2004 [Section II]

ill-treatment in police custody – violation.

Örnek and Eren – Turkey (Nº 41306/98)
Judgment 15.7.2004 [Section III]

ill-treatment in police custody – friendly settlement (statement of regret, undertaking to take appropriate measures and *ex gratia* payment of 50,000 euros).

Articles 3, 5 and 6(2)

Absandze – Georgia (Nº 57861/00)
Judgment 20.7.2004 [Section II]

alleged lack of adequate medical care of detainee; lawfulness and length of detention on remand and lack of possibility of review of lawfulness; alleged breach of presumption of innocence – striking out.

Article 3, 8 and 13

Temel – Turkey (Nº 37047/97)
Judgment 13.7.2004 [Section II]

alleged ill-treatment by police during search of home – friendly settlement (statement of regret, undertaking to take appropriate measures and *ex gratia* payment of 6,000 euros).

Article 5(1)

Ciszewski – Poland (Nº 38668/97)
Judgment 13.7.2004 [Section IV]

continuation of detention on remand by virtue of a practice without any legal basis – violation (cf. *Baranowski* judgment of 28 March 2001).

Article 5(3)

Karakaş and others – Turkey (Nº 35077/97)
Ağirağ and others – Turkey (Nº 35982/97)
Judgments 27.7.2004 [Section IV]

failure to bring detainees promptly before a judge – violation.

Articles 5(3) and 6(1)

Süleyman Yilidirim – Turkey (Nº 40518/98)
Judgment 29.7.2004 [Section I]

failure to bring detainee promptly before a judge and independence and impartiality of State Security Court – violation.

Čevizović – Germany (Nº 49746/99)
Judgment 29.7.2004 [Section III]

length of detention on remand and length of criminal proceedings – violation.

Article 6(1)

Kovačević – Croatia (Nº 12775/02)
Judgment 1.7.2004 [Section I]

Bašić – Croatia (Nº 74309/01)
Judgment 8.7.2004 [Section I]

Dorontić – Croatia (Nº 4938/02)
Martić – Croatia (Nº 12815/02)
Judgments 15.7.2004 [Section I]

legislation staying all proceedings relating to claims for damages resulting from terrorist acts or from acts of members of the army or police during the war in Croatia – friendly settlement (*ex gratia* payment of 6,000 euros, including costs, in each case).

Wohlmeyer Bau GmbH – Austria (Nº 20077/02)
Judgment 8.7.2004 [Section I]

Gizicka – Poland (Nº 55383/00)
Zuzčák and Zizčáková – Slovakia (Nº 48814/99)
Tomková – Slovakia (Nº 51646/99)
Judgments 13.7.2004 [Section IV]

Bednarska – Poland (Nº 53413/99)
Judgment 15.7.2004 [Section I]

Radek – Poland (Nº 30311/02)
Kreuz – Poland (no. 2) (Nº 46245/99)
Judgments 20.7.2004 [Section IV]

Biały – Poland (Nº 52040/99)
Judgment 27.7.2004 [Section IV]

Rouard – Belgium (Nº 52230/99)
Roobaert – Belgium (Nº 52231/99)
GB-Unic – Belgium (no. 1) (Nº 52303/99)
GB-Unic – Belgium (no. 2) (Nº 52304/99)
Judgments 29.7.2004 [Section I]

M.Ł. and A.Ł. – Poland (Nº 44189/98)
Judgment 27.7.2004 [Section IV]

McMullen – Ireland (Nº 42297/98)
Judgment 29.7.2004 [Section III]

length of civil proceedings – violation.

Franjulien – Belgium (Nº 52950/99)
Judgment 29.7.2004 [Section I]

length of civil proceedings – striking out.

Adamscy – Poland (Nº 49975/99)
Judgment 27.7.2004 [Section IV]

length of enforcement proceedings – violation.

Entreprise Robert Delbrassinne S.A. – Belgium (Nº 49204/99)
Judgment 1.7.2004 [Section I]

Kalkanis – Greece (Nº 67591/01)
Judgment 8.7.2004 [Section I]

Vayopoulou – Greece (Nº 19431/02)
Judgment 15.7.2004 [Section I]

Carries – France (Nº 74628/01)
Judgment 20.7.2004 [Section II]

length of administrative proceedings – violation.

Eastaway – United Kingdom (Nº 74976/01)
Judgment 20.7.2004 [Section IV]

length of proceedings concerning disqualification of company director – violation.

Gobry – France (Nº 71367/01)
Judgment 6.7.2004 [Section II]

length of proceedings before the *Conseil d'Etat* – violation.

Lazarou – Greece (Nº 66808/01)
Judgment 8.7.2004 [Section I]

length of proceedings in the Audit Court – violation.

Pfleger – Czech Republic (Nº 58116/00)
Judgment 27.7.2004 [Section II]

length of criminal proceedings which the applicant had joined as a party seeking damages – violation.

Pothoulakis – Greece (Nº 16771/02)
Judgment 15.7.2004 [Section I]

Wróbel – Poland (Nº 46002/99)
Judgment 20.7.2004 [Section IV]

Zhbanov – Bulgaria (Nº 45563/99)
Judgment 22.7.2004 [Section I]

length of criminal proceedings – violation.

Manasson – Sweden (Nº 41265/98)
Judgment 20.7.2004 [Section IV]

enforcement of tax surcharges prior to determination of liability by a court, and length of the proceedings – friendly settlement (*ex gratia* payment of 44,000 euros).

Walser – France (Nº 56653/00)
Judgment 1.7.2004 [Section I]

dismissal of appeal on points of law as a result of appellant's failure to surrender into custody or to lodge security prior to appeal hearing – violation.

Houria Abbas – France (Nº 49532/99)
Judgment 15.7.2004 [Section III]

dismissal of appeal on points of law as a result of appellant's failure to surrender into custody prior to appeal hearing – violation.

Dondarini – San Marino (Nº 50545/99)
Judgment 6.7.2004 [Section II]

lack of oral hearing in criminal appeal proceedings – violation.

Yeşil – Turkey (Nº 50249/99)
Judgment 1.7.2004 [Section III]

Çolak – Turkey (no. 1) (Nº 52898/99)
Çolak – Turkey (no. 2) (Nº 53530/99)
Aksaç – Turkey (Nº 41956/98)
Judgments 15.7.2004 [Section III]

İrey – Turkey (Nº 58057/00)
Judgment 27.7.2004 [Section IV]

Çaloğlu – Turkey (Nº 55812/00)
Judgment 29.7.2004 [Section III]

independence and impartiality of State Security Court – violation.

Article 6(1) and (3)(c)

Pronk – Belgium (Nº 51338/99)
Judgment 8.7.2004 [Section I]

refusal of courts to allow representation of absent accused – violation.

Articles 6(1) and 10

Ayşenur Zarakolu and others – Turkey (Nº 26971/95 and Nº 37933/97)
Judgment 13.7.2004 [Section II]

seizure of book and conviction of editor for making separatist propaganda; independence and impartiality of State Security Court – violation.

Haydar Yilidirim and others – Turkey (Nº 42920/98)
Judgment 15.7.2004 [Section III]

conviction for incitement to hatred based on social, ethnic and regional differences, and independence and impartiality of State Security Court – violation.

Okutan – Turkey (Nº 43995/98)
Judgment 29.7.2004 [Section III]

Iprahim Ülger – Turkey (Nº 57250/00)
Judgment 29.7.2004 [Section III]

conviction for making separatist propaganda and independence and impartiality of State Security Court – violation.

Articles 6(1) and 13

Romashov – Ukraine (Nº 67534/01)
Judgment 27.7.2004 [Section II]

prolonged delay in complying with decision of labour disputes commission awarding sums of money, and lack of effective remedy – violation.

Djangozov – Bulgaria (Nº 45950/99)
Judgment 8.7.2004 [Section I]

length of civil proceedings, stayed pending outcome of parallel criminal proceedings, and lack of effective remedy – violation.

Lisławska – Poland (Nº 37761/97)
Zynger – Poland (Nº 66096/01)
Arrêts 13.7.2004 [Section IV]

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

Nastos – Greece (Nº 6711/02)
Theodoropuolous – Greece (Nº 16696/02)
Judgments 15.7.2004 [Section I]

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

O'Reilly and others – Ireland (Nº 54725/00)
Judgment 29.7.2004 [Section III]

length of judicial review proceedings and lack of effective remedy – violation.

Hadjikostova – Bulgaria (no. 2) (Nº 44987/98)
Judgment 22.7.2004 [Section I]

length of civil proceedings and alleged lack of effective remedy – no violation.

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

Katsoulis – Greece (Nº 66742/01)
Judgment 8.7.2004 [Section I]

compulsory reafforestation of land on basis of ministerial decision of 1934, without re-examination – violation (cf. *Papastavrou and others v. Greece* judgment of 10 April 2003).

Bocancea and others – Moldova (Nº 18872/02, Nº 20490/02, Nº 18745/02, Nº 6241/02, Nº 6236/02, Nº 21937/02, Nº 18842/02, Nº 18880/02 and Nº 18875/02)
Judgment 6.7.2004 [Section IV]

delays by authorities in complying with court judgments ordering payment of compensation – violation.

Shmalko – Ukraine (Nº 60750/00)
Judgment 20.7.2004 [Section II]

prolonged delay in complying with court decisions awarding sums of money – violation.

Croitoru – Moldova (Nº 18882/02)
Judgment 20.7.2004 [Section IV]

prolonged delays by authorities in payment of sums awarded by court – violation.

Scordino – Italy (no. 1) (Nº 36813/97)
Judgment 29.7.2004 [Section I]

length of proceedings relating to payment of compensation for expropriation, passing of legislation affecting outcome of pending court proceedings and adequacy of compensation for expropriation – violation.

Article 8

Madonia – Italy (Nº 55927/00)
Judgment 6.7.2004 [Section IV]

absence of legal basis for opening of prisoner's correspondence with lawyer and with the European Commission of Human Rights – violation.

Article 10

Kürkçü – Turkey (Nº 43996/98)
Judgment 27.7.2004 [Section II]

conviction of translator for defaming the armed forces in translation of a report of a human rights non-governmental organisation – violation.

Article 1 of Protocol No. 1

Scordino – Italy (no. 2) (Nº 36815/97)
Judgment 15.7.2004 [Section I]

prolonged building prohibition – violation.

I.R.S. and others – Turkey (Nº 26338/95)
Judgment 20.7.2004 [Section II]

prescription of property rights on basis of 20 years of occupation by the State, without compensation – violation.

Asuman Aydin – Turkey (Nº 40261/98)
Judgment 15.7.2004 [Section III]

Muhey Yaşar and others – Turkey (Nº 36973/97)
Judgment 22.7.2004 [Section I]

delay in payment of compensation for expropriation – violation.

Mora do Vale and others – Portugal (Nº 53468/99)
Judgment 29.7.2004 [Section III]

lengthy delay in fixing and payment of compensation in respect of occupation of land in the context of nationalisation – violation.

Just satisfaction

Karagiannis – Greece (Nº 51354/99)
Judgment 15.7.2004 [Section I]

Elia s.r.l. – Italy (Nº 37710/97)
Judgment 22.7.2004 [Section II (former composition)]

Buffalo s.r.l. in liquidation – Italy (Nº 38746/97)
Judgment 22.7.2004 [Section I]

Golea – Roumanie/Romania (Nº 29973/96)
Judgment (striking out) 27.7.2004 [Section II]

Segal – Romania (Nº 32927/96)
Judgment 27.7.2004 [Section II]

Revision

Karagiannis – Greece (Nº 51354/99)
Judgment 8.7.2004 [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:

NACHOVA and others - Bulgaria (Nº 43577/98 and 43579/98)
Judgment 26.2.2004 [Section I]

The cases concern the shooting of two Roma fugitives by military police during an attempted arrest, and effectiveness of the investigation (see Information Note No. 61).

Judgments which have become final

Article 44(2)(b)

The following judgments have become final in accordance with Article 44(2)(b) of the Convention (expiry of the three month time limit for requesting referral to the Grand Chamber) (see Information Note Nos. 62-63):

MERIT – Ukraine (Nº 66561/01)
Judgment 30.3.2004 [Section II]

RIVAS – France (N° 59584/00)
QUESNE – France (Nº 65110/01)
COORBANALLY – France (Nº 67114/01)
Judgments 1.4.2004 [Section I]

KARALYOS and HUBER – Hungary (and Greece) (Nº 75116/01)
MEHDI ZANA – Turkey (no. 2) (Nº 26982/95)
Judgments 6.4.2004 [Section II]

J.G. - Poland (Nº 36258/97)
Judgment 6.4.2004 [Section IV]

ÖZALP and others – Turkey (Nº 32457/96)
WEH – Austria (N° 38544/97)
BELCHEV – Bulgaria (Nº 39270/98)
HAMANOV – Bulgaria (Nº 44062/98)
Judgments 8.4.2004 [Section I]

SERDAR ÖZCAN – Turkey (Nº 55427/00)
SOARES FERNANDES – Portugal (Nº 59017/00)
KAYIHAN and others – Turkey (Nº 42124/98)
Judgments 8.4.2004 [Section III]

MAMAÇ and others – Turkey (Nº 29486/95, Nº 29487/95 and Nº 29853/96)
Judgment 20.4.2004 [Section II]

VADALA – Italy (Nº 51703/99)
BULENA – Czech Republic (Nº 57567/00)
AMIHALACHIOAIE - Moldova (N° 60115/00)
Judgments 20.4.2004 [Section II]

ANGELOV – Bulgaria (Nº 44076/98)
RADOVANOVIC – Austria (Nº 42703/98)
Judgments 22.4.2004 [Section I]

NASTOU – Greece (Nº 51356/99)
Judgment (just satisfaction) 22.4.2004 [Section I]

SARIKAYA – Turkey (Nº 36115/97)
ÖZER and others – Turkey (Nº 48059/99)

YAZGAN – Turkey (Nº 49657/99)
YAZGANOGLU – Turkey (Nº 50915/99)
YAVVUZASLAN – Turkey (Nº 53586/99)
Judgments 22.4.2004 [Section III]

MAAT – France (Nº 39001/97)
DOERGA – Netherlands (N° 50210/99)
Judgments 27.4.2004 [Section II]

MEHMET SALIH and ABDÜLSAMET ÇAKMAK – Turkey (Nº 45630/99)
DÖNMEZ – Turkey (Nº 48990/99)
Judgments 29.4.2004 [Section III]

Article 44(2)(c)

On 7 July 2004 the Panel of the Grand Chamber rejected requests for referrral of the following judgments, which have consequently become final:

Kovács – Hungary (Nº 54457/00)
Judgment 16.12.2003 [Section II]

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

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

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

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

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

Kačmár – Slovakia (Nº 40290/98)
Judgment 9.3.2004 [Section IV]

Iorgov – Bulgaria (Nº 40653/98)
Judgment 11.3.2004 [Section I]

Tóth – Hungary (Nº 60297/00)
Judgment 30.3.2004 [Section II]

Takak – Turkey (Nº 30452/96)
Judgment 1.4.2004 [Section III]

Krzak – Poland (Nº 51515/99)
Judgment 6.4.2004 [Section IV]

Statistical information[1]

Judgments delivered	July	2004
Grand Chamber	2	9
Section I	39	116(123)
Section II	22(24)	102(113)
Section III	17	83(103)
Section IV	28(36)	100(130)
former Sections	1	3
Total	**109(119)**	**413(481)**

Judgments delivered in July 2004					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	2	0	0	0	2
Section I	31	4	1	3	39
Section II	18(20)	1	1	2	22(24)
Section III	16	1	0	0	17
Section IV	25(33)	3	0	0	28(36)
former Section II	0	0	0	1	1
Total	**92(102)**	**9**	**2**	**6**	**109(119)**

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

Judgments delivered in 2004					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	8	0	0	1	9
former Section I	0	0	0	0	0
former Section II	1	0	0	2	3
former Section III	0	0	0	0	0
former Section IV	0	0	0	0	0
Section I	94(97)	16(20)	2	4	116(123)
Section II	89(100)	7	2	4	102(113)
Section III	78(98)	5	0	0	83(103)
Section IV	86(116)	12	2	0	100(130)
Total	**356(420)**	**40(44)**	**6**	**11**	**413(481)**

Decisions adopted s		July	2004
I. Applications declared admissible			
Grand Chamber		1	1
Section I		4	152(160)
Section II		6	73(74)
Section III		11	88(107)
Section IV		7	84(115)
Total		**29**	**398(457)**
II. Applications declared inadmissible			
Grand Chamber		0	1
Section I	- Chamber	4	76(78)
	- Committee	304	3420
Section II	- Chamber	5	52(53)
	- Committee	254	2419
Section III	- Chamber	9	39
	- Committee	267	1621
Section IV	- Chamber	2	52(63)
	- Committee	174	1745
Total		**1019**	**9425(9439)**
III. Applications struck off			
Section I	- Chamber	1	41
	- Committee	3	39
Section II	- Chamber	3	31
	- Committee	6	37
Section III	- Chamber	0	94
	- Committee	3	16
Section IV	- Chamber	1	23
	- Committee	5	29
Total		**22**	**310**
Total number of decisions[1]		**1070**	**10133(10206)**

1. Not including partial decisions.

Applications communicated	July	2004
Section I	20(24)	313(335)
Section II	7	234(258)
Section III	13	401(402)
Section IV	13	152
Total number of applications communicated	**53(57)**	**1100(1147)**

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

Convention

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

Protocol No. 1

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

Protocol No. 2

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

Protocol No. 6

Article 1	:	Abolition of the death penalty

Protocol No. 7

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

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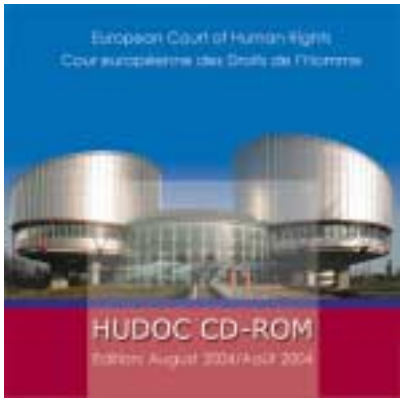

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