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EUROPEAN COURT OF HUMAN RIGHTS

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ARTICLE 2

LIFE
Alleged inhuman treatment and killing by military forces, and adequacy of investigation: *communicated*.

BITIYEVA and IDUYEVA-BISIYEVA – Russia (N° 57953/00 and N° 37392/03)
[Section I]

The applicants are a mother and daughter who lived in Chechnya. The first applicant, who was politically active against the war and a member of an NGO, was detained in 2000. She claimed to have been taken to a detention facility, together with one of her sons, after a search of their house and a passport check by Russian soldiers. She was kept there for one month, during which she was beaten, humiliated and denied professional medical help in spite of her health problems. She maintained, backed by the testimony of another detainee, that the conditions of detention were inhuman. Prior to her release, she was transferred to a hospital and cleared of the charges of involvement with illegal armed groups. The second applicant alleges that her mother and three other members of the family were killed in an attack on their house by military forces in May 2003. She submitted three statements by witnesses of the events describing the arrival of military vehicles in the middle of the night, the breaking into several houses in the neighbourhood and the noise of shots coming from the first applicant's house. The witnesses submitted that the following morning soldiers surrounding the village had told them that a military group with a "special mission" permit had entered the village during the night. A criminal investigation was opened into the deaths. The second applicant requested the prosecutor to grant her victim status in the case, but she received no reply. She submits that after the killings she was harassed and threatened by military and law-enforcement bodies, and that she feared for her safety. She claims her brother disappeared after being detained by military forces, and that her aunt has been questioned about her application to the Court.
Communicated under Articles 2, 3, 5 and 13, with a question on possible hindrance of the exercise of the applicants' right of petition.

LIFE
Disappearance after alleged abduction by security services, and adequacy of investigation: *communicated*.

MAGOMADOV – Russia (N° 68004/01)
[Section I]

The applicant lives in a village in Chechnya. He claims that his brother was arrested in October 2000 after a search of their house by an armed unit of the Russian Federal Security Service. The family applied to various law-enforcement authorities for information on the disappearance of their relative, but received little information. The security services acknowledged that they had apprehended their relative at a checkpoint, as he resembled a "wanted fighter". In December 2000, the applicant was informed that criminal proceedings would be opened into his brother's disappearance. The Department of Interior of Chechnya subsequently informed the applicant that his brother had been detained on suspicion of having links with illegal armed groups but had been released the day after his arrest when it had been established that the suspicion was unfounded. The applicant, together with an NGO, made several requests for information to the General Prosecutor, and complained to him about the contradictory information the family had received and of the absence of entries in the register

of detainees at the centre where the applicant's brother had been detained. In May 2004, the applicant himself disappeared. The family suspects he is being held at a Russian military base. Communicated under Articles 2, 3 and 5.

LIFE
Reimprisonment of seriously ill detainee : *communicated*.

AYDOGAN – Turkey (N° 7018/04)
[Section III]

The applicant introduced the application on his own behalf and on behalf of his son. The latter, held in a type-F remand prison, had gone on hunger strike for a hundred and twenty-five days. As a result, he suffered from Wernicke-Korsakoff syndrome, an illness that leads to a series of cerebral disorders. In December 2001 the applicant was provisionally released for medical treatment. His release was ordered on the basis of a medical report by the relevant authorities. The suspension of the sentence was renewed twice, on both occasions on the basis of medical certificates. In September 2003 a new medical report concluded that the health of the applicant, who continued to suffer from the syndrome, did not justify extending the suspension of his sentence. The applicant was then re-imprisoned in January 2004. The Istanbul Medical Association stated that the illness's after-effects were no longer curable and held that the medical reports drawn up by the relevant authorities had no scientific basis. In March 2004, the applicant was transferred to the prison wing of a hospital.
Communicated under Articles 2 and 3.

ARTICLE 3

TORTURE
Ill-treatment of young people and a pregnant woman in custody : *violation*.

BATI and others – Turkey (N° 33097/96 and N° 57834/00)
Judgment 3.6.2004 [Section I]
(see Article 13, below).

INHUMAN TREATMENT
Indirect suffering of applicant as a result of treatment of son in detention: *communicated*.

AYDOGAN – Turkey (N° 7018/04)
[Section III]
(see Article 2, above).

EXTRADITION
Detention with a view to extradition to Turkmenistan: *communicated*.

RYABIKIN – Russia (N° 8320/04)
[Section I]

The applicant is a Turkmen citizen of Russian ethnic origin. He was the head of a construction company that entered a contract with the Government. Following problems in the implementation of the contract, the applicant brought criminal proceedings against two

public officials. He claims that after lodging the complaint he received threats from law-enforcement bodies and decided to leave the country. Prior to leaving, he applied for Russian citizenship at the Russian Embassy. He entered Russia in 2001 with migrant status. In 2003, he applied for refugee status, which was rejected on the ground that he did not qualify as a refugee and had probably left Turkmenistan to escape from criminal proceedings. The applicant's appeal against the rejection of refugee status is pending. In the meantime, criminal proceedings had been initiated against the applicant in Turkmenistan and he was placed by the Turkmen authorities on an international wanted list. In February 2004, during a visit to the Passport and Visa Service concerning his pending application for citizenship, the applicant was arrested. The District Court ordered his detention pending extradition to Turkmenistan. The City Court upheld this decision, without specifying the applicant's term of detention. No decision on his extradition has been taken so far by the Russian authorities.
Communicated under Articles 3 and 5.

EXPULSION
Expulsion to Iran, where applicant would allegedly face risk of death or ill-treatment as a homosexual: *inadmissible*.

FASHKAMI – United Kingdom (N° 17341/03)
Decision 22.6.2004 [Section IV]
(see Article 8, below).

EXPULSION
Expulsion to Tanzania, where applicant alleges he would be prevented from receiving treatment for HIV: *inadmissible*.

NDANGOYA – Sweden (N° 17868/03)
Decision 22.6.2004 [Section IV]
(see Article 8, below).

EXPULSION
Expulsion to Bosnia-Herzegovina of a family suffering from post-traumatic stress disorder: *inadmissible*.

SALKIC – Sweden (N° 7702/04)
Decision 29.6.2004 [Section IV]

The applicants are a Bosnian Muslim family which fled to Germany in 1992 due to alleged harassment and discrimination. They were returned to Bosnia-Herzegovina in 1998 and housed by the Refugee Authority in Tuzla. In 2000, they entered Sweden and requested asylum. Their application was rejected as it was considered that they could return to their country without a risk of persecution due to their ethnicity. From their arrival in Sweden until their expulsion, all the members of the family were in contact with the Swedish health care system and under psychiatric treatment. Several medical certificates indicated that their fragile mental health was linked to traumatic experiences and anxiety about the future. Some doctors stated that the children would be permanently damaged by expulsion. The Migration Authorities, whilst acknowledging the difficult circumstances of the family, did not consider these were grave enough to constitute a violation of humanitarian standards if they were expelled, and, hence, rejected the seven asylum applications which the family submitted in total. The expulsion was suspended following a request by the Court under Rule 39 of the Rules of Court but once the Court decided not to prolong the interim measure, in March 2004,

the family was expelled. A psychologist who examined the children upon their arrival in Tuzla stated that adequate treatment for them was not available in Bosnia-Herzegovina.

Inadmissible under Articles 2 and 3: Despite the fact that the applicants had been through traumatic experiences, suffered severe stress and required long-term treatment, there existed health care centres which the applicants could rely on in Bosnia-Herzegovina, even if they were not of the same standards as those in Sweden. Given the high threshold set by Article 3, and the fact that the case did not disclose exceptional circumstances, the expulsion was not contrary to this provision: manifestly ill-founded.

ARTICLE 5

Article 5(1)(e)

LAWFUL ARREST
Detention in police custody for drunkenness and disorderly conduct: *violation*.

HILDA HAFSTEINSDÓTTIR – Iceland (N° 40905/98)
Judgment 8.6.2004 [Section IV]

Facts: The applicant was arrested and held on remand in police custody on six occasions between 1988 and 1992. The first time she was taken to a police station by two taxi drivers since she had refused to pay them. On four other occasions the applicant arrived voluntarily at the same police station, apparently without any purpose, and in a very drunken state. The last incident of detention occurred when the police were called by a hotel complaining about the applicant. On each of the six occasions the applicant spent the night in a cell and was released the following morning. According to the police reports drawn up, the reasons for her detention on every occasion had been her state of intoxication, agitation and aggressive behaviour towards the policemen. The applicant filed complaints against various police officers, but the prosecution authorities did not consider there were grounds for ordering an investigation. She then instituted civil proceedings against the State, claiming compensation for having been unlawfully arrested by the police. The Supreme Court dismissed the claim, finding there had been sufficient reasons and a legal basis for the successive detentions.

Law: Article 5(1)(e) – It was not disputed that each of the applicant's confinements by the police to detention in a cell had amounted to a deprivation of liberty. The detentions were covered by Article 5(1)(e), given that the applicant's conduct and behaviour had been under the strong influence of alcohol and could reasonably have been considered to entail a threat to public order. As to the lawfulness of the detentions, the Court was satisfied they had conformed to national substantive and procedural rules. However, concerning the quality of the rules in question, the provisions relied on by the Government were not precise as to the type measures that the police were authorised to take in respect of a detainee, nor did they address the maximum authorised duration of detention. Whilst the Police Instructions invoked by the authorities did contain more detailed rules on the discretion which a police officer enjoyed in ordering detention, the instructions did not permit detention in cases of mere intoxication if an alternative measure could be used. Moreover, the Court was not satisfied that such Police Instructions had been made accessible to the public. Hence, the exercise of discretion by the police and the duration of the detention had been governed by administrative practice alone, not by a legal framework. For these reasons, the Court was not satisfied that the law, as applicable at the material time, was sufficiently precise and accessible to avoid all risk of arbitrariness. Accordingly, the applicant's deprivation of liberty had not been "lawful".
Conclusion: violation (5 votes to 2).

Article 41 – The finding of a violation was sufficient just satisfaction for the non-pecuniary damage sustained by the applicant.

ARTICLE 6

Article 6(1) [civil]

APPLICABILITY
Application by *assistente* in criminal proceedings to civil court for compensation in respect of damage resulting from the criminal offence: *Article 6 not applicable*.

GARIMPO – Portugal (N° 66752/01)
Decision 10.6.2004 [Section III]

Following an accident in which the applicant's son was killed, criminal proceedings were brought against the driver at fault. The applicant participated in the proceedings as an *assistente*. This form of intervention, available to victims of criminal offences and their close relatives, enables those concerned to participate actively in criminal proceedings as an assistant to the prosecuting authorities. In principle, this is the procedure that complainants should use to apply for compensation for damage arising from an offence; however, under certain conditions, which were met in the instant case, they may lodge this request separately with the civil courts. While the criminal proceedings were under way, the applicant applied to the civil courts for compensation for damage resulting from the accident. The criminal proceedings ended in a decision that there was no case to answer. In the civil proceedings, the court ruled partially in the applicant's favour and awarded him compensation.

Inadmissible under Article 6(1): This provision is applicable to criminal proceedings in which the applicant participates as an *assistente* (cf. the *Moreira de Azevedo* judgment), except in those situations where participation as an *assistente* is exclusively punitive in purpose. In the instant case, from the moment that the applicant decided to bring separate civil proceedings to obtain compensation for the damage sustained as a result of the accident, the criminal proceedings could no longer result in an award of compensation to the complainant, but merely in the possible conviction of the accused. In the Court's opinion, the applicant's decision to bring a civil action amounted to an unequivocal waiver of his civil rights in the context of the criminal proceedings. Accordingly, the criminal proceedings in the instant case did not concern the applicant's civil rights and obligations: incompatible *ratione materiae*.
[cf. the *Perez* judgment of 12 February 2004 in which the Court held that Article 6's applicability to civil-party applications ended where such applications were merely punitive in purpose. See the summary in Case-law Information Note No. 61 of February 2004.]

APPLICABILITY
Administrative proceedings brought by non-commissioned officer responsible for dealing with postal orders : *admissible*.

ZISIS – Greece (N° 77658/01)
[Section I]

The applicant is a serving non-commissioned officer in the army. He is assigned to the Army Postal Service, which is responsible for processing and distributing military mail between the army's different sections. This postal service, which is separate from the civilian postal

service, was set up to ensure that the distribution of mail which is considered confidential or pertaining to matters of national security was entrusted only to armed forces personnel, who are subject to stricter disciplinary norms than civilian officials. The applicant holds a managerial post in a local military post office. He is responsible for dealing with the army's postal orders. In this capacity, he applied for the risk allowance for managerial staff. The administrative courts found that the applicant was primarily and exclusively involved in carrying out managerial duties, and accordingly held that he was entitled to receive the allowance.
Admissible under Article 6 (reasonable time), the question of the applicability of this Article being joined to the merits.

ACCESS TO COURT
Refusal of a private children's home to hand children over to adoptive parents, notwithstanding final and binding court decisions : *violation*.

PINI and BERTANI, and MANERA and ATRIPALDI – Romania (N° 78028/01 and N° 78030/01)
Judgment 22.6.2004 [Section II]
(see Article 8, below).

ACCESS TO COURT
Dismissal of appeal on points of law on account of appelant's failure to indicate his family status and the number and age of his children : *admissible*.

ZOUBOULIDIS – Greece (N° 77574/01)
Decision 3.6.2004 [Section I]

The applicant is a civil servant in the Ministry of Foreign Affairs. He works as an usher in an embassy. He brought civil proceedings to secure an increase in his expatriation allowance for dependent children. This action was dismissed at first instance but he was partially successful on appeal. The applicant appealed on points of law. The Court of Cassation dismissed his appeal. It declared certain grounds of appeal inadmissible on account of their vagueness, and criticised the applicant for, *inter alia*, failing to provide information on his family situation and the number and age of his children. This information was recorded in the case-file which had been filed with the appeal on points of law.
Admissible under Article 6(1).

ADVERSARIAL TRIAL
Rejection of appeal on points of law as inadmissible in preliminary procedure for examination of appeals by the Court of Cassation: *no violation*.

STEPINSKA – France (N° 1814/02)
Judgment 15.6.2004 [Section II]

Facts: The applicant had applied to the *commission de surendettement des particuliers* (commission for personal over-indebtedness) with a request for verification of a sum she owed. The judge dealing with enforcement proceedings at the *tribunal de grande instance* fixed the amount owed by the applicant in a judgment against which no ordinary appeal lay. The applicant appealed on points of law to the Civil Division of the Court of Cassation. She chose to conduct her own defence. The appeal was declared inadmissible on the basis of the preliminary procedure for examining the admissibility of appeals to the Court of Cassation. Under that procedure, which came into force in 2002, manifestly inadmissible or ill-founded

appeals on points of law are declared inadmissible at the outset. The applicant's appeal was manifestly inadmissible under the consistent case-law in that area.

Law: Article 6(1) – In the context of the preliminary admissibility procedure for appeals to the Court of Cassation, the advocate-general had made his submissions for the first time, in oral form only, at the public hearing (in contrast to existing practice in proceedings before the Court of Cassation, as already examined by the Court: see the *Meftah* judgment, ECHR 2002-VII). In the instant case, having chosen to conduct her own defence, the applicant had not been represented by a member of the Court of Cassation Bar and had not been summoned to the hearing. The Court had already ruled that the brevity of the grounds provided for preliminary admissibility decisions on appeals to the Court of Cassation was not contrary to Article 6 (cf. decision in *Burg*, no. 34763/02, ECHR 2003-II). With regard to this specific procedure, the Court noted that, in the context of the preliminary admissibility procedure for appeals to the Court of Cassation, the filing of a reply to the advocate-general's oral submissions would have had no effect on the outcome of the dispute because the legal solution adopted had not been open to discussion. The applicant's appeal had clearly fallen into the category of manifestly inadmissible appeals. The Convention did not aim to protect rights that were purely theoretical. Accordingly, in view of the particular circumstances of this case, the fact that the applicant had been unable to reply to the advocate-general's oral submissions had not amounted to a violation of Article 6, unless she were to be recognised as enjoying a right that had no real scope or substance.
Conclusion: no violation (unanimously).
[For the procedure governing the non-admissibility of appeals to the *Conseil d'Etat*, see the decision in *Latournerie v. France*, no. 50321/99, 10 December 2002]

ADVERSARIAL TRIAL
Absence of opportunity to reply to oral submissions of the *avocat général* at hearing in Court of Cassation and absence of notification of the date of the hearing: *no violation*.

STEPINSKA – France (N° 1814/02)
Judgment 15.6.2004 [Section II]
(see above).

ORAL HEARING
Lack of oral hearing in administrative proceedings : *no violation*.

VALOVÁ and others – Slovakia (Nº 44925/98)
Judgment 1.6.2004 [Section IV]

Extract : "According to the Court's established case-law, in proceedings before a court of first and only instance the right to a "public hearing" in the sense of Article 6 § 1 entails an entitlement to an oral hearing unless there are exceptional circumstances that justify dispensing with such a hearing. In particular, an oral hearing may not be required under Article 6 § 1, *inter alia*, where a tribunal is only called upon to decide on questions of law of no particular complexity.
The Court notes that in its judgment … the Nitra Regional Court expressly stated that the only point in question was a question of law: it was called upon to decide whether the applicants had standing … to have the property restored. From this point of view the crucial issue was whether or not the private company of which the applicants' predecessors had been members and from which the land in question had been taken away had been a legal person. That issue was determined in the judgment of the Nitra branch office of the Bratislava Regional Court … delivered in the context of proceedings which concerned a different restitution claim of the applicants. Prior to the delivery of that judgment the Regional Court held an oral hearing in

the course of which the applicants were free to submit their arguments. In these circumstances, the Court considers that another public hearing was not indispensable under Article 6 § 1 of the Convention when deciding on the point at issue.
The Court does not find on the evidence before it that the applicants' submissions to the Nitra Regional Court were capable of raising any issues of fact or of law pertaining to their restitution claim which were of such a nature as to require an oral hearing for their disposition. At the relevant time Section 250f of the Code of Civil Procedure permitted courts to deliver a judgment without prior oral hearing in similar cases."

IMPARTIAL TRIBUNAL
Appeal Court judge having acted as legal counsel against the applicants in earlier proceedings: *admissible*.

PUOLITAIVAL and PIRTTIAHO – Finland (N° 54857/00)
Decision 1.6.2004 [Section IV]

The applicants were the owners of a company. In 1991, they brought civil proceedings against another company, whose lawyer at the time, P.L., was also a *referendaire* of the Court of Appeal. The lawyer made harsh submissions against the applicants in those proceedings. In 1992, the applicants initiated another set of civil proceedings against an investment bank. The case was examined by the Court of Appeal in 1993 and again in 1997. Judge P.L. did not take part in the 1993 proceedings, but was a member of the Chamber that dismissed the applicants' appeal in 1997. The applicants requested the Supreme Court for leave to appeal stating, *inter alia*, that one of the Court of Appeal judges was partial for having acted as a counsel for the opposing party in previous proceedings. The Supreme Court refused leave to appeal after having obtained a statement from judge P.L. in which she declared she did not even remember having acted as counsel to the applicants' adversary in older proceedings.
Admissible under Article 6.

IMPARTIAL TRIBUNAL
Independence and impartiality of a judge who was also a Member of Parliament: *no violation*.

PABLA KY – Finland (Nº 47221/99)
Judgment 16.9.2003 [Section IV]

Facts: The applicant was a company running a restaurant on rented premises. Following the completion of renovation works agreed between the parties, the applicant instituted civil proceedings against the owner of the premises since it considered the works were unsatisfactory. The District Court rejected the applicant's claim for compensation. The Court of Appeal upheld the decision. One of the members of the Court of Appeal, M.P., was also a Member of the Finnish Parliament at the time (he had been acting as an expert member of that court since 1974). The applicant complained to the Supreme Court, *inter alia*, about the lack of independence of judge M.P. The Supreme Court refused leave to appeal.

Law: Article 6(1) – As there was no indication that M.P. was subjectively biased against the applicant, the only question was whether his position as a member of the legislature could cast a legitimate doubt on the objective impartiality of the Court of Appeal. The Court recalled that there was no objection *per se* to an expert lay member forming part of a given court. Contrary to what the applicant had alleged, M.P.'s membership of a particular political party had no connection or link with any of the parties or the substance of the case. Neither had M.P. exercised any prior legislative or advisory functions in respect of the case before the Court of Appeal. Hence, the Court was not persuaded that the mere fact that M.P. was a

member of the legislature at the time when he sat on the applicant's appeal was sufficient to raise doubts on the independence and impartiality of the Court of Appeal. The applicant's fears in this respect could not therefore be regarded as objectively justified.
Conclusion: no violation (6 votes to 1).

Article 6(1) [criminal]

FAIR HEARING
Fitness of an eleven year old boy to plead and stand trial: *violation*.

S.C. – United Kingdom (Nº 60958/00)
Judgment 15.6.2004 [Section IV]

Facts: When he was eleven years old the applicant was charged with attempted robbery and committed for trial before the Crown Court. Two psychiatric reports drawn up before the trial stated that the applicant had learning difficulties and impaired reasoning skills, which could have adversely affected his understanding of the consequences of his wrong actions. The medical reports recommended long term foster care in preference to a custodial sentence. At a pre-trial hearing, the applicant's counsel argued that the trial should be stayed as an abuse of process, because the applicant would not be able to understand fully and participate in the trial, given his low attention span and cognitive abilities, which were more consistent with a child of 8 rather than 11. The submission was rejected and the applicant was placed on trial in the Crown Court. Measures were taken to conduct the trial in as informal a manner as possible (the applicant was not required to sit in the dock, the court took frequent breaks and the wearing of wigs was dispensed with). He was convicted and sentenced to two and a half years' detention. On appeal, the applicant advanced new evidence, including a statement from a social worker who had been with him throughout the trial, which underlined the applicant's lack of comprehension of the situation he had been faced with. The Court of Appeal refused leave to appeal.

Law: Article 6(1) (fair trial) – The trial on criminal charges of an eleven year old child does not in itself give rise to a breach of this provision, as long as he or she is able to participate effectively in the trial. "Effective participation" requires that the accused has a broad understanding of the nature of the trial process and of what is at stake for him. Although steps were taken to conduct the trial in as informal a manner as possible and the court process seems to have been explained to the applicant in a manner commensurate with his learning difficulties by the social worker who attended the trial with him, the statements of the social worker showed that the applicant had not comprehended the situation he was in, or, even more strikingly, did not seem to have grasped the fact that he risked a custodial sentence, and had thus appeared confused when taken down to the holding cells instead of going back to his foster father. In the light of this evidence, the Court could not conclude that the applicant had been capable of participating effectively in his trial. The child's best interest as well as that of the community would have required the applicant to be tried in a specialist tribunal, which would have been able to give full consideration and make proper allowance for his handicaps. Despite the fact that it had not been contended on behalf of the applicant during the domestic proceedings that he was unfit to plead, the Court was not convinced in the circumstances of the case that the applicant had been capable of participating effectively in his trial to the extent required by Article 6 of the Convention.
Conclusion: violation (5 votes to 2).

Article 41 – The Court made an award in respect of costs and expenses.

FAIR HEARING
Lack of adversarial procedure with regard to expert report ordered in criminal proceedings : *admissible*.

COTTIN – Belgium (N° 48386/99)
Decision 10.06.2004 [Section I]

The applicant was prosecuted for assault and battery, which the victim alleged had resulted in permanent incapacity for work. In an interlocutory judgment, the court of appeal ordered a unilateral expert medical assessment of the victim. The applicant was unable to attend the examination but had an opportunity during the hearing to criticise the expert report. The court of appeal relied on the medical report in ruling on the merits in the criminal proceedings. It sentenced the applicant to a term of imprisonment, which was suspended, and a fine. As the victim had joined the proceedings as a civil party, the court ordered a medical report for the purpose of determining the civil claims. Like those ordered by the civil courts, any such reports had to be prepared in compliance with the adversarial principle.
Admissible under Article 6(1) taken separately and in conjunction with Article 14.

ADVERSARIAL TRIAL
Quashing of appeal judgment by Court of Cassation and giving of final decision on the case without further pleading: *inadmissible*.

RIHA – France (N° 71443/01)
Decision 24.6.2004 [Section III]

The applicant was prosecuted for failure to pay income tax. At first instance and on appeal, the trial judges found him guilty and sentenced him to one year's imprisonment, suspended, and to a fine, and imposed the additional penalty of a prohibition on practising his profession for five years. The applicant appealed on points of law, arguing that the maximum duration of the additional penalty had been fixed at three years in the applicable legislation. The Criminal Division of the Court of Cassation quashed and annulled the applicant's sentence of five years' prohibition on practising his profession, as this duration exceeded the statutory maximum duration of three years. Noting that it was entitled to apply the law directly on the basis of the facts as found and assessed by the lower courts in the exercise of their exclusive jurisdiction, the Court of Cassation decided not to send the case back to the trial court, as the Code of Judicial Organisation authorised it to do in a case of this sort, and determined the dispute with final effect by fixing the duration of the additional penalty at three years.

Inadmissible under Article 6(1): The bar on professional activity for five years had been imposed by the first-instance court, so that the applicant had had an opportunity to challenge it on appeal and then, successfully, to apply to the Criminal Division arguing that the statutory limit on the duration of such a measure had been disregarded. Equally, the applicant did not allege that the Criminal Division had possibly based its decision on facts other than those "found and assessed by the lower courts in the exercise of their exclusive jurisdiction". Clearly, in fixing the duration of the prohibition at three years, the Division in question had confined itself to correcting the error in law committed by the lower courts: manifestly ill-founded.
[Application of the approach taken with respect to a similar complaint concerning proceedings before the *Conseil d'Etat;* see the judgment in *APBP v. France* of 21 March 2002, no. 38436/97. See the summary in Case-law Information Note No. 40 of March 2002.]

Article 6(3)(c)

DEFENCE THROUGH LEGAL ASSISTANCE
Absence of defence lawyer for certain parts of trial: *admissible*.

BALLIU – Albania (N° 74727/01)
Decision 27.5.2004 [Section III]

The applicant, who was charged, *inter alia*, with murder and being the creator/participator of an armed gang, was tried on these counts in the District Court and sentenced to life imprisonment. He maintains that during the criminal proceedings his lawyer did not represent him for a period of over two months. In the hearings which took place during that time the prosecutor had summoned and questioned witnesses against the applicant. Likewise, the applicant alleges that he had no defence counsel when the parties made their final submissions. The Government maintain that the applicant's lawyer was absent from seven consecutive hearings without giving any reasons. The applicant had been offered a court-appointed lawyer but had refused this possibility. The proceedings had therefore continued with the presence of the applicant but without any defence lawyer. The applicant's appeals on the grounds that he had been denied a fair trial in breach of his right to be assisted by a lawyer and to summon defence witnesses were rejected. The Supreme Court held that the alleged violations had not had a significant influence on the substance of the first-instance judgment. The Constitutional Court likewise dismissed the applicant's appeal.
Admissible under Article 6.

ARTICLE 8

PRIVATE LIFE
Publication in the sensationalist press of photos concerning the private life of a princess : *violation*.

VON HANNOVER – Germany (N° 59320/00)
Judgment 24.6.2004 [Section III]

The applicant is the eldest daughter of Prince Rainier III of Monaco. A number of German tabloid magazines published several series of photos, taken without her knowledge, showing her outside her home going about her daily business either alone or in company. The applicant sought an injunction in the German courts against any further publication of the photos in Germany. The lower courts held that, under the Copyright Act, the applicant, as a "figure of contemporary society "par excellence" (*eine "absolute" Person der Zeitgeschichte*) had to tolerate the publication without her consent of photos taken outside her home. The Federal Court of Justice held that figures of contemporary society were entitled to respect for their private life even outside their home, but only if they had retired to a "secluded place" (*in eine örtliche Abgeschiedenheit*) where it was objectively clear to everyone that they wanted to be alone and where, confident of being away from prying eyes, they behaved in a given situation in a manner in which they would not behave in a public place (criterion of spatial isolation). In accordance with that criterion the applicant won her case regarding the photos showing her with her boyfriend at the far end of a restaurant courtyard. That approach was upheld by a leading judgment of the Federal Constitutional Court. That court attached decisive weight to the freedom of the press and the public interest in knowing how a princess behaved outside

her representative functions. The applicant lost her case against the publication of photos showing her outside her home going about her daily life, either alone or accompanied, in a "non-isolated place".

The law: Article 8 – The publication of photos showing the applicant, alone or in the company of an adult, engaged in purely private activities in her daily life fell within the scope of her "private life". The photos and accompanying commentaries had been published for the purposes of an article designed to satisfy the curiosity of a particular readership regarding the details of the private life of the princess, who was not a public figure and did not fulfil any official function on behalf of Monaco. In short, the publications in question had not contributed to any debate of general interest to society despite the applicant being known to the public. The Court also stressed that everyone, even if they were known to the general public, had to have a "legitimate expectation" of protection and respect for their private life, which included a social dimension. The photos in question – which concerned exclusively details of the applicant's private life – had been taken without her knowledge or consent and in the context of daily harassment by photographers. Moreover, increased vigilance in protecting private life was necessary to contend with new communication technologies which, among other things, made possible the systematic taking of photos and their dissemination to a broad section of the public. In defining the applicant as a figure of contemporary society par excellence, the domestic courts did not allow her to rely on her right to protection of her private life unless she was in a secluded place out of the public eye and, moreover, succeeded in proving it (which could be difficult). In the Court's view, the criterion of spatial isolation was in reality too vague and difficult for the person concerned to determine in advance. The State, which had a positive obligation under the Convention to protect private life and the right to control the use of one's image, had failed to ensure the effective protection of the applicant's private life.
Conclusion: violation (unanimously).

Article 41 – The Court reserved this question.

PRIVATE LIFE
Placement of detainee under permanent camera surveillance: *inadmissible*.

VAN DER GRAAF – Netherlands (N° 8704/03)
Decision 1.6.2004 [Section II]

On 6 May 2002 the applicant was arrested and taken into custody on suspicion of having shot and killed a well-known politician. The applicant was placed under permanent camera surveillance. The governor of the remand centre considered that such a measure was necessary given the reaction of society to the applicant's offence, as well as to prevent any risk of suicide or other harm to the applicant. The applicant's appeals against the successive orders to prolong his permanent camera surveillance were accepted as well-founded. The courts found that there was no legal basis for imposing such a measure, given the applicant's individual detention regime. On 5 July 2002 an amendment was introduced to the relevant prison regulations, whereby it also became possible to place detainees who were under an individual detention regime under permanent camera surveillance. On that same day, the governor issued a new order for the applicant's camera surveillance. The applicant's appeal was this time rejected as the measure had a sufficient legal basis in the amended rules. Moreover, a balance had been struck between the interference in the applicant's private sphere and the social unrest that could arise if the applicant escaped or his health was harmed.

Inadmissible under Article 3: Whilst being permanently observed by a camera for a period of about four and a half months may have caused the applicant feelings of distress for lack of any form of privacy, it had not been sufficiently established that such a measure had in fact

subjected the applicant to mental suffering of a level of severity such as to constitute inhuman or degrading treatment: manifestly ill-founded.

Inadmissible under Article 8: The placing of the applicant under permanent camera surveillance constituted a serious interference with his right to respect for his private life. However, the measure had a basis in domestic law and pursued the legitimate aim of preventing the applicant's escape or harm to his health. Given the great public unrest caused by the applicant's offence and the importance of bringing him to trial, the interference complained of could be regarded as necessary in a democratic society in the interests of public safety and the prevention of disorder and crime: manifestly ill-founded.

PRIVATE LIFE
Noise nuisance from discotheques : *admissible*.

MORENO GÓMEZ – Spain (N° 4143/02)
Decision 29.06.2004 [Section IV]

The applicant lives in a block of flats near which discotheques were legally opened. Numerous complaints were filed by local residents on account of the noise-nuisance and night-time disturbance of the peace caused by the discotheques' activities. The relevant authorities found that the levels of acoustic disturbance were above the permitted norms. The municipality regularly awarded licences for the discotheques to open and their operations continued to be authorised. The applicant complained of insomnia and health problems resulting from the noise generated by the discotheques at night. She brought proceedings against the municipal authorities, accusing them of passivity, and sought to obtain compensation for the damage sustained as a result of the noise-nuisance. Her case was dismissed on the ground that she had not proven the existence of noise disturbance within her home as a result of the night-time disturbance of the peace.
Admissible under Article 8.

PRIVATE LIFE
Impossibility to access full extent of personal information recorded in security police records: *communicated*.

SEGERSTEDT-WIBERG – Sweden (N° 62332/00)
[Section IV]

The five applicants are affiliated to political parties of the left, namely the liberal and communist parties. Some of them are anti-Nazi activists engaged in humanitarian projects. As they suspected that information on them had been entered in the security police records because of their political views, they requested access to the police records on them. Until April 1999 absolute secrecy applied to such records, and the requests which the applicants made prior to this date were thus rejected. Following changes to the legislation in this area, which opened the possibility to access personal files on a case-by-case assessment, the five applicants were granted access to certain parts of the information recorded on them. As they wished to view their entire files, they all brought proceedings before the Administrative Court of Appeal requesting full access. The court rejected the requests, finding that full disclosure of the files might jeopardise future measures or operations by the police. Leave to appeal against the refusals was denied. In the case of the third applicant, who worked for a private company that undertook projects on behalf of National Defence, his employer asked him to resign following a request by a military authority which had looked at his security police files. The applicant was eventually transferred from his position and no longer considered for promotions. The applicants complain that the filing of secret information negatively affected

their careers and that none of the information stored could substantiate an assumption that they constituted a security risk. They allege that the storing of information was a means of surveillance of political dissidents which had entailed a violation of their rights under Articles 10 and 11.
Communicated under Articles 8, 10, 11 and 13, with a question on exhaustion of domestic remedies.

PRIVATE LIFE
Expulsion to Iran, where applicant's right to physical and moral integrity would allegedly be breached given the ban against homosexuality: *inadmissible*.

FASHKAMI – United Kingdom (N° 17341/03)
Decision 22.6.2004 [Section IV]

The applicant, a citizen of Iran, requested asylum in the United Kingdom, claiming fear of persecution in his country for being homosexual. He claims that the Iranian security forces visited the house where he was living with his partner and arrested him and held him in custody for more than three months. He alleges that if returned to Iran, he would run the risk of extra-judicial execution and ill-treatment as punishment for his homosexual behaviour. The asylum application was first examined by the Secretary of State, who found it lacking in credibility and rejected it on the ground that he was not satisfied that the applicant was in fact Iranian. On appeal, the Adjudicator also rejected the claim after having evaluated the risk for homosexuals in Iran. Despite harsh legislation against homosexual acts, the burden of proof was high and convictions hard to achieve. As the applicant had not expressed any prospect of continuing a relationship with his partner, no issue arose under Article 8. Leave to appeal against the Adjudicator's decision was rejected. Directions for the applicants expulsion have not been issued yet.

Inadmissible under Articles 2 and 3: Whilst the general situation in Iran did not foster the protection of human rights and homosexuals could be vulnerable to abuse, the applicant had not established in his case that there were substantial grounds for believing that he would face treatment contrary to these Articles: manifestly ill-founded.

Inadmissible under Article 8: Whilst expelling persons who are at risk of treatment contrary to Articles 2 and 3 can engage the responsibility of Contracting States given the fundamental importance of these provisions, such compelling considerations do not automatically apply under the other provisions of the Convention. On a purely pragmatic basis, it could not be required that an expelling Contracting State only return an alien to a country which was in full and effective enforcement of all the rights and freedoms set out in the Convention: manifestly ill-founded.

PRIVATE LIFE
Expulsion to Tanzania following conviction for spreading HIV: *inadmissible*.

NDANGOYA – Sweden (N° 17868/03)
Decision 22.6.2004 [Section IV]

The applicant, a Tanzanian national, was granted a residence permit in Sweden on the basis of his marriage to a Swedish national. The couple, who had two children together, subsequently separated. The applicant was thereafter convicted on two occasions: firstly, for making unlawful threats and carrying knives in public places, and secondly, for aggravated assault after engaging in sexual contacts without disclosing to his partners he was HIV positive, and thus transmitting the infection to two women. The applicant was sentenced to six years'

imprisonment on the last counts, but given the good relationship he had with his daughters, his expulsion was not ordered at first instance. However, the Court of Appeal found the applicant had acted with exceptional ruthlessness and indifference towards his victims, and held him liable for having committed the crimes with intent. His expulsion from Sweden was thus ordered. Leave to appeal to the Supreme Court was refused. Whilst serving the prison sentence, the applicant filed several petitions for a revocation of the expulsion order. He claimed, backed by medical certificates, that his chances of receiving life-sustaining HIV treatment in Tanzania would be slim. In addition, his close links to his children as well as his new relationship with a Swedish woman would be severely affected by expulsion. All the applicant's petitions were rejected.

Inadmissible under Articles 2 and 3: Although the applicant's circumstances in Tanzania would be less favourable than those he enjoyed in Sweden, this was not decisive. The applicant could obtain treatment and had some family support in his country of origin. The circumstances were not of such an exceptional nature that expulsion would be contrary to the standards of Articles 2 and 3: manifestly ill-founded.

Inadmissible under Article 8: The expulsion order constituted an interference which had a basis in domestic law and pursued the legitimate aim of public safety and the prevention of disorder and crime. It would no doubt have serious implications for the family life of the applicant, whose regular contact with his children would be greatly limited. However, the applicant's conviction for having had unprotected sexual contacts with three women without disclosing his HIV infection, and as a result having infected two of the victims with the virus, was of the utmost gravity. As there was a risk that he could engage in further conduct of that type, the applicant's expulsion was not disproportionate to the aim pursued. A fair balance had been struck: manifestly ill-founded.

FAMILY LIFE

Adoptive parents without any close link with the children whom they adopted abroad and who remained in a children's home after the adoption: *Article 8 applicable*.

PINI and BERTANI, and MANERA and ATRIPALDI – Romania (N° 78028/01 and N° 78030/01)
Judgment 22.6.2004 [Section II]

Facts: The applicants, two Italian couples, had each received authorisation, by final judicial decision, to adopt a Romanian child; the children in question had lived in a Romanian private residential home since being abandoned. The decisions, delivered in Romania on 28 September 2000, ordered the amendment of the minors' birth certificates and the issuing of new certificates. The adoptions were declared to be compatible with the national legislation in force and with the Hague Convention of 29 May 1993 on Protection of Children and Cooperation in respect of Intercountry Adoption. By final judicial decisions of June and August 2001 the residential home was ordered to hand over the children and their birth certificates to the applicants. The adopted children did not leave the residential home. The home repeatedly challenged the execution of the decisions and, after its objections had been dismissed, attempted enforcement by bailiffs failed. In the course of 2002 and 2003, the residential home obtained stays of execution of the adoption orders. The applicants made various unsuccessful applications to enforce the adoption orders. At the same time, the residential home applied to have the adoption orders for the minors set aside. The application was dismissed for failure to comply with the formal requirements. The two minors brought proceedings to have their adoption orders quashed. One of them won her case. Recent information submitted to the Court indicated that the children enjoyed good living conditions, in every sense, in the residential home. They did not wish to leave in order to join the applicants, whom they knew only vaguely, and preferred to remain in the centre, where they

seemed to have established social and emotional ties with the other children and with the "substitute" "mothers" and "aunts".

Law: Article 8 – *As to the existence of a bond amounting to "family life"*: Although the applicants had had contact with their adopted daughters, they did not have *de facto* family relationships with them. The Court took various factors into account in finding that there was a relationship protected by Article 8. The relationship between the adopted children and the parents, declared adoptive parents by final and irrevocable decisions, had arisen from lawful adoptions that were not shams, which had ended the rights and obligations existing between the adopted children and their progenitors and with any other entity. The adoptions had complied both with the national legislation and with international conventions. Admittedly, the adopted minors' consent to their adoption had not been sought, since they had been under the statutory minimum age, namely 10 years old, when the courts had ruled on the adoption applications, but this threshold had not been unreasonable, given the discretion left to States in this area under international conventions. Whilst, in the instant case, there had not yet been cohabitation or sufficiently close *de facto* ties between the adoptive parents and their adopted daughters, not only was prospective family life or a potential relationship not outside the ambit of Article 8, but this circumstance was not attributable to the applicants, who had merely followed the procedure put in place by the respondent State in this area (selection of the child on the basis of photographs, without preparatory contact). In addition, the applicants had always viewed themselves as the minors' parents and had behaved accordingly, through the only means open to them, namely by sending letters written in Romanian. Article 8 was applicable.

Compliance with Article 8 (the State's positive obligations): In the instant case, the respective interests of the adoptive parents and the adopted children had been in conflict. The applicants' legitimate aspirations to found a family had been in conflict with the adopted minors' wish to remain in the socio-family environment in which they had been raised. The applicants' legitimate desire could not enjoy absolute protection under the Convention in so far as it conflicted with the minors' refusal to be adopted by a foreign family. The Court attached particular importance to the best interests of the child, which could take priority over those of the parent. It was even more important to give the child's interests precedence in the case of relationships based on adoption. The applicants' interest was considered weaker than that of the adopted minors. The applicants had been formally recognised as adoptive parents in the absence of any specific pre-existing ties with the children, who were already nine and a half years of age, whom they had never really known and with whom they had no emotional ties. At the time of their adoption, the adopted children had been very close to the age from which their consent would have been obligatory. They had not accepted the new family relationship and had objected to it, even in the courts, where one of them had been successful. The minors' refusal had carried a certain weight since it had been consistently expressed ever since they had attained the necessary maturity to give an opinion on their adoption, and this opposition had made the minors' harmonious integration into their new adoptive family unlikely. Given the children's interest, the Romanian authorities had had no absolute obligation to ensure that the children left the country against their will and to ignore the legal proceedings pending at the time in which the lawfulness and merits of the initial adoption orders had been challenged.
Conclusion: no violation (six votes to one).

Article 6(1) – Although the adoption orders were final and irrevocable, they had not been enforced. This situation had not been attributable to the applicants or to the court bailiffs, but to the residential home in which the children had been living. Although the State could not be blamed for the actions of this private establishment, it was necessary to go beyond appearances and examine whether the State could be held responsible for the situation complained of. For more than three years, the State had failed to take effective measures to enable the bailiffs to carry out their task effectively and enforce the decisions with regard to the establishment in question, *inter alia* through police assistance, and had taken no measures

against the establishment or its director, despite the range of measures available under domestic law. By failing to take effective measures to ensure compliance with enforceable decisions, the national authorities had created a situation which undermined the rule of law and the principle of legal certainty. In addition, the passing of time in the present case had resulted in potentially irreversible consequences for the applicants. The provisions of Article 6(1) had thus been rendered nugatory.
Conclusion: violation (four votes to three).
The Court held unanimously that there had been no violation of Article 2(2) of Protocol No. 4.

Article 41 – The Court awarded each of the applicant couples a sum for pecuniary and non-pecuniary damage. It made awards to each of them in respect of costs and expenses.

FAMILY LIFE
Refusal to grant a father access to his daughter, whom he had not legally recognised: *violation*.

L. – Netherlands (N° 45582/99)
Judgment 1.6.2004 [Section II]

Facts: The applicant's daughter was born out of wedlock from his relationship with the mother of the child, which had lasted three years. Following the child's birth, the courts appointed the mother as guardian and the applicant as auxiliary guardian (the applicant's function ended when that institution was abolished by law). Although the couple did not cohabit, the applicant visited the mother and child on a regular basis. The applicant never formally recognised his daughter or sought judicial consent to overcome the mother's objection to such recognition. Once the applicant's relationship with the mother had broken down, he requested the courts to grant him access to his daughter. The request was declared admissible in first-instance proceedings subject to a report to be prepared by the Child Care authorities on the feasibility of an access arrangement. The decision was subsequently quashed by the Court of Appeal, which found that the applicant had insufficiently established that he had a close personal relationship with the child or that there was a link between them that could be regarded as "family life". The Supreme Court accepted these findings, holding that "family life" for the purposes of Article 8 implied the existence of further personal ties in addition to biological paternity.

Law: Article 8 – Mere biological kinship, without any further legal or factual elements indicating the existence of a close personal relationship between parent and child, should not be regarded as sufficient to attract the protection of Article 8. As the applicant had never sought to recognise his daughter or cohabited with the mother and child, he had never formed a "family unit" with them. However, the child had been born out of a genuine relationship between the applicant and the mother, and he had acted as his daughter's auxiliary guardian until that institution had been abolished. The applicant visited them both at unspecified regular intervals, and discussed the child's health problems with the mother on several occasions. In these circumstances, when the applicant's relationship with the mother ended, there existed – in addition to biological kinship – certain ties between the applicant and his daughter which were sufficient to attract the protection of Article 8. Thus, the decision of the courts to declare the applicant's request for access to his daughter inadmissible on the ground that there was no family life between them was in breach of his rights under Article 8.
Conclusion: violation (six votes to one)

Article 41 – The Court awarded the applicant 5,000 euros in respect of non-pecuniary damage. It also made an award in respect of costs and expenses.

POSITIVE OBLIGATIONS
Failure to hand over legally adopted children to adoptive parents: *no violation*.

PINI and BERTANI, and MANERA and ATRIPALDI – Romania (N° 78028/01 and N° 78030/01)
Judgment 22.6.2004 [Section II]
(see above).

ARTICLE 9

FREEDOM OF CONSCIENCE
Repeated convictions of conscientious objector for persistently refusing to wear uniform and to carry out orders during compulsory military service : *admissible*.

ÜLKE – Turkey (N° 39437/98)
Decision 1.6.2004 [Section II]

The applicant was a conscientious objector and active member of an anti-militarist association. In August 1995 he was called up for military service. From September 1995 he was repeatedly convicted of having set other persons against the institution of military service, of having refused to wear uniform or of having deserted; as a result, he was sentenced to imprisonment on several occasions. Each time he was released, he was sent back to his unit and again convicted on account of his persistent refusal to wear uniform. Under the domestic legislation, all male citizens are obliged to follow at least a period of basic training, failing which they are liable to imprisonment. No other form of service is available to conscientious objectors.

Admissible under Article 9, the question of this Article's applicability being joined to the merits. The applicant complained of the successive sentences imposed by the national courts each time he stated that he was a conscientious objector and refused to wear military uniform. This series of prosecutions and convictions amounted to an "ongoing state of affairs" against which the applicant had had no remedy in domestic law. The situation had continued to exist on the date on which the application was lodged. The Government's objection that the six-month time-limit had not been observed was therefore dismissed.

MANIFESTER SA RELIGION / MANIFEST RELIGION
Interdiction de porter le foulard islamique dans une université : *non-violation*.
Prohibition on wearing of Muslim headscarf in a university : *no violation*.

LEYLA SAHIN – Turkey (N° 44774/98)
Judgment 29.6.2004 [Section IV]

Facts: On 23 February 1998 the Vice-Chancellor of the University of Istanbul issued a circular directing that students wearing the Islamic headscarf would be refused admission to lectures, courses and tutorials. The applicant, who wore an Islamic headscarf, was a student at the faculty of medicine of the university at the material time. On 12 March 1998 she was denied access to a written examination for wearing the Islamic headscarf. On 20 March 1998 the university authorities refused to enrol her on a course, on 16 April 1998 she was denied

access to a lecture and on 10 June 1998 to another written examination, all for the same reason. The applicant applied for an order setting the circular aside, but her application was dismissed by the administrative courts. They ruled that, under the relevant legislation and in accordance with decisions of the Constitutional Court and the Supreme Administrative Court, the University Vice-Chancellor had power to regulate students' dress in order to maintain order. Under the settled case-law of those courts, neither the regulation, nor the individual measures, were illegal.

Law: Article 9 – The circular issued by the University of Istanbul on 23 February 1998, which placed restrictions of place and manner on the right to wear the Islamic headscarf, constituted an interference with the applicant's right to manifest her religion. The circular had been issued pursuant to statutory powers, as supplemented by a 1991 judgment of the Constitutional Court in which it followed its own previous case-law. In addition, the Supreme Administrative Court had for many years prior to that taken the view that the Islamic headscarf was not compatible with the fundamental principles of the Republic. As to the manner in which the university had applied the relevant provision, regulations on wearing the Islamic headscarf had existed well before the applicant had enrolled at the university. Accordingly, there was a basis in Turkish law for the interference and the law was accessible and foreseeable. It would have been clear to the applicant, from the moment she entered the university, that there were regulations on wearing the Islamic headscarf and, from 23 February 1998, that she was liable to be refused access to lectures if she continued to do so. The interference pursued the legitimate aims of protecting the rights and freedoms of others and protecting public order. It was the principle of secularism, as interpreted by the Turkish Constitutional Court, which was the paramount consideration underlying the ban on the wearing of religious insignia in universities. That notion of secularism appeared to the Court to be consistent with the values underpinning the Convention and upholding that principle could be regarded as necessary for the protection of the democratic system in Turkey. It was understandable in the context of Turkish society, where the values of pluralism, respect for the rights of others and, in particular, equality before the law of men and women were being taught and applied in practice, that the relevant authorities would consider that it ran counter to the furtherance of such values to accept the wearing of religious insignia, including, as in the case before it, that women students covered their heads with a headscarf while on university premises. In Turkish universities, to the extent that they did not overstep the limits imposed by the organisational requirements of State education, practising Muslim students were free to perform the religious duties that were habitually part of Muslim observance. The University of Istanbul treated all forms of dress symbolising or manifesting a religion or faith on an equal footing. Rather than barring students wearing the Islamic headscarf access to the university, the university authorities had sought throughout the decision-making process to adapt to the evolving situation through continued dialogue with those concerned, while at the same time ensuring that order was maintained on the premises. In those circumstances and having regard in particular to the margin of appreciation left to the Contracting States, the Court found that the University of Istanbul's regulations and the measures taken to implement them were justified in principle and proportionate to the aims pursued and, therefore, could be regarded as "necessary in a democratic society".
Conclusion: no violation (unanimously).
The Court found that no separate question arose under Articles 8 and 10, Article 14 taken together with Article 9, or Article 2 of Protocol No. 1.
[N.B.: An application arising out of the ban on wearing the Islamic headscarf for clinical training at a nursing college was struck out of the Court's list on 29 June 2004 after it was withdrawn by the applicant (see *Zeynep Tekin v. Turkey*, no. 41556/98). See Case-Law Information Note no. 44 of July 2002 for the summary.]

ARTICLE 10

FREEDOM OF EXPRESSION
Conviction of writer and publisher for defamation of members of a recognised Resistance group in a historical account in a book: *no violation*.

CHAUVY and others – France (N° 64915/01)
Judgment 29.6.2004 [Section II]

Facts: The first applicant was the author of a book entitled "AUBRAC-Lyon 1943", published in 1997 by Éditions Albin Michel (the third applicant), whose chairman was the second applicant. The book described historical events from the Second World War relating to the French Resistance. In particular, it examined one of the main "grey areas" from this period, namely the Caluire meeting, a particularly significant event in the history of the French Resistance. On 21 June 1943 Klaus Barbie, regional head of the Gestapo, arrested the main leaders of the Resistance, who were meeting in Caluire, a suburb of Lyons. Among those arrested was Raymond Aubrac, a member of the Resistance movement, who succeeded in escaping in the autumn of 1943. The book's author sought to challenge what he called the official truth about this major episode in the history of the Second World War as reported, *inter alia,* by Mr and Mrs Aubrac in the media. Accordingly, the book had an appendix containing a memoir by Klaus Barbie, the so-called "*Testament Barbie*", and the author posed a large number of questions based on comparison of this document with the account of the events given by Mr and Mrs Aubrac. The Aubracs instituted proceedings against the applicants for libel. The court convicted the first two applicants of criminal libel against the Aubracs in their capacity as members of a "recognised Resistance movement" and ordered them to pay fines. The applicants were also ordered to pay damages to Mr and Mrs Aubrac. The court dismissed the request for the book to be destroyed, but ordered the publication of a legal notice and its insertion in every copy of the book. The court of appeal upheld the judgment, considering in particular that the book's thesis as a whole tended to suggest to readers that the Aubracs had committed acts of betrayal and that it systematically called into question the historical accounts given by those recognised members of the Resistance by implying that they had lied. The Court of Cassation dismissed an appeal on points of law by the applicants.

Law: Article 10 – There had been interference with the applicants' exercise of their freedom of expression. It had been based on two pieces of legislation, dated 1881 and 1951, as interpreted in the Court of Cassation's consistent case-law. As professionals in the publishing field, the publisher and the publishing company could not have been unaware of those elements of positive law and had thus been in a position to assess the risks incurred in the author's challenging of hitherto uncontested historical facts and to draw his attention to those risks. Moreover, the publisher and, through him, the author ought to have been aware that, in accordance with the consistent case-law, the book's contents could result in a conviction for libel. The legal consequences of the book's publication had therefore been reasonably foreseeable. The applicants' conviction had had a legitimate aim, namely to protect the Aubracs' reputation. The quest for historical truth was an integral part of freedom of expression and in the instant case the substantive historical issue, which was part of an ongoing debate among historians and public opinion, did not belong to the category of clearly established historical facts – such as the Holocaust – whose denial or revision would be removed from the protection of Article 10 by Article 17. With regard to the proportionality of the interference, the Court considered that the convictions – handed down after a thorough and very detailed examination of the book's content – had been based on relevant and

sufficient grounds. It was satisfied by the evidence and reasoning on which the national courts had based their conclusion that the content of the book in question had not complied with the essential rules of historical method and had made particularly serious insinuations. With regard to the penalties imposed, the Court noted that the courts had not ordered the destruction of the book or banned its publication. The penalties imposed did not appear to be unsuitable measures or overly restrictive of freedom of expression. In short, the interference with the applicants' freedom of expression had not been disproportionate to the legitimate aim pursued.
Conclusion: no violation (unanimously).

FREEDOM OF EXPRESSION
Order to pay compensation for defamation of a politician: *admissible*.

WIRTSCHAFTS-TREND ZEITSCHRIFTEN-VERLAGS GMBH – Austria
(N° 58547/00)
Decision 22.6.2004 [Section IV]

The applicant was the owner and publisher of a weekly magazine which released an article in which a book was reviewed. The article criticised the author of the book for his indulgence towards Jörg Haider, in particular for "pardoning Haider's belittlement of concentration camps as 'punishment camps'". Following a compensation claim by Haider, the Regional Court ordered the applicant company to pay compensation and publish a rectification, and also forfeited the issue in question. It found that the information had amounted to a reproach against Mr Haider as he was portrayed as having played down the extent of crimes committed in concentration camps, which was a criminal offence under the National Socialism Prohibition Act. Irrespective of whether the reproach had been a statement of fact or a value judgment, the court held it had not been justified and had therefore constituted defamation. The judgment was upheld by the Court of Appeal. The applicant company complains that its freedom of expression has been breached.
Admissible under Article 10.

FREEDOM OF EXPRESSION
Censorship imposed on journalists from the National Television company: *communicated*.

MANOLE – Moldova (N° 13936/02)
[Section IV]

The first nine applicants are journalists working at Teleradio Moldova, the State-run television company. The tenth applicant is the strike committee of the company. They complain that censorship has existed at the television company throughout its entire existence, but that it has become unbearable since February 2001, when the Communist Party won the elections. They allege that no opposition party has access to airtime and that programmes which convey political views which differ from those of the ruling party are banned. In February 2002, staff were prohibited from giving any information on the massive anti-government demonstrations which had started a month earlier. This led to the signing of a declaration of protest by the staff and the commencement of a passive strike. Whilst a compromise between the company and the Government seemed possible at the beginning, a state of emergency was later introduced at the company and military troops were moved to its premises. Leaders of the strike movement began to be dismissed from their positions and were subjected to disciplinary sanctions. The first applicant alleges that she was removed from her position as chief newscaster and was obliged to leave her job after twenty-two years. The eight other applicants submit additional instances of governmental interference with editorial policy, such as the banning of programmes, restricting the access of certain

personalities to television or the cancellation of live programmes shortly before they were to be aired.
Communicated under Article 10.

FREEDOM OF EXPRESSION
Attempted dismissal of President of Supreme Court, allegedly for expressing his views on the separation of powers and the independence of the judiciary: *inadmissible*.

HARABIN – Slovakia (N° 62584/00)
Decision 29.6.2004 [Section IV]

In 1998 the applicant was elected as President of the Supreme Court. Two years later, the Government initiated a procedure to revoke his appointment on grounds that his actions and behaviour raised doubts as to his trustworthiness and did not meet the requirements for the post. A report prepared by the Minister of Justice with a number of allegations against the applicant stated, *inter alia*, that the views he had expressed regarding the amendment of several laws on the judiciary, as well as on a draft amendment of the Constitution, evidenced a desire on his part to strengthen his personal powers rather than focus on the professional and ethical problems of the judiciary. The applicant filed a petition with the Constitutional Court which was dismissed, mainly because there was no right under the Constitution to exercise the post for which he had been elected and because there was no indication that his constitutional rights had been violated. In any event, given that the Government's revocation proposal was defeated, the applicant held the post of President of the Supreme Court until the appointment had expired.

Inadmissible under Article 10: Government's preliminary objection (non-exhaustion) – the remedy advanced by the Government under the Civil Code was not designed to protect the applicant's freedom of expression as such: objection dismissed. As the disputed measure essentially concerned the applicant's ability to properly exercise the post of President of the Supreme Court, a matter related to the administration of justice, not one of a right secured by the Convention, it was unnecessary for the Court to determine whether the allegations in the Minister's report were well founded. Even assuming that the Government's proposal to remove the applicant from office had had a chilling effect on his freedom of expression, it had been of a limited duration, as the motion for his revocation had finally been defeated: manifestly ill-founded.

ARTICLE 11

FREEDOM OF ASSOCIATION
Ineligibility to stand for Parliament and termination of mandate as local councillor : *violation*.

ZDANOKA – Latvia (N° 58278/00)
Judgment 17.6.2004 [Section I]
(see Article 3 of Protocol No. 1, below).

FREEDOM OF ASSOCIATION
Refusal to register the financial organ of a political party in receipt of funds from a foreign political party : *communicated*.

BASQUE NATIONALIST PARTY - REGIONAL ORGANISATION OF IPARRALDE – France (N° 71251/01)
[Section I]

The applicant party was classified as an association under French law. It indicated that its activity was the same as any political party. Its articles of association revealed that it was constituted as a regional organisation affiliated to the ideology of a Spanish political party whose purpose was to defend and promote Basque nationalism. In order to receive funds, particularly financial contributions from the above-mentioned Spanish political party, the applicant party set up a funding association. It filed an application for registration of this association with the relevant French authorities, in accordance with the statutory requirements. The application was refused. The *Conseil d'Etat* upheld the refusal, on the ground that French legislation prohibited political parties' funding associations from receiving financial contributions from a foreign political party. It added that this prohibition was intended to ensure the prevention of disorder within the meaning of the Convention.
Communicated under Article 11, either taken alone or in conjunction with Article 10.

ARTICLE 12

MARRY
Prohibition on marriage of father-in-law and daughter-in-law: *admissible*.

B. and L. – United Kingdom (N° 36536/02)
Decision 29.6.2004 [Section IV]

The applicants complain that they are prevented by law from marrying. The first applicant is the father of the second applicant's former husband. When their respective marriages failed, the applicants moved in together with L.'s son, who is B.'s grandson but now refers to B. as "Dad". The Marriage Act 1949 prohibits the marriage of a parent-in-law to a child-in-law unless the former spouse of each party is dead. There is no such prohibition regarding other relationships of affinity but not consanguinity, e.g. step-parent with step-child. The prohibition may be lifted by a personal Act of Parliament. There are no established criteria for such a procedure, which is at Parliament's discretion, and legal aid is not available for the costs of obtaining a personal Act of Parliament.

Admissible under Articles 12 and 14: Government's preliminary objection (non-exhaustion): it had not been established that seeking a declaration of incompatibility of the impugned legislation with the Convention was a sufficiently "effective" remedy: objection dismissed.

ARTICLE 13

EFFECTIVE REMEDY
Length of proceedings concerning ill-treatment, resulting in offences being time-barred: *violation*.

BATI and others – Turkey (N° 33097/96 and N° 57834/00)
Judgment 3.6.2004 [Section I]

Facts: In 1996 the applicants were placed in police custody and subsequently in pre-trial detention, and charged, *inter alia*, with membership of an armed gang. Thirteen of the applicants alleged that they had been subjected to brutality and ill-treatment while in police custody; one of the applicants claimed to have suffered a miscarriage on account of this ill-treatment. In 1996 an initial complaint alleging ill-treatment in police custody resulted in a finding that there was no case to answer on account of insufficient evidence against the police officers accused of the offences. Following a further criminal complaint for ill-treatment, charges were brought from 1997 onwards by the prosecuting authorities against six police officers who had been accused by the applicants. In a judgment of February 2003 the Assize Court decided to discontinue proceedings against four of the officers because the limitation period had expired, given that five years had passed since the last procedural step and no other measure capable of suspending the running of the limitation period had been taken; it also discontinued proceedings against another officer because he had died. A further officer was found guilty of having beaten and tortured two applicants, causing one of them to have a miscarriage. With regard to the accusations brought by the other applicants, the officer was acquitted in the absence of sufficiently certain evidence of his guilt.

Law: Article 3 – The Court found it established that all the thirteen applicants in question – four of whom had been aged eighteen or less at the material time and one of whom was pregnant – had lived throughout their time in police custody in a permanent state of physical pain and anxiety owing to uncertainty about their fate and the intensity of the violence to which they had been subjected. In the Court's opinion, such treatment had been intentionally meted out by agents of the State in the performance of their duties, with the aim of extracting confessions or information. The violence inflicted on them, taken as a whole and having regard to its purpose and duration, had been particularly serious and cruel, had been capable of causing "severe" pain and suffering and had therefore amounted to "torture".
Conclusion: violation (unanimously).
The same applicants also complained under Article 3 of the failure to carry out an extensive investigation into these acts of torture. The Court, master of the characterisation to be given in law to the facts, decided to examine this complaint under Article 13.

Article 13 (examined by the Court of its own motion) – In the course of the domestic investigation in respect of the police officers, opened following the applicants' complaint, certain of the accused had not been brought face to face with the applicants, including the officer who had been acquitted of torture. Additional medical examinations had also been requested with a view to establishing the causes of the injuries observed on the applicants' bodies but those examinations had never been ordered, which represented not only a flaw in the investigation but in certain circumstances could also amount to "inhuman and degrading treatment". The investigation had also been very long, which, on account of the limitation period, had resulted in virtual impunity for the main perpetrators of the acts of violence, despite the irrefutable evidence against them. The criminal-law remedy used by the applicants had thus been rendered ineffective, which had rendered equally ineffective recourse to civil

remedies as a means of obtaining redress for the alleged violations. In those circumstances, the Court held that the applicants had satisfied the obligation to exhaust domestic remedies.
Conclusion: violation (unanimously).

Article 5(3) – The length of time spent in police custody – between eleven and thirteen days – had been excessive. As to the length of the periods of pre-trial detention complained of by the applicants, the authorities had merely used identical and abstract phrases to order their continued detention. In addition, the Court held that special diligence had been required, especially as one of the victims was a minor and the applicants had claimed to be victims of police violence.
Conclusion: violation (unanimously).

Article 41 – The Court awarded the applicants sums for personal injury and non-pecuniary damage, and for costs and expenses.

EFFECTIVE REMEDY
Effectiveness of remedy under the Pinto law, resulting in payment of compensation : *inadmissible*.

CATALDO – Italy (N° 45656/99)
Decision 3.6.2004 [Section I]

The applicant had been under preliminary criminal investigation between 1991 and 1998. In July 2001 he availed himself of a remedy newly provided under the so-called "Pinto Act" to seek compensation for the length of the proceedings against him. The court of appeal to which the case was referred found that a reasonable time had been exceeded. It dismissed the applicant's claim in respect of pecuniary damage and awarded him, on an equitable basis, an amount for non-pecuniary damage and an amount for costs and expenses, along with interest. Taken together, those sums were less than the applicant had claimed. The applicant did not appeal on points of law. The decision was enforced. The applicant complained of the excessive length of the criminal proceedings and the lack of any effective remedy to complain of it.

Inadmissible under Article 6(1): The domestic court had expressly acknowledged the breach of Article 6 on account of the unreasonable length of the impugned proceedings. It had then afforded appropriate redress for that breach. The Court confirmed that, as the domestic court had found, the pecuniary damage alleged by the applicant was a matter for speculation. As to the amounts of the sums awarded by the domestic court as compensation for the breach, the Court considered that, as a whole, they were adequate and capable of affording redress for the violation suffered. In short, the domestic judicial decision was in conformity with the Court's case-law (with regard to Article 41 of the Convention). Consequently, the applicant could no longer claim to be the "victim" of the alleged violation.

Inadmissible under Article 13: In so far as the domestic judicial decision complied with the Court's case-law, the "Pinto" remedy had met the requirements of Article 13 in the instant case.

ARTICLE 34

VICTIM
Loss of status of victim following use of the Pinto law remedy : *inadmissible*.

CATALDO – Italy (N° 45656/99)
Decision 3.6.2004 [Section I]
(see Article 13, above).

ARTICLE 35

Article 35(1)

SIX MONTH PERIOD
Continuing situation.

ÜLKE – Turkey (N° 39437/98)
Decision 1.6.2004 [Section II]
(see Article 9, above).

Article 35(3)

RATIONE MATERIAE
Alleged separate violation of general principles of international law : *inadmissible*.

CALHEIROS LOPES and others – Portugal (N° 69338/01)
Decision 3.6.2004 [Section III]
(see Article 1 of Protocol No. 1, below).

ARTICLE 48

REQUEST FOR AN ADVISORY OPINION
Decision on the Court's competence to give an advisory opinion.

REQUEST FOR AN ADVISORY OPINION ON THE CO-EXISTENCE OF THE CIS CONVENTION AND THE EUROPEAN CONVENTION
Decision 2.6.2004 [Grand Chamber]

In January 2002 the Committee of Ministers requested the Court for an advisory opinion on the co-existence of the Convention on Human Rights and Fundamental Freedoms of the Commonwealth of Independent States (CIS) and the European Convention on Human Rights. The CIS is an organisation of twelve former Soviet republics, including several States Parties to the European Convention. The CIS Convention on human rights, which came into force in

1998, foresees the creation of a CIS Commission to monitor compliance with that Convention. The request for an advisory opinion referred to Parliamentary Assembly Recommendation 1519(2001), in which the Assembly had recommended that the Committee of Ministers request the Court to give an advisory opinion on the question whether the CIS Commission should be regarded as "another procedure of international investigation or settlement" for the purposes of Article 35(2)(b) of the Convention. The Assembly considered that it should not, referring to the weaknesses of the CIS Commission, in particular the lack of independence and impartiality of its members (who are appointed by each State Party as "representatives") and the nature of its decisions (which take the form of "understandings, conclusions and recommendations").

Decision: Articles 48 and 49 – Notwithstanding the Committee of Ministers' reference to the "co-existence" of the two Conventions, the Court considered that the request related essentially to the specific question whether the CIS Commission could be regarded as "another procedure of international investigation or settlement" within the meaning of Article 35(2)(b). The request therefore related to "a legal question concerning the interpretation of the Convention". It was necessary, however, to examine whether the Court's competence was excluded by Article 47(2) on the ground that the question raised fell within the scope of the expression "any other question which the Court or the Committee of Ministers might have to consider in consequence of any such proceedings as could be instituted in accordance with the Convention". The Court considered that "proceedings" in this context referred to those instituted under Articles 33 and 34 of the Convention, namely inter-state and individual applications, and that the expression "any other question" covered admissibility issues. In that respect, the question whether a matter had already been submitted to "another procedure of international investigation or settlement" was an admissibility issue which had been examined in the context of individual applications in the past, in particular under former Article 27(1)(b) by the European Commission of Human Rights, which had in two cases gone beyond simply ascertaining whether the matter had been submitted to another procedure and had carried out a qualitative assessment of the procedure, including the nature of the supervisory body and the effect of its decisions. The Court endorsed that approach and concluded that the question whether a particular procedure fell within the scope of Article 35(2)(b) was one which it might have to consider in the future in the context of its examination of the admissibility of an individual application. Its competence to give an advisory opinion on the matter referred to it was therefore excluded in principle. As to the possibility of it having to decide whether the specific procedure of the CIS Commission was "another procedure", the Court observed that several CIS member States (one of which, Russia, has ratified the CIS Convention) are Parties to the European Convention and that the substantive provisions of the CIS Convention are broadly equivalent to those in the European Convention. It could not therefore be excluded that the Court might have to consider in the context of a future concrete case whether the CIS procedure was "another procedure of international investigation or settlement". Referring to the *travaux préparatoires*, the Court added that the term "proceedings" mentioned in Article 47(2) was not limited to pending cases but included hypothetical cases which might arise in the future.
Conclusion: The request for an advisory opinion did not come within the Court's advisory competence.
[Note: Although the Court has been competent to give advisory opinions since the entry into force of Protocol No. 2 in 1970, this is the first time a request for an advisory opinion has been made by the Committee of Ministers.]

ARTICLE 1 OF PROTOCOL No. 1

PEACEFUL ENJOYMENT OF POSSESSIONS
Claim for compensatory land in respect of property abandoned as a result of boundary changes following the Second World War: *violation*.

BRONIOWSKI – Poland (Nº 31443/96)
Judgment 22.6.2004 [Grand Chamber]

Facts: Following the Second World War, the Polish State undertook to compensate persons who had been "repatriated" from the so-called "territories beyond the Bug river", which no longer formed part of Poland, in respect of property which they had been forced to abandon there. Such persons were entitled to have the value of the abandoned property deducted either from the price of immovable property purchased from the State or from the fee for "perpetual use" (a maximum period of 99 years) of State property. The estimated number of claimants was in the high tens of thousands. In 1968, the applicant's mother inherited the estate of his grandmother, who had abandoned a plot of land and a house when repatriated. The applicant's mother was subsequently granted the right of "perpetual use" of a plot of State land at a fee of PLZ 392 per year. For the purposes of compensation the value of the abandoned property was fixed at PLZ 532,260 and was offset against the total fee for "perpetual use" (PLZ 38,808). After inheriting his mother's estate, the applicant requested payment of the remainder of the compensation due. He was informed that as a result of the enactment of the Local Self-Government Act in 1990, by which most State land had been transferred to the local authorities, it was not possible to satisfy his claim. In 1994, the Supreme Administrative Court dismissed the applicant's complaint about the Government's alleged inactivity in failing to introduce legislation dealing with such claims. Between 1993 and 2001, several laws were passed which further reduced the already small stock of property designated for compensating repatriated persons. In December 2002, the Constitutional Court declared unconstitutional various statutory provisions restricting the possibility of satisfying entitlement to compensation for abandoned property. The court considered that by excluding particular types of State-owned land, the legislation had rendered the "right to credit" illusory. In practice, claimants had to participate in auctions of State-owned property and were frequently excluded as a result of additional conditions being imposed. Furthermore, following the Constitutional Court's judgment the State Agricultural and Military Property Agencies suspended auctions pending the adoption of new legislation. Subsequently, a law of December 2003 provided that the State's obligations towards persons who, like the applicant, had obtained some compensatory property under the previous statutes, were considered to have been discharged.

Law: Scope of the case – The sole issue was whether there had been a violation of Article 1 of Protocol No. 1 on account of the State's acts and omissions in relation to implementation of the applicant's entitlement to compensatory property, vested in him by domestic legislation at the time of entry into force of the Protocol and subsisting at the time of lodging his application.

Article 1 of Protocol No. 1 – The Court had found in its admissibility decision that the applicant had a proprietary interest eligible for protection under this provision and since then the Constitutional Court and the Supreme Court had regarded the "right to credit" as a property right. The Court therefore confirmed its conclusion that the right constituted a "possession". As to the scope and content of the right, at the time of entry into force of the Protocol and of lodging of the application the law had provided for the value of abandoned

property to be offset against, *inter alia*, the fee for a right of perpetual use, with any outstanding amount being offset against other specified types of property. The applicant's "possessions" therefore comprised the entitlement to obtain further compensatory property. Having regard to the complexity of the issues involved, the property right in question could not be classified in a precise category and it was appropriate to examine the case in the light of the general rule of peaceful enjoyment of possessions. Furthermore, whether the case was analysed in terms of a positive duty or an interference which required to be justified, the applicable criteria did not differ in substance: a fair balance had to be struck between the interests of the individual and those of the community. The mutual interrelation of the alleged omissions and acts that might be regarded as "interferences" made it difficult to classify them in a single precise category and, in the particular circumstances of the case, it was unnecessary to do so.

Lawfulness: The restrictions on the applicant's rights were based on legislation and although the Constitutional Court had found the provisions to be incompatible with the rule of law and the protection of property rights, those findings and their consequences were considerations to be taken into account in determining whether a fair balance had been struck. The Court therefore proceeded on the assumption that any interference was "provided for by law".

Legitimate aim: The State's aims were to reintroduce local self-government, restructure the agricultural system and generate financial means for the modernisation of military institutions. In the context of the major transitions undergone by Poland in recent years, it was necessary for the authorities to resolve such issues. The Court therefore accepted that it was legitimate for the respondent State to take measures designed to achieve those aims.

Fair balance: (i) the background – The State had had to deal with an exceptionally difficult situation, involving complex, large-scale policy decisions, and the number and value of the claims involved were factors to be taken into account. Yet, notwithstanding the social and economic constraints, the State had confirmed its obligations to claimants after ratification of Protocol No. 1 and this was relevant to its margin of appreciation.
(ii) the conduct of the authorities – At the beginning of the period under consideration the applicant was entitled to compensatory property in respect of the value of the remainder of the abandoned property. However, implementation was almost impossible, as the State Treasury had little land left following the transfer of property to the local authorities. As a result of further legislative measures, the applicant's right was gradually all but wiped out, so that while it still existed in theory, it had been rendered illusory, as the Constitutional Court had found. The suspension of auctions by two State agencies after that court's judgment was a deliberate attempt to prevent the implementation of a final and enforceable judgment. It was tolerated by the executive and legislature and could not be explained in terms of any legitimate public interest; indeed, it was capable of undermining the credibility and authority of the judiciary. Another material factor was the entry into force of the law of December 2003, which discharged the State's obligation where partial compensation had been received.
(iii) the conduct of the applicant – Although the applicant had not participated in any auction, he was not responsible for and had not contributed to the state of affairs of which he was complaining. Bearing in mind the risks inherent in the bidding process, the State's obstructive action and inaction meant that the auction procedure could not be regarded as an "effective" or "adequate" means for the applicant to realise his entitlement to compensation.
(iv) conclusion as to fair balance – The Court accepted that the radical reform of the country's political and economic system and its financial situation might justify stringent limitations on compensation for claimants but found that no satisfactory grounds had been adduced to justify the extent to which the State had failed over many years to implement an entitlement conferred on claimants. The rule of law requires that States ensure the legal and practical conditions for the implementation of laws and it was therefore incumbent on the authorities to remove the incompatibility between the letter of the law and the State-operated practice which hindered the effective exercise of the applicant's rights. By imposing successive limitations

on the exercise of the applicant's right to credit, and by applying the practices that made it unenforceable and unusable in practice, the authorities had destroyed the very essence of the right. Moreover, the applicant's situation was compounded by the fact that his practically unenforceable entitlement had been legally extinguished by the 2003 law. In principle, compensation for expropriation must be reasonably related to the value of the property and since the Government accepted that the applicant's family had received only 2% of the compensation due, there was no cogent reason why the applicant should be deprived of the possibility of obtaining at least a proportion of his entitlement. In conclusion, the applicant had had to bear a disproportionate and excessive burden which could not be justified in terms of the legitimate general community interest pursued by the authorities.
Conclusion: violation (unanimously).

Articles 46 and 41 – It was inherent in the Court's findings that the violation of the applicant's right originated in a widespread problem which resulted from a malfunctioning of domestic legislation and administrative practice and which affected a large number of people. Indeed, the systemic nature of the problem had been recognised by the domestic courts. It followed that the deficiencies in national law and practice identified in the applicant's case might give rise to numerous well-founded applications. The Committee of Ministers had invited the Court (Resolution DH(2004)3) to identify such systemic problems in its judgments and had recommended that in such circumstances the Contracting States should set up effective remedies in order to avoid repetitive cases being brought before the Court. Under Article 41, States are obliged not only to pay sums awarded as just satisfaction but also to select, subject to the Committee of Ministers' supervision, the general and individual measures to be adopted in order to put an end to the violation and to redress the effects as far as possible. While it is in principle not for the Court to determine what remedial measures may be appropriate under Article 46, in view of the systemic situation which it had identified, general measures at national level were undoubtedly called for and the measures had to be such as to remedy the systemic defect so as to avoid the Convention system being overburdened with large numbers of applications deriving from the same cause. Thus, the measures ought to include a scheme offering redress to those affected, either by removing any hindrance to the implementation of the claimants' right or by providing equivalent redress.
The Court reserved the question of just satisfaction for pecuniary and non-pecuniary damage in the present case. It made an award in respect of costs and expenses.

DEPRIVATION OF PROPERTY
Delay in fixing and paying final compensation in respect of nationalisation : *admissible*.

CALHEIROS LOPES and others – Portugal (N° 69338/01)
Decision 3.6.2004 [Section III]

The applicants were shareholders in the largest Portuguese agricultural company. The company was nationalised in 1975; the terms of compensation for shareholders were to be established at a later date. An initial sum for provisional compensation was fixed by the State in April 1980. This amount was reviewed and increased in 1984 and 1986. The final amount of compensation was initially determined in 1988. At the applicants' request, an arbitration tribunal increased the final amount in a 1990 decision. The State opposed this decision and in November 1993 it fixed a new amount for final compensation of the applicants. The applicants lodged an application for judicial review in 1994 and were successful. Following an appeal by the State, the domestic courts dismissed their claims with final effect in November 2000.

Having regard to its jurisdiction *ratione temporis*, the Court could not examine the complaints in so far as they concerned nationalisation and the amount of compensation to be paid, events which had occurred prior to ratification of the Convention by the respondent State (cf. the

judgment in *Almeida Garrett, Mascarenhas Falcão and Others v. Portugal*, ECHR 2000-I): *inadmissible*.

Admissible under Articles 6(1), 13 and 17, and under Article 1 of Protocol No. 1 with regard to the complaints concerning the determination and late payment of the final compensation.

The Court cannot examine separate allegations of violation of the general principles of international law, but may take such allegations into consideration when examining allegations of violations of Articles of the Convention, and must take them into consideration when interpreting the Convention.

CONTROL OF THE USE OF PROPERTY
Impossibility of recovering foreign currency deposits in a bank: *communicated*.

JELICIC – Bosnia-Herzegovina (N° 41183/02)
[Section IV]

During the period when the Socialist Federal Republic of Yugoslavia (SFRY) still existed, the applicant deposited a certain amount of German marks in two foreign-currency savings accounts which she held in a bank. She attempted to withdraw the savings on several occasions but to no avail. The bank informed her that it could not repay her because, prior to the country's dissolution, her money had been re-deposited at the National Bank in accordance with the prevailing practice in times of the SFRY. In 1998, following a civil action by the applicant, the First Instance Court ordered the bank to pay her in full the sums in the accounts. She subsequently obtained an order for the enforcement of the judgment. In 2000, the Human Rights Chamber found that the Republika Srpska had breached the applicant's rights under Article 6 and Article 1 of Protocol No. 1, and ordered a rapid and full enforcement of the judgment. The authorities informed the Court that enforcement of the judgment would entail a violation of the rules in force on foreign currency transactions. In 2002, upon completion of the bank's privatisation process, and in accordance with relevant legislation, the applicant's foreign currency deposit became a public debt of the Republika Srpska.
Communicated under Article 1 of Protocol No. 1, with a question on exhaustion of domestic remedies.

ARTICLE 2 OF PROTOCOL No. 1

RIGHT TO EDUCATION
Obligation to undergo religious training prior to attending school courses about the Koran : *inadmissible*.

ÇİFTÇİ – Turkey (N° 71860/01)
Decision 17.6.2004 [Section III]

The applicant applied to the state school at which his son was a pupil for permission to enrol him in Koranic classes so that he could study the Koran and its interpretation. The national legislation provided for mandatory religious-education classes from primary school onwards, but required pupils to have completed primary schooling in order to be able to attend Koranic classes. The applicant's son, who was under twelve years at the material time, had not completed his primary school education. The applicant unsuccessfully applied for exemption from this rule.

Inadmissible under Article 2 of Protocol No. 1: Domestic regulations on education must not pursue an aim of indoctrination that might be regarded as not respecting the parents' religious and philosophical convictions.
In the instant case, the obligation to have obtained a primary school leaving certificate before attending Koranic classes was intended to ensure that minors who wished to receive religious training in Koranic classes had attained a certain "maturity" through the elementary education provided by primary schools. As such, this legal requirement did not amount to an attempt at indoctrination aimed at preventing religious education. This precondition sought to limit the possible indoctrination of minors at an age when they asked many questions and could be easily influenced by Koranic classes: manifestly ill-founded.

ARTICLE 3 OF PROTOCOL No. 1

VOTE
Impossibility for Turkish Cypriot to vote in parliamentary elections: *violation*.

AZIZ – Cyprus (Nº 69949/01)
Judgment 22.6.2004 [Section II]

Facts: The applicant, who is a member of the Turkish-Cypriot community, requested to be registered in the electoral roll with a view to voting in parliamentary elections. The Ministry of the Interior refused the applicant's request, explaining that under the Constitution members of his community could not be registered on the Greek-Cypriot electoral role. The applicant applied to the Supreme Court against the refusal. The Supreme Court dismissed the appeal, holding that under the Cypriot Constitution and relevant electoral legislation, members of the Turkish Community residing in the Republic of Cyprus could not vote in parliamentary elections and that it could not intervene to fill a legislative gap which existed in this respect.

Law: Article 3 of Protocol No. 1 – Although States have a wide margin of appreciation in this sphere and considerable latitude in establishing rules governing parliamentary elections, such rules should not be such as to exclude some persons from participating in the political life of the country, in particular, in the choice of the legislature. As a result of the anomalous situation in the country since 1963 and the gap in legislation, the applicant, as a member of the Turkish-Cypriot community residing in the Government-controlled area of Cyprus, had been deprived of any opportunity to express his opinion in the choice of the members of the House of Representatives. In such circumstances, the very essence of his right to vote had been denied.
Conclusion: violation (unanimously).

Article 14 – As the difference in treatment in the present case resulted from the very fact that the applicant was a Turkish Cypriot, as well as from the constitutional provisions regulating voting rights between members of the Turkish-Cypriot and Greek-Cypriot communities, which had become impossible to implement, there was a clear inequality of treatment in the enjoyment of the right in question. Accordingly, there had been a violation of this provision.
Conclusion: violation (unanimously).

Article 41 – The Court made an award in respect of costs and expenses.

STAND FOR ELECTION
Ineligibility to stand for Parliament on account of involvement in a party which previously backed a *coup d'Etat*: *violation*.

ZDANOKA – Latvia (N° 58278/00)
Judgment 17.6.2004 [Section I]

Facts: During the Soviet period, the applicant was a member of the Communist Party of Latvia (CPL), a regional branch of the Communist Party of the Soviet Union. The restoration of the Republic of Latvia's independence was proclaimed in May 1990. A period of transition was introduced with a view to gradual restoration of genuine State sovereignty. This period ended on 21 August 1991 with the proclamation of the country's absolute and immediate independence. On account of its participation in two attempted coups d'état during the transition period, on 13 January and in August 1991, the CPL was declared unconstitutional and dissolved in September 1991. In 1994 and 1995 the Latvian Parliament adopted two laws on municipal and parliamentary elections respectively, which stated that persons who had actively participated in the CPL's activities after 13 January 1991, the date of the first coup d'état supported by that party, could not stand for election. Such participation was to be established by the courts on an application by the Prosecutor-General. In 1997 the applicant was able to stand in local elections and was elected to the Riga City Council. The applicant was obliged to withdraw her candidacy for the 1998 parliamentary elections. In 1999, on an application by the Prosecutor-General's office, the national courts held that the applicant had personally been involved in the CPL's activities after the critical date of 13 January 1991. The applicant was automatically disqualified from standing for election and lost her seat on the Riga City Council. An appeal on points of law by the applicant was declared inadmissible in February 2000. The applicant's name was removed from the list of candidates submitted for the 2002 parliamentary elections.

Law: Preliminary objection – the Government argued that the matter had been resolved within the meaning of Article 37(1)(b) since the applicant could legally stand in the European elections. However, the respondent State had neither acknowledged nor afforded redress for the measures taken against the applicant in the past, namely her disqualification from standing in the 1998 and 2002 parliamentary elections and the withdrawal of her seat on the City Council in 1999. The applicant was therefore still a "victim" and the matter had not been resolved: objection dismissed.

Article 3 of Protocol No. 1 – The ruling that the applicant was ineligible to stand had pursued legitimate aims: protection of the State's independence, the democratic regime and national security. It had been a permanent restriction on her rights in that it was of indefinite duration and would continue until the relevant legislation was repealed. The applicant had never been convicted of a criminal offence on account of her activities. As there had been no ban prohibiting the CPL's activities before August 1991, the applicant could not be accused of active participation in an illegal association. The Court considered that, contrary to what was argued by the Government, the applicant's personal conduct in 1991 had not reached such a level of seriousness as to justify her continuing ineligibility in the present. The ineligibility procedure introduced by the law was very strongly focused on the past and did not allow for adequate assessment of the current danger posed by the persons concerned. The Court examined the applicant's present behaviour and considered that, among the criticisms levelled at the applicant by the respondent Government, none of her ideas or political activities appeared to be incompatible with the fundamental values of the Convention. In addition, the activities for which the respondent Government criticised the applicant were not prohibited by Latvian law and the applicant had never been placed under investigation or convicted of an offence. In short, the Government had supplied no information about any specific act by the applicant after 1991 that was capable of endangering the Latvian State, its national security or

its democratic regime. Consequently, the applicant's permanent disqualification from standing for election to the Latvian Parliament, imposed on account of her activities within the CPL after 13 January 1991, had not been proportionate to the legitimate aims pursued and had curtailed her electoral rights to such an extent as to impair their very essence; in addition, its necessity in a democratic state had not been established.
Conclusion: violation (five votes to two).

Article 11 – The applicant's disqualification from standing for election to parliament and to municipal councils had amounted to an interference with her right to freedom of association. This interference had been prescribed by law and had pursued a legitimate aim, namely protection of national security. As to the measure's proportionality, the party of which the applicant had been a militant member could not have been regarded as "illegal" between 13 January 1991 and August 1991 and the Government had not supplied information about any specific act by the applicant aimed at destroying the newly-restored Republic of Latvia or its democratic order. The applicant's ineligibility was based on her past political activity and not on her present conduct, and her current public activities did not indicate any failure to respect the fundamental values of the Convention. Consequently, the applicant's ineligibility to stand for election to parliament or to municipal councils on account of her active participation in the CPL, which was still in force more than ten years after the events for which that party had been held responsible, seemed disproportionate to the aim pursued and accordingly unnecessary in a democratic society.
The Court pointed out that the second sentence of Article 11(2) of the Convention, authorising "lawful restrictions" with regard to "members of the armed forces, of the police or of the administration of the State" did not apply to members of parliament or to members of elected assemblies of local authorities.
Conclusion: violation (five votes to two).
The Court held that it was unnecessary to examine separately the complaint under Article 10.

Article 41 – The Court made an award in respect of the pecuniary damage suffered by the applicant as a result of the loss of her seat on the City Council, and an award in respect of the non-pecuniary damage resulting from her disqualification from standing as a candidate in the parliamentary elections and the loss of her City Council seat. It also made an award in respect of cost and expenses.

ARTICLE 5 OF PROTOCOL No. 7

EQUALITY BETWEEN SPOUSES
Recognition of foreign divorce by unilateral repudiation : *communicated*.

D. D. – France (N° 3/02)
[Section II]

Other judgments delivered in June

Article 3

Aydin and Yunus – Turkey (Nº 32572/96 and Nº 33366/96)
Judgment 22.6.2004 [Section IV]

ill-treatment in police custody – violation.

Şahmo – Turkey (Nº 37415/97)
Judgment 22.6.2004 [Section IV]

ill-treatment in police custody – friendly settlement (statement of regret, undertaking to take appropriate preventive measures and *ex gratia* payment of 23,000 euros plus costs).

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

Altun - Turkey (Nº 24561/94)
Judgment 1.6.2004 [Section IV]

destruction of possessions and home by security forces in 1993 – violation.

Article 5(1) and (3)

Tám – Slovakia (Nº 50213/99)
Judgment 22.6.2004 [Section IV]

lawfulness of psychiatric detention and absence of proper review – violation.

Article 5(1) and Article 6(1) and (3)(c)

Broadhurst – United Kingdom (Nº 69187/01)
Judgment 22.6.2004 [Section IV]

detention for non-payment of community charge and unavailability of legal aid for the proceedings – friendly settlement (*ex gratia* payment of £2,700 plus costs).

Article 5(3) and/et (4)

Wesołowski – Poland (Nº 29687/96)
Judgment 22.6.2004 [Section II]

length of detention on remand and absence of right for detainee to attend or be represented at hearings on prolongation of detention – violation.

Article 5(3), (4) and (5) and Article 6(1)

Pavletić - Slovakia (Nº 39359/98)
Judgment 22.6.2004 [Section IV]

length of detention on remand, length of time taken to decide on requests for release from detention on remand and absence of right to compensation – violation; impartiality of judge who had previously acted as prosecutor in the same case – no violation.

Article 5(4)

Frommelt – Liechtenstein (Nº 49158/99)
Judgment 24.6.2004 [Section III]

absence of hearing in connection with prolongation of detention on remand – violation.

Article 6(1)

Freimann – Croatia (Nº 5266/02)
Judgment 24.6.2004 [Section I]

legislation staying all proceedings relating to claims for damages in respect of terrorist acts – violation.

Jorgić – Croatia (Nº 70446/01)
Kresović – Croatia (Nº 75545/01)
Judgments 24.6.2004 [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* payments of 8,500 euros and 4,500 euros respectively, including costs).

De Jorio – Italy (Nº 73936/01)
Judgment 3.6.2004 [Section I]

parliamentary immunity attaching to alleged defamation by Member of Parliament – violation.

Tamminen – Finland (Nº 40847/98)
Judgment 15.6.2004 [Section IV]

refusal to hear witness requested by a party to civil proceedings – violation.

Romlin – Sweden (Nº 48630/99)
Judgment 15.6.2004 [Section IV]

lack of oral hearing in proceedings before social security courts – friendly settlement.

Yalman and others – Turkey (Nº 36110/97)
Judgment 3.6.2004 [Section I]

Bartl – Czech Republic (Nº 50262/99)
Judgment 22.6.2004 [Section II]

Leszczyńska – Poland (Nº 47551/99)
Judgment 22.6.2004 [Section IV]

length of civil proceedings – violation.

Houfová – Czech Republic (no. 1) (Nº 58177/00)
Houfová – Czech Republic (no. 2) (Nº 58178/00)
Judgments 15.6.2004 [Section II]

Libánský – Czech Republic (Nº 48446/99)
Judgment 22.6.2004 [Section II]

Králíček – Czech Republic (Nº 50248/99)
Judgment 29.6.2004 [Section II]

length of proceedings relating to restitution of property – violation.

Kastner – Hungary Nº 61568/00)
Judgment 29.6.2004 [Section II]

length of proceedings relating to employment – violation.

Urbańczyk - Poland (Nº 33777/96)
Judgment 1.6.2004 [Section IV]

Lechelle - France (Nº 65786/01)
Simon - France (Nº 66053/01)
Judgments 8.6.2004 [Section II]

Piekara – Poland (Nº 77741/01)
Judgment 15.6.2004 [Section IV]

length of administrative proceedings – violation.

Beaumer – France (Nº 65323/01)
Judgment 8.6.2004 [Section II]

length of administration proceedings concerning a claim for compensation following infection with the AIDS virus as a result of transfusion of contaminated blood – violation.

J.-M.F. – France (Nº 42268/98)
Judgment 1.6.2004 [Section II]

length of proceedings in the social security courts – violation.

Richard-Dubarry – France (Nº 53929/00)
Judgment 1.6.2004 [Section II]

length of proceedings in the Audit Courts – violation.

Clinique Mozart sarl – France (Nº 46098/99)
Judgment 8.6.2004 [Section II]

length of proceedings concerning tax penalties – violation.

Mutimura – France (Nº 46621/99)
Judgment 8.6.2004 [Section II]

length of criminal proceedings concerning genocide in Rwanda, which the applicant had joined as a party seeking damages; and lack of effective remedy – violation.

A.W. – Poland (Nº 34220/96)
Judgment 24.6.2004 [Section III]

length of criminal proceedings – violation.

Ahmet Koç – Turkey (Nº 32580/96)
Judgment 22.6.2004 [Section II]

independence and impartiality of martial law court and length of criminal proceedings – violation.

Leşker Acar – Turkey (Nº 39678/98)
Judgment 22.6.2004 [Section II]

Murat Yılmaz – Turkey (Nº 48992/99)
Doğan and Keser – Turkey (Nº 50193/99 and Nº 50197/99)
Kaya and others – Turkey (Nº 54335/00)
Judgments 24.6.2004 [Section III]

independence and impartiality of State Security Court – violation.

G.W. - United Kingdom (Nº 34155/96)
Le Petit - United Kingdom (Nº 35574/97)
Judgments 15.6.2004 [Section IV]

independence and impartiality of naval courts martial – violation.

Thompson – United Kingdom (Nº 36256/97)
Judgment 15.6.2004 [Section IV]

independence of military officer before whom detainee brought and absence of right to compensation; summary trial of soldier by commanding officer and denial of legal assistance – violation.

Articles 6 and 8

Voleský – Czech Republic (Nº 63627/00)
Judgment 29.6.2004 [Section II]

adequacy of measures taken by authorities to enforce father's right of access to his child – no violation; length of the proceedings – no violation.

Articles 6(1) and 9

Vergos – Greece (Nº 65501/01)
Judgment 24.6.2004 [Section I]

refusal of building permit for place of worship for "True Orthodox Christians" – no violation; length of administrative proceedings – violation.

Article 6 and Article 1 of Protocol No. 1

Sîrbu and others – Moldova
(Nº 73562/01, Nº 73565/01, Nº 73712/01, Nº 73744/01, Nº 73972/01 and Nº 73973/01)
Luntre and others – Moldova
(Nº 2916/02, Nº 21960/02, Nº 21951/02, Nº 21941/02, Nº 21933/02, Nº 20491/02, Nº 2676/02, Nº 23594/02, Nº 21956/02, Nº 21953/02, Nº 21943/02, Nº 21947/02 and Nº 21945/02)
Pasteli and others – Moldova
(Nº 9898/02, Nº 9863/02, Nº 6255/02 and Nº 10425/02)
Judgments 15.6.2004 [Section IV]

Zhovner – Ukraine (Nº 56848/00)
Piven – Ukraine (Nº 56849/00)
Voytenko – Ukraine (Nº 18966/02)
Judgments 29.6.2004 [Section II]

delays by authorities in complying with court judgments making financial awards – violation.

Buzatu – Romania (Nº 34642/97)
Judgment 1.6.2004 [Section II]

annulment by Supreme Court of Justice of final and binding judgment ordering return of property previously nationalised, exclusion of courts' jurisdiction with regard to nationalisation and deprivation of property – violation.

Article 8

Narinen – Finland (Nº 45027/98)
Judgment 1.6.2004 [Section IV]

absence of clear legal basis for opening of bankrupt's correspondence by trustee – violation.

Article 8 and Article 1 of Protocol No. 1

Doğan and others – Turkey
(Nº 8803/02, Nº 8804/02, Nº 8805/02, Nº 8806/02, Nº 8807/02, Nº 8808/02, Nº 8809/02, Nº 8810/02, Nº 8811/02, Nº 8813/02, Nº 8815/02, Nº 8816/02, Nº 8817/02, Nº 8818/02 and Nº 8819/02)
Judgment 29 June 2004 [Section III]

forced evacuation of village in 1994 and refusal to permit return of villagers – violation.

Article 1 of Protocol No. 1

Öner and Çavuşoğlu – Turkey (Nº 42559/98)
Judgment 24.6.2004 [Section III]

delays in payment of compensation for expropriation – violation.

Revision

Santoni – France (Nº 49580/99)
Judgment (revision) 1.6.2004 [Section II]

Referral to the Grand Chamber

Article 43(2)

The following cases have been referred in accordance with Article 43(2) of the Convention:

JAHN and others – Germany (N^{os} 46720/99, 72203/01 and 75552/01)
Judgment 22.1.2004 [Section III]

The applications concern the obligation to return property in the GDR to the State without compensation following the reunification.

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

The case concerns the conviction of a lawyer for contempt of court by the same court before which the contempt took place.

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. 61-62):

IPEK - Turkey (Nº 25760/94)
Judgment 17.2.2004 [Section II]

KRANZ – Poland (Nº 6214/02)
Judgment 17.2.2004 [Section IV]

CVIJETIĆ - Croatia (Nº 71549/01)
Judgment 27.2.2004 [Section I]

SABIN POPESCU – Romania (Nº 48102/99)
FAVRE - France (Nº 72313/01)
Judgments 2.3.2004 [Section II]

MUŽENJAK - Croatia (Nº 73564/01)
PIBERNIK - Croatia (Nº 75139/01)
FOSSI and MIGNOLLI - Italy (Nº 48171/99)
SILVESTER'S HORECA SERVICE – Belgium (Nº 47650/99)
Arrêts 4.3.2004 [Section I]

CSANADI - Hungary (Nº 55220/00)
MIRAILLES - France (Nº 63156/00)
Judgments 9.3.2004 [Section II]

PITKÄNEN – Finland (Nº 30508/96)
ÇALISKAN – Turkey (Nº 32861/96)
ABDULLAH AYDIN – Turkey (Nº 42435/98)
GLASS - United Kingdom (N° 61827/00)
JABLONSKÁ - Poland (Nº 60225/00)
Judgments 9.3.2004 [Section IV]

MANIOS – Greece (Nº 70626/01)
LENAERTS – Belgium (Nº 50857/99)
BOUZALMAD – Belgium (Nº 51083/99)
LOVENS – Belgium (Nº 50858/99)
PICONE - Italy (Nº 59273/00)
CALVO – Italy (Nº 59636/00)
POLLIFRONE – Italy (Nº 60391/00)
MONTANARI – Italy (Nº 61995/00)
BELLINI – Italy (no. 2) (Nº´64098/00)
ANTONIO SIENA – Italy (Nº 65120/01)
G.B. – Bulgaria (Nº 42346/98)
Judgments 11.3.2004 [Section I]

RADIO FRANCE - France (N° 53984/00)
Judgment 30.3.2004 [Section II]

NURAY SEN - Turkey (Nº 25354/94)
PACHNIK - Poland (Nº 53029/99)
HULEWICZ – Poland (Nº 35656/97)
HIRST - United Kingdom (no. 2) (N° 74025/01)
Judgments 30.3.2004 [Section IV]

Article 44(2)(c)

On 14 June 2004 the Panel of the Grand Chamber rejected requests for referrral of the following judgments, which have consequently become final:

WORWA – Poland (N° 26624/95)
Judgment 27.11.2003 [Section III]

KOKTAVÁ – Czech Republic (Nº 45107/98)
Judgment 2.12.2003 [Section II]

MÜSLÜM GÜNDÜZ - Turkey (N° 35071/97)
Judgment 4.12.2003 [Section I]

KARAHALIOS – Greece (Nº 62503/00)
Judgment 11.12.2003 [Section I]

ÜKÜNÇ and GÜNEŞ – Turkey (Nº 42775/98)
ÇETİNKAYA and others – Turkey (Nº 57944/00)
Judgments 18.12.2003 [Section III]

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

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

BECERIKLI and ALTEKIN – Turkey (Nº 57562/00)
Judgment 8.1.2004 [Section III]

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

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

İÇÖZ – Turkey (Nº 54919/00)
EROLAN and others – Turkey (Nº 56021/00)
HIDIR ÖZDEMIR – Turkey (Nº 46952/99)
METIN POLAT and others – Turkey (Nº 48065/99)
ÇINAR – Turkey (Nº 48155/99)
Judgments 15.1.2004 [Section III]

GÜVEN and others – Turkey (Nº 40528/98)
İRFAN KAYA – Turkey (Nº 44054/98)
JALALIAGHDAM – Turkey (Nº 47340/99)
KIRCAN – Turkey (Nº 48062/99)
ÖZERTIKOGLU – Turkey (Nº 48438/99)
KORKMAZ – Turkey (Nº 50903/99)
Judgments 22.1.2004 [Section III]

TAHIR DURAN – Turkey (Nº 40997/98)
HALIL DOGAN – Turkey (Nº 49503/99)
KALYONCUGIL and others – Turkey (Nº 57939/00)
Judgments 29.1.2004 [Section III]

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

MOUFFLET - France (Nº 53988/00)
CROCHARD and others - France (Nº 68255/01, Nº 68256/01, Nº 68257/01, Nº 68258/01, Nº 68259/01, Nº 68260/01 and Nº 68261/01)
Judgments 3.2.2004 [Section II]

COUDRIER - France (Nº 51442/99)
Judgment 10.2.2004 [Section II]

Statistical information[1]

Judgments delivered	June	2004
Grand Chamber	1	7
Section I	8(9)	77(84)
Section II	27(28)	80(89)
Section III	8(23)	66(86)
Section IV	24(45)	72(94)
former Sections	0	2
Total	**68(106)**	**304(362)**

Judgments delivered in June 2004					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	1	0	0	0	1
Section I	6(7)	2	0	0	8(9)
Section II	26(27)	0	0	1	27(28)
Section III	8(23)	0	0	0	8(23)
Section IV	20(41)	3	1	0	24(45)
Total	**61(99)**	**5**	**1**	**1**	**68(106)**

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	6	0	0	1	7
former Section I	0	0	0	0	0
former Section II	1	0	0	1	2
former Section III	0	0	0	0	0
former Section IV	0	0	0	0	0
Section I	63(66)	12(16)	1	1	77(84)
Section II	71(80)	6	1	2	80(89)
Section III	62(82)	4	0	0	66(86)
Section IV	61(83)	9	2	0	72(94)
Total	**264(318)**	**31(35)**	**4**	**5**	**304(362)**

Decisions adopted		June	2004
I. Applications declared admissible			
Section I		32	148(156)
Section II		18	67(68)
Section III		13(29)	77(96)
Section IV		18(26)	77(108)
Total		**81(105)**	**369(428)**
II. Applications declared inadmissible			
Grand Chamber		0	1
Section I	- Chamber	12	72(74)
	- Committee	607	3116
Section II	- Chamber	12(13)	47(48)
	- Committee	522	2165
Section III	- Chamber	11	30
	- Committee	359	1354
Section IV	- Chamber	10	50(61)
	- Committee	299	1571
Total		**1832(1833)**	**8406(8420)**
III. Applications struck off			
Section I	- Chamber	10	40
	- Committee	4	36
Section II	- Chamber	12	28
	- Committee	3	31
Section III	- Chamber	5	94
	- Committee	4	13
Section IV	- Chamber	1	22
	- Committee	7	24
Total		**46**	**288**
Total number of decisions[1]		**1959(1984)**	**9063(9136)**

1. Not including partial decisions.

Applications communicated	June	2004
Section I	57	293(311)
Section II	68	227(251)
Section III	186	388(389)
Section IV	29	139
Total number of applications communicated	**340**	**1047(1090)**

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