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EUROPEAN COURT OF HUMAN RIGHTS

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

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ARTICLE 4 of PROTOCOL No. 7

Inadmissible

RULE 39

ARTICLE 1

RESPONSIBILITY OF STATES
Positive obligation of the State to ensure the respect of the rights guaranteed by the Convention outside its territory and the principle of State immunity: *inadmissible*.

MANOILESCU and DOBRESCU - Romania and Russia (N° 60861/00)
Decision 3.3.2005 [Section III]

In 1997 an administrative board allowed an application by the first applicant for the return of a building to him in his capacity as heir. That decision was upheld in a 1998 judgment, which became final in the absence of an appeal. The building was used by the Embassy of the Russian Federation in Romania. In view of the immunity enjoyed by embassies under the 1961 Vienna Convention, it was impossible to obtain restitution of the building in the normal manner through bailiffs. The applicants subsequently brought court proceedings against various authorities including the city council. The mayor stated that, according to a diplomatic note, the building was now the property of Russia. The court pointed out that enforcing the decision would amount to breaching the diplomatic immunity enjoyed by the embassy. The applicants were unsuccessful in both sets of court proceedings they had instituted. They made direct approaches to the Russian and Romanian authorities with a view to securing the recovery of the building, but to no avail.

Complaints against Romania:
Inadmissible under Article 6(1): The property in respect of which the applicants' claim for restitution had been allowed was assigned to officials of the Russian Embassy in Romania and constituted "premises of the mission" within the meaning of Vienna Convention on Diplomatic Relations. The Romanian authorities had been unable to enforce the final decision in the applicants' favour on account of the principle of a foreign State's diplomatic immunity on Romanian soil. As public international law – of which the Convention was an integral part – currently stood, the fact that the decision in which the restitution of the building been granted had not been executed because of the rule that foreign States enjoyed immunity from execution with regard to the premises of diplomatic or consular missions did not amount to a disproportionate restriction of the right of "access to a court": manifestly ill-founded.

Inadmissible under Article 1 of Protocol No. 1: The final administrative decision in which the applicants' title to the building had been recognised amounted to a claim against the Romanian State that could be regarded as sufficiently established to constitute an "asset". The Romanian authorities' refusal to take enforcement measures to secure the return of the building had served a "public interest" directly linked to observance of the principle of State immunity, namely the need to avoid disrupting relations between Romania and the Russian Federation and hindering the proper functioning of that foreign State's diplomatic mission in Romania. The national courts had therefore dismissed the applicants' application for enforcement measures, pointing out that the Russian Federation owned the building and that its ownership had not been invalidated by any final judicial decision. No domestic court had invalidated the applicants' title, which furthermore could not have expired with the passing of time, and it was not inconceivable that execution might subsequently take place – for example, if the foreign State enjoying immunity from execution gave its consent to the taking of coercive measures by the Romanian authorities, thereby voluntarily waiving its right to avail itself of the international provisions in its favour – and that possibility was expressly provided for in international law. Lastly, Romanian law entitled the applicants to financial or other forms of compensation. The situation complained of had therefore not upset the requisite balance between the protection of the individual right to the peaceful enjoyment of possessions and the requirements of the general interest: manifestly ill-founded.

Complaints against Russia:
Article 1 of the Convention: The applicants did not come within the "jurisdiction" of the Russian Federation within the meaning of this Article. The Russian Federation had not exercised any jurisdiction over the applicants: it had not been a respondent party in the civil action which they had brought in the Romanian courts with a view to securing the enforcement of the administrative decision in their favour, nor had it intervened in the proceedings to raise the defence of sovereign immunity, and the proceedings in question had been conducted exclusively in Romanian territory. Only the Romanian courts had exercised sovereign power in respect of the applicants, and the Russian authorities had no powers of review, whether direct or indirect, in respect of decisions and judgments given in Romania. The fact that the applicants had informed the Russian Ambassador that their application for recovery of a building occupied by that foreign State's embassy had been allowed and that the embassy had made clear that it considered itself to be the owner of several buildings, including the one to be returned to the applicants, was not sufficient to bring them within the jurisdiction of the Russian Federation within the meaning of Article 1.
Nor could the Russian Federation's responsibility be engaged under Article 1 of the Convention by possible breaches of its positive obligation to ensure respect for the rights guaranteed by the Convention and relied on by the applicants. It could not be criticised for not taking positive steps, such as intervening in the court proceedings instituted by the applicants on account of the Romanian administrative authorities' failure to execute the decision in their favour, or giving its prior consent to any coercive measures. Although it had been in its power to take such measures (cf. *Ilaşcu and Others v. Moldova and Russia*, ECHR 2004-VII), requiring the Russian Federation to take them would be contrary to existing international public policy as it would mean waiving that State's entitlement to foreign sovereign immunity, a principle which was universally accepted in international law and pursued the legitimate aim of safeguarding comity and good relations between States: incompatible *ratione personae*.

ARTICLE 2

LIFE
Killing of civilians during military operation: *violation*.

AKKUM and Others – Turkey (N° 21894/93)
Judgment 24.3.2005 [Section I]

Facts: The applicants are the father, brother and mother of three relatives found dead after a military operation in 1992 near Diyarbakır. The applicants alleged that their relatives had been killed unlawfully by the security forces and that the authorities had failed to carry out an adequate investigation into the killings. Mr Akkum also submitted that his son's ears had been cut off after his death and that he had had to bury an incomplete and mutilated body. The applicants further complained that the soldiers had killed a horse, a dog and livestock. They maintained that there was a practice of conducting inadequate investigations into the killings of individuals in south-east Turkey, where agents of the State were alleged to have been involved, and of failing to prosecute those responsible. The applicants also complained that, because of their Kurdish origin, they and their deceased relatives had been subjected to discrimination. The Government denied that soldiers had been responsible for the killing of Mr Karakoç and maintained that Mr Akkum and Mr Akan had been killed in crossfire between soldiers and members of the Kurdistan Workers' Party (PKK) and that it had not been possible to establish who had shot them.

Law: Preliminary objection – The Court did not deem it necessary to re-examine the Government's argument (already put to the Commission) that the applicants had failed to exhaust domestic remedies.
Conclusion: Objection dismissed (unanimously).

Article 38(1)(a) – The Government had withheld key documentary evidence indispensable for the correct and complete establishment of the facts and had advanced no explanation for the failure to submit this material.
Conclusion: failure to fulfil obligation under Article 38 (unanimously).

Establishment of the facts – Some reports made available in the Convention proceedings had been full of omissions and contradictions. Moreover, information provided by State agents and relating to the facts of the case was contradictory and, at least as regards statements made by a number of those agents, could not be accepted as truthful. The overall circumstances justified the drawing of inferences as to the well-foundedness of the applicants' allegations. The Court found it established that Mr Karakoç, his horse and his dog had been killed by the soldiers in the circumstances alleged by applicant Karakoç. As regards the killing of Mr Akkum and Mr Akan, it was legitimate to draw a parallel between the situation of detainees, for whose well-being the State was held responsible, and the situation of people found injured or dead in an area within the exclusive control of the State authorities. In both situations, information about the events in question lied wholly, or to a large extent, within the exclusive control of the authorities. The Government had failed to adduce any argument from which it could be deduced that the documents withheld by them contained no information bearing on the applicant's claims. No meaningful investigation had been conducted at domestic level capable, firstly, of establishing the true facts surrounding the killings of Mr Akkum and Mr Akan and the mutilation of Mr Akkum's body, and, secondly, of leading to the identification and punishment of those responsible. The Government had therefore failed to account for the killing of Mr Akkum and Mr Akan or for the mutilation of Mr Akkum's body.
Conclusion: Respondent State liable for the death of the applicants' three relatives (unanimously).

Article 2 (*obligation to protect the right to life*) – The Court having established that Mr Karakoç had been killed by soldiers on 10 November 1992 and the Turkish Government having failed to account for the killing of Mr Akkum and Mr Akan, there had been a violation of Article 2 concerning the killings. It was not necessary to reach any separate finding concerning the alleged lack of care in the planning and control of the operation.
Conclusions: violation (unanimously); unnecessary to determine whether there had been a violation on account of the alleged lack of care in the planning and control of the operation (unanimously).

Article 2 (*obligation to conduct an effective investigation*) – The domestic authorities had failed to carry out an adequate and effective investigation into the killings of the applicants' three relatives.
Conclusion: violation (unanimously).

Article 3 – The Court had no doubts that the anguish caused to Mr Akkum as a result of the mutilation of the body of his son amounted to degrading treatment contrary to Article 3.
Conclusion: violation (unanimously).

Article 13 – No criminal investigation could be considered to have been conducted in accordance with this provision. The applicants had therefore been denied an effective remedy in respect of the deaths of their relatives and the mutilation of the body of Mr Akkum and had thereby been denied access to any other available remedies at their disposal, including a claim for compensation. Having regard to its findings under Articles 2 and 13, the Court did not find it necessary to determine whether the failings identified in the case were part of a practice adopted by the Turkish authorities.
Conclusions: violation (unanimously); unnecessary to determine whether there had been a practice by the authorities of infringing Articles 2 and 13 (unanimously).

Articles 14 and 18 – Noting its findings of a violation of Articles 2 and 13, the Court did not consider it necessary also to consider those complaints in conjunction with Article 14. In light of its findings it also saw no need to examine the complaint under Article 18 separately.
Conclusion: Unnecessary to determine whether there has been a violation of Article 14 in conjunction with Articles 2 and 13 (unanimously) or of Article 18 (unanimously).

Article 1 of Protocol No. 1 – The killing of the horse and the dog constituted an unjustified interference with Mr Karakoç's right to the peaceful enjoyment of his possessions. Regarding the killing of livestock, no evidence had been submitted by the applicants concerning the number of killed animals belonging to them and the Court had been unable to establish the circumstances in which they were killed. In those circumstances, the Court did not find it established that there had been a violation in that respect.

Conclusion: violation in part and non-violation in part (unanimously).

Article 41 – The Court awarded applicant Karakoç EUR 57,300 for pecuniary damage, to be held by her for the wife and children of her son, Mr Karakoç. The Court awarded EUR 81,100 for non-pecuniary damage to the three applicants and the heirs of their deceased relatives. It also made an award for costs and expenses.

POSITIVE OBLIGATIONS
Accidental death of a passenger getting down from a train, and effectiveness of the investigation: *inadmissible*.

BONE - France (N° 69869/01)
Decision 1.3.2005 [Section II]

The applicants' fourteen-year-old son was travelling by train. As the train arrived at the station, he attempted to alight on the side of the track rather than on the appropriate platform. Another train was approaching on the track and struck and killed him. The preliminary investigation established the facts on the basis of a medical examination of the victim, statements taken from witnesses, sketches and photographs of the scene, and the train's data recorder. The applicants lodged a complaint against a person or persons unknown, alleging manslaughter, and applied to join the proceedings as a civil party. The judicial investigation, directed mainly at the State railway company, concluded that there was no case to answer. The expert report indicated that the mandatory safety measures had been observed and that the accident had been caused by the victim's reckless conduct. Subsequent appeals were dismissed.

Inadmissible under Article 2: Article 2 could not guarantee everyone an absolute level of safety in all everyday activities that entailed a risk of physical injury. In particular, the State could not be expected to assume a positive obligation to protect careless travellers.
The victim himself had opened the door on the side of the track, had been aware that he was not alighting on the accessible side of the station platform and, when alerted to this by a friend, had thought that he could cross the track to the platform, thereby disregarding the warning on the carriage door about the serious risk entailed in such circumstances. The victim's extremely reckless conduct had been the decisive cause of his accidental death, and the national authorities could not be criticised for failing to take steps that could have resulted in his life being saved. The judicial authorities had conducted a thorough and impartial examination of the circumstances surrounding the death and had concluded that the railway company could not be held criminally liable, in reasoned decisions following adversarial proceedings to which the applicants had had full access, in particular through their lawyer: manifestly ill-founded.

POSITIVE OBLIGATIONS
Death of a political journalist, allegedly as a result of a forced disappearance and failure of the authorities to protect his life, and effectiveness of the investigation: *admissible.*

GONGADZE - Ukraine (N° 34056/02)
Decision 22.3.2005 [Section II]

The applicant is the wife of a deceased journalist, who was well know for his political independence and denunciation of corruption cases. The applicant's husband disappeared in September 2000 under circumstances which have to date not yet been established by the Ukrainian authorities. The body of an unidentified person was found on 8 November 2000 and a first forensic examination concluded that the time of the death corresponded to that of the applicant's husband. A few days later some relatives recognised the body as that of the disappeared journalist. However, all documents relating to the first forensic examination were confiscated, and the authorities announced that contrary to the first findings, the body which had been discovered had been buried for two years. The applicant's request to be recognised as civil party and to participate in the identification of the body was refused for a long time. A

new forensic examination of the body was organised. Despite the views of Russian and American specialists who participated in the examination and concluded that it was highly probable that the body found was that of the missing journalist, the Prosecutor General announced that it was not. It could not be confirmed as there were witnesses who had seen him alive after his disappearance. In February 2001, the Prosecutor General's office informed the applicant that on the basis of additional evidence it could now be confirmed that the body found was that of her husband. In May 2001, the authorities announced that the applicant's husband had presumably been murdered by two drug-users, hence the crime was not politically motivated. The applicant filed a complaint for negligence in the investigation, but the claim was not registered and later could not be found. In November 2002 a prosecutor involved in the case was arrested and charged with negligence in the investigation. In October 2003 an official of the Ministry of the Interior was arrested on suspicion of involvement in the disappearance. The case is still pending.

Admissible under Articles 2, 3 and 13. The Government's Preliminary Objection (complaints under Articles 2 and 3 were out of time): Although criminal proceedings were still pending, the applicant alleged delays and deficiencies in such proceedings. The Court decided to join the objection to the merits.

USE OF FORCE
Shooting of person during siege as he had failed to heed police orders: *no violation.*

BUBBINS – United Kingdom (N° 50196/99)
Judgment 17.3.2005 [Section III]

Facts: The applicant's brother, Michael Fitzgerald, was shot dead by the police at his flat following a siege lasting almost two hours. As Mr Fitzgerald had appeared to aim a gun at one of the police officers and had not responded when ordered to drop it, a police officer had fired one shot, which had killed Mr Fitzgerald. Only on very close examination of his weapon was it revealed to be a replica. The matter was voluntarily referred to the Police Complaints Authority. The police investigation report was sent to the Director of Public Prosecutions, who concluded that there was no evidence to justify any criminal proceedings against any police officer. The Police Complaints Authority confirmed the findings. Following an inquest and after the Coroner had directed that as a matter of law the only possible verdict was lawful killing, the jury returned that verdict. The applicant's request for legal aid to pursue proceedings for judicial review of the inquest verdict was refused by the Area Committee of the Legal Aid Board, as was a subsequent appeal.

Law: Article 2 (*obligation to protect the right to life*) – As regards the actions of the police officer who had fired the fatal shot, there was no reason to doubt that he had honestly believed that his life had been in danger and that it had been necessary to open fire in order to protect himself and his colleagues. Moreover, the Court could not substitute its own assessment of the situation for that of an officer who had been required to react in the heat of the moment to avert an honestly perceived danger to his life. The officer had found himself confronted by a man pointing a gun at him. That man had ignored previous warnings to give himself up and, in defiance of these warnings, had conveyed on occasions a clear impression that he would open fire. Even before discharging the fatal shot, the officer had shouted a final warning, which had gone unheeded. The use of lethal force in the circumstances of this case, albeit highly regrettable, had not been disproportionate and had not exceeded what was absolutely necessary to avert what was honestly perceived by the police officer to be a real and immediate risk to his life and the lives of his colleagues.
As regards the planning and control of the operation, the Court observed that the conduct of the operation had remained at all times under the control of senior officers and that the deployment of the armed officers had been reviewed and approved by the tactical firearms advisers who had been summoned to the scene. Furthermore, the use of firearms by the police as well as the conduct of police operations of the kind at issue were regulated by domestic law and a system of adequate and effective safeguards existed to prevent arbitrary use of lethal force. The key officers had all been trained in the use of firearms and their movements and actions had been subject to the control and supervision of experienced senior officers. It had therefore not been shown that there had been a failure to plan and organise the operation in such a

way as to minimise to the greatest extent possible any risk to the life of Mr Fitzgerald. In sum, his killing had resulted from the use of force which had been no more than was absolutely necessary.
Conclusion: no violation (unanimously).

Article 2 (*obligation to conduct an effective investigation*) –The Court had already had occasion to conclude that the inquest procedure in England and Wales was capable of fulfilling the Article 2 requirements of an effective investigation into an alleged killing by State agents. In the instant case the inquest had been held over a four-day period. Many witnesses had been heard. The jury had visited the scene of the incident. Even if refused legal aid, the family had been legally represented throughout the proceedings by experienced counsel. If an independent judicial officer such as a Coroner decided after an exhaustive public procedure that the evidence heard on all relevant issues clearly pointed to only one conclusion, and did so in the knowledge that his decision might be subject to judicial review, it could not be maintained that this decision impaired the effectiveness of the procedure.
Conclusion: no violation (unanimously).

Article 13 of the Convention – Although the inquest procedure had provided in the circumstances an effective mechanism for subjecting the circumstances surrounding the killing of Mr Fitzgerald to public and searching scrutiny, and had thereby satisfied the respondent State's procedural obligations under Article 2, no judicial determination had ever been made on the liability in damages, if any, of the police on account of the manner in which the incident had been handled and concluded.
It was true that the Coroner's jury had returned a verdict of lawful killing at the close of the inquest. However, that finding could not be said to have determined the issue of whether or not any civil liability attached to the police, a matter which had to be resolved in a different domestic fact-finding forum and according to different principles of law and in application of a different standard of proof.
The Court had already had occasion to declare that in the case of a breach of Articles 2 and 3 of the Convention, compensation for the non-pecuniary damage flowing from the breach should, in principle, be available as part of the range of redress. In the instant case, the applicant, even if ultimately successful in a civil action against the police, would have had no prospect of obtaining compensation for non-pecuniary damage since domestic law did not provide for such. On that account, it would also have been most improbable that she would have received legal aid to take civil proceedings.
Conclusion: violation (6 votes to 1).

Article 41 – The Court awarded the applicant EUR 10,000 for non-pecuniary damage. It also made an award for costs and expenses.

ARTICLE 3

INHUMAN OR DEGRADING TREATMENT
Dispersion of demonstrators with tear-gas: *communicated*.

ATAMAN - Turkey (N° 74552/01)
[Section IV]
(see Article 11, below).

INHUMAN OR DEGRADING TREATMENT
Continued imprisonment of a detainee suffering from a chronic mental illness: *communicated*.

RIVIERE - France (N° 33834/03)
[Section II]

The applicant was sentenced to life imprisonment for murder and robbery in 1982 and has been in prison for twenty-seven years. He has a chronic mental illness which has deteriorated during his time in custody and, in particular, has displayed suicidal tendencies. Since July 1991 he has been entitled to prison leave and to parole. The applicant applied for parole in 2002 and 2003. Psychiatric assessments were ordered. His applications were refused on account of the change in his psychiatric condition.
Communicated under Article 3.

INHUMAN OR DEGRADING TREATMENT
Conditions of detention of a paraplegic person: *communicated*.

VINCENT - France (N° 6253/03)
[Section II]

The applicant was imprisoned in 2002 for the abduction and false imprisonment of a minor. Since an accident in 1989 he has been paraplegic and confined to a wheelchair. He complains of his conditions in prison and of the medical treatment he receives there, arguing that he does not have the same rights as able-bodied prisoners. In particular, he complains that he has encountered practical problems in his cell on a daily basis on account of the lack of suitable sanitary facilities for people with disabilities, and that he has been transported in a prison van lacking appropriate equipment. The lack of special facilities for persons with impaired mobility has also meant that he has no access to cultural, sports and educational activities or to the place of worship in the prison.
Communicated under Articles 3, 9, and 14 taken together with Article 3. Application given priority treatment.

INHUMAN TREATMENT
Alleged overcrowding, lack of medical assistance and unhealthy living conditions in a remand centre: *admissible.*

OSTROVAR – Moldova (Nº 35207/03)
Decision 22.3.2005 [Section IV]
(see Article 8, below).

ARTICLE 5

Article 5(1)

DEPRIVATION OF LIBERTY
Detention of foreign nationals suspected of terrorist links on the basis of legislation subsequently declared incompatible with the Convention by the House of Lords: *communicated.*
Détention d'étrangers soupçonnés d'avoir des liens avec des terroristes sur le fondement d'une loi par la suite déclarée incompatible avec la Convention par la Chambre des lords : *communiquée*.

A. and Others - United Kingdom [N° 3455/05]
[Section IV]

LAWFUL DETENTION
Refusal to reopen proceedings having resulted in the applicant's conviction *in absentia*: *violation.*

STOICHKOV – Bulgaria (N° 9808/02)
Judgment 24.3.2005 [Section I]

Facts: The applicant left Bulgaria in 1988. In 1989, following proceedings *in absentia*, he was convicted of rape and attempted rape and sentenced to ten years' imprisonment. In 2000 he returned to Bulgaria and was arrested and taken to prison to serve his sentence. His request to be released – based on the argument that the ten-year limitation period for the enforcement of his sentence had expired – was rejected in turn by district and regional prosecutors and the Supreme Cassation Prosecutor, all considering that the period had been interrupted by several measures taken with a view to having his sentence enforced. In 2001 the Supreme Court held that his request for a reopening of the criminal proceedings was inadmissible as the case-file had been destroyed in 1997, which rendered a rehearing impossible in practice. His request for restoration of the case-file was in vain.

Law: Article 5(1)(a) – The Court found no indication that the applicant had waived his right to appear and defend himself in the proceedings against him in 1989. He should, therefore, have had the opportunity to have those proceedings reopened and the merits of the rape charges against him determined in his presence. Since 1 January 2000 Bulgarian law had expressly provided for such a possibility. However, when the applicant had requested that his case be reopened, the Supreme Court of Cassation had refused, essentially on the ground that the case-file of the original proceedings had been destroyed, which, in its view, rendered a rehearing impossible in practice. He had apparently not received a reply to his request for restoration of the case-file. He had thus been deprived of the possibility to obtain from a court, which had heard him, a fresh determination of the merits of the charges on which he had been convicted.
It followed that the criminal proceedings against the applicant, coupled with the impossibility to obtain a fresh determination of the charges against him by a court which had heard him, had been manifestly contrary to the principles embodied in Article 6. Therefore, while his initial deprivation of liberty in 2000 might have been deemed justified under Article 5(1)(a), having been effected for the purpose of enforcing a lawful sentence, it ceased to be so in 2001, when the Supreme Court of Cassation had refused to reopen the proceedings.
Conclusion: violation (unanimously).

Article 5(4) – The applicant's argument that his sentence could no longer be enforced as the limitation period had expired raised an issue of fact determinative of the legality of his detention which was independent of, and distinct from, his 1989 conviction and sentence. As the legality of his detention was not clear he should have been able to have this issue resolved by a court meeting the requirements of Article 5 (4). Under Bulgarian law, however, all issues affecting the legality of execution of prison sentences were entrusted to the public prosecutor. There was no provision expressly providing for judicial review of such issues and no general *habeas corpus* procedure applying to all kinds of deprivation of liberty.
Conclusion: violation (unanimously).

Article 5(5) – Bulgarian law did not provide the applicant with an enforceable right to compensation for the violations found.
Conclusion: violation (unanimously).

Article 41 – The Court held that the most appropriate form of redress for the violation of Article 5(1)(a) would be to reopen the proceedings and retry the applicant in keeping with all the requirements of a fair trial. The Court awarded the applicant EUR 8,000 for non-pecuniary damage and also made an award for costs and expenses.

LAWFUL DETENTION
Transfer of prisoner to his country of origin where he might be released on parole later than in the respondent State: *inadmissible.*

VEERMÄE – Finland (N° 38704/03)
Decision 15.3.2005 [Section IV]

The applicant, an Estonian, had begun serving a nine-year prison sentence in Finland following his conviction there. An expulsion order was subsequently served on him. The Finnish Ministry of Justice ordered his transfer to Estonia to serve the rest of his sentence there, basing itself on domestic law enacted so as to render applicable the Additional Protocol to the Convention on the Transfer of Sentenced Persons (European Treaty Series no. 167; for "the Transfer Convention", see ETS no. 112). The Ministry of Justice considered, *inter alia*, that the applicant did not have particular bonds with Finland and that he had closer social ties to his country of origin than to Finland. The applicant appealed to the Administrative Court, arguing that in Finland it would be possible for him to be released on parole in July 2005 after serving half of his sentence, whereas in Estonia release on parole would only be possible after his having served two-thirds of his sentence. Even then, his release on parole would be discretionary as only 15 per cent of inmates in Estonian prisons were released on parole. His *de facto* sentence would therefore be at least one and a half years longer in Estonia, or even twice as long as his sentence in Finland should no release on parole be granted in Estonia.
In its opinion to the Administrative Court the Finnish Ministry of Justice confirmed that as a first-time offender the applicant would be serving four years and six months if he were to remain in Finland. In Estonia it would be possible for him to obtain conditional release on having served two-thirds of his sentence (six years). The Administrative Court dismissed the applicant's appeal, finding *inter alia* that, even though he was likely to serve a significantly longer prison sentence in Estonia owing to the differences in the possibility of being released on parole, his transfer would not breach Article 5, as the sentence he would actually be serving in Estonia would not exceed the sentence imposed by the Finnish courts.

Article 3 – The evidence submitted did not sufficiently substantiate this grievance so as to disclose an appearance of a real risk of treatment proscribed by Article 3 on the applicant's transfer to an Estonian prison. Moreover, he would be free to lodge an application against Estonia should he consider his treatment there to be in breach of the Convention: manifestly ill-founded.

Article 5(1)(a) – The applicant had an expectation of being released on parole in Finland after serving half of his sentence. The application of the Transfer Convention could, in principle, result in the applicant spending a longer time in prison on his return to Estonia than he would in Finland before being released on parole. There was no dispute, however, as to the compatibility with Article 5 of the applicant's deprivation of liberty in Finland. Nor was it in dispute that the original sentence had been imposed on the applicant in conformity with the requirements of Article 6. The question for the Court was whether his transfer, with the risk of a *de facto* longer sentence, would violate Article 5 and whether the transfer arrangements would require a procedure offering the guarantees of Article 6. As the serving of the applicant's sentence following his transfer would be based on his conviction in Finland, the necessary causal connection between that conviction and his deprivation of liberty in Estonia would still exist. Even assuming that the causal link would be broken if the possibility of a transfer could not be foreseen at the time of his conviction, the Additional Protocol entered into force in respect of Finland on 1 August 2001, i.e. prior to that conviction.
The Convention should so far as possible be interpreted in harmony with other rules of international law of which it forms part such as the Transfer Convention and its Additional Protocol. The Convention did not require the Contracting Parties to impose its standards on third States or territories. To lay down a strict requirement that the sentence served in the administering country should not exceed the sentence that would have to be served in the sentencing country would also thwart the current trend towards strengthening international cooperation in the administration of justice, a trend which is reflected in the Transfer Convention and is in principle in the interests of the persons concerned. In view of this, the possibility of a longer period of imprisonment in Estonia did not in itself render the deprivation of the

applicant's liberty arbitrary as long as the sentence to be served did not exceed the sentence imposed in the criminal proceedings in Finland. As a further safeguard against arbitrariness, Finnish law provided for the possibility of appealing to an administrative court against a transfer decision.
The Court did not exclude the possibility that a flagrantly longer *de facto* sentence in the administering State could give rise to an issue under Article 5, and hence engage the responsibility of the sentencing State under that Article. For this to be the case, however, substantial grounds would have to be shown to exist for believing that the time to be served in the administering State would be flagrantly disproportionate to the time which would have had to be served in the sentencing State. In view of the information concerning the Estonian practice in converting sentences, in particular the position of the Estonian Government to the effect that a penalty imposed in Estonia would be likely to be less severe than a penalty imposed in Finland, there were no substantial grounds for believing that his converted sentence would be flagrantly disproportionate, if disproportionate at all. Moreover, his case would be heard by an Estonian city court before his sentence was converted. The present case could be distinguished from *Ezeh and Connors v. the United Kingdom* [GC], nos. 39665/98 and 40086/98, ECHR 2003-X, where the Court found that the awards of additional days by the prison governor had constituted fresh deprivations of liberty imposed for punitive reasons: manifestly ill-founded.

Article 6 (*ex officio*) – If the applicant were transferred to Estonia, any conversion of his sentence would be carried out by a city court. Having regard to the finding under Article 5, no issue arose under Article 6.

Article 14 in conjunction with Article 5 – The applicant could not be compared to prisoners of Finnish origin serving their sentences in Finnish prisons. The aim of the Transfer Convention constituted objective and reasonable justification for the difference in treatment of the applicant and prisoners of Finnish origin, on the one hand, and other prisoners of Estonian origin, on the other. The Court accepted the Government's argument that the difference in treatment between different prisoners of Estonian origin was due to the fact that the time-consuming arrangements for a transfer were a practical obstacle to transferring prisoners serving only short sentences prior to their release on parole in Finland: manifestly ill-founded.

Article 4 of Protocol No. 7 – Even assuming that Article 4 of Protocol No. 7 to the Convention could apply to proceedings taking place within the jurisdiction of more than one State, the Estonian authorities had not yet made any decision as to the applicant's sentence in Estonia. In any event, there was no indication that he would face a new set of criminal proceedings for the same offence, as distinct from the proceedings concerning the conversion of the sentence: manifestly ill-founded.

Article 5(5)

COMPENSATION
Impossibility to bring proceedings to claim compensation for an alleged unlawful detention: *communicated*.

A. and Others - United Kingdom [N° 3455/05]
[Section IV]
(see under “Deprivation of liberty”, above)

The eleven applicants, who are foreign nationals, were certified and detained under the Anti-Terrorism, Crime and Security Act 2001. They challenged their certification with the Special Immigration Appeals Commission (“SIAC”) on the argument of whether they could reasonably be suspected of being international terrorists. The Commission ruled that there was a public emergency within the meaning of Article 15, and that the measures applied to the applicants were “strictly required” in the circumstances. However, it also ruled that the derogation was unlawful because the 2001 Act discriminated against foreign nationals. The House of Lords, contrary to the SIAC, found that there was no public emergency situation for the purposes of Article 15, and held that the United Kingdom's derogation from Article 5(1) had been unlawful. The order which had provided for the derogation was quashed, and a declaration

issued to the effect that the 2001 Act was incompatible with both Articles 5 and 14 of the Convention. The applicants were not, however, required to be released immediately because pursuant to the Human Rights Act, which incorporates the Convention into domestic law, the declaration of incompatibility had no impact on the validity of the primary legislation at issue. Some of the applicants have been released but others remain detained under maximum security conditions.
Communicated under Articles 3, 5 (alone and together with Article 14), and 13.

ARTICLE 6

Article 6(1) [civil]

APPLICABILITY
Request for compensation for forced labour during the Second World War: *Article 6 applicable.*

WOŚ – Poland/Pologne (N° 22860/02)
Decision 1.3.2005 [Section IV]

In 1993 the applicant applied to the Polish-German Reconciliation Foundation ("the Foundation"), for compensation on account of his forced labour during the Second World War on the territory of Poland. The Foundation had been established by the Government of Poland in order to distribute funds contributed by the Government of the Federal Republic of Germany under a 1991 agreement between the two States ("the first compensation scheme"). The funds were to be used for providing financial assistance to victims of Nazi persecution who had been particularly wronged. The Foundation was to determine the necessary criteria for the granting of compensation payments, having regard to serious damage to the victims' health and to their current difficult financial situation. A Polish Minister (Head of the Cabinet Office) had established the Foundation by making a declaration before the State notary. The Foundation was operating under the supervision of the Minister of the State Treasury.
In 1994 the Foundation's Verification Commission established that the applicant had performed forced labour until January 1945 and awarded him a certain amount in compensation. His appeal was dismissed by the Appeal Verification Commission. In 1999 the Foundation's Management Board adopted a Resolution introducing a deportation requirement for claimants who had been forced labourers, unless they had been under 16 years of age at the time of being forced to work. The Foundation's Verification Commission granted the applicant further compensation based on forced labour performed prior to turning 16 in February 1944. His appeal to the Appeal Verification Commission, challenging the amount granted, was refused on the basis that under the 1999 Resolution only forced labourers deported to the Third Reich or to an area occupied by the German Reich (with the exception of the territory of occupied Poland) were eligible for compensation. The Supreme Administrative Court declined to examine the merits of the applicant's further complaint, considering that the source of an entitlement to an award from the Foundation did not stem from an act of public administration.
From 1998 to 2000 another set of international negotiations took place on the issue of compensation in respect of slave and forced labourers for Nazi Germany. These negotiations concluded in 2000 with the adoption of a Joint Statement which was signed by all parties, including the Government of Poland. The Government of Germany and German companies undertook to contribute a further DEM 5 billion. The Statute of the Foundation was then amended on the initiative of the Minister of the State Treasury in order to arrange for the disbursal of these funds ("the second compensation scheme").
The applicant's request for compensation under the second scheme was refused by the Foundation's Verification Commission on the ground that he did not satisfy the deportation requirement. He did not appeal. In 2001 the Management Board of the Foundation adopted a Resolution with a view to providing compensation to certain categories of claimants not otherwise eligible. In application of this Resolution the Foundation granted the applicant compensation of PLN 1,000 due to the fact that he had performed forced labour as a child under 16 years of age.
Before the Court the applicant complained about the Foundation's decisions partly refusing to grant him compensation. He further alleged, in substance, that he did not have access to a court in respect of the Foundation's decisions in his case.

Responsibility of the Polish State: It could not be said that the State exercised a pervasive influence in the daily operations of the Foundation. It did not have direct influence over the decisions taken by the Foundation in respect of individual claimants; however, the State's role was crucial in establishing the overall framework in which the Foundation operated. The fact that a State chooses a form of delegation in which some of its powers are exercised by another body cannot be decisive for the question of State responsibility *ratione personae*. The exercise of State powers which affects Convention rights and freedoms raises an issue of State responsibility regardless of the form in which these powers happen to be exercised, be it for instance by a body whose activities are regulated by private law. The Polish State's decision to delegate, to a body operating under private law, its obligations arising out of the international agreements, could not relieve the State of the responsibilities it would have incurred had it chosen to discharge these obligations itself. In the specific circumstances the actions of the Foundation in respect of both compensation schemes were capable of engaging the responsibility of the State.

Applicability of Article 6: With regard to the first compensation scheme the dispute over the applicant's entitlement to compensation, and in particular its scope, was genuine and serious. The Foundation's regulations defined the conditions and procedures with which a claimant had to comply before compensation could be awarded. Those regulations, regardless of their characterisation under domestic law, could be considered to create a right for a victim of Nazi persecution to claim compensation from the Foundation. Accordingly, if a claimant complied with the eligibility conditions stipulated in those regulations he or she had a right to be awarded compensation which was not of *ex gratia* nature. Hence the applicant could claim, at least on arguable grounds, the right to receive compensation from the Foundation in respect of the overall period of his forced labour. This was so especially since he had already received one instalment of such compensation by virtue of the 1994 decision.
There were similarities between the entitlement to welfare allowance (see *Salesi v. Italy,* judgment of 26 February 1993, Series A 257-E, § 19) and the entitlement to receive compensation from the Foundation, regard being had in particular to the eligibility criteria of a claimant's difficult financial standing and severe damage to his or her health as a result of Nazi persecution. The applicant was claiming an individual, economic right flowing from specific rules laid down in the Foundation's Statute and its by-laws. The right to claim compensation from the Foundation could therefore be considered "civil" for the purposes of Article 6.
With regard to the *second* compensation scheme the applicant had not demonstrated that he had filed an appeal to the Appeal Verification Commission against the decision of the Foundation's Verification Commission of 2001. In those circumstances it was not necessary to examine whether Article 6(1) applied to those proceedings: non-exhaustion of domestic remedies.

Compliance with Article 6 (in respect of the proceedings concerning the first compensation scheme): admissible.

ACCESS TO COURT
Refusal of the authorities to assist in the execution of a final judgment ordering restitution of property: *violation*.

MATHEUS - France (N° 62740/00)
Judgment 31.3.2005 [Section I]
(see Article 1 of Protocol No. 1, below).

ACCESS TO COURT
Impossibility to obtain a ruling on a case-law conflict: *admissible*.

CRUZ DA SILVA COELHO - Portugal (N° 9388/02)
Decision 31.3.2005 [Section II]

The applicant's 19-year-old son drowned in a river next to a beach frequented by holidaymakers. According to the facts as established by the domestic courts, the victim, who was unable to swim, had been walking by the water, which had been no higher than knee level, when he had fallen into a hole deeper than his own height which had opened up at the bottom of the river. The hole had been caused by the extraction of sand, altering the shape of the river bed. There had been no information or warning signs on display at the site of the accident. A young man attempted to save the applicant's son but also drowned. The applicant brought an action for damages against the State, but without success. The parents of the young man who had died in the same way as the applicant's son obtained a judgment from the Supreme Court in which the State was held liable for failing in its duty to supervise the beach. Relying on that judgment in so far as it concerned the same issue, the applicant appealed on points of law to the Supreme Court but was unsuccessful. She subsequently used the remedy available for ensuring coherence of case-law. Her application was dismissed as it had not been made within the time allowed and in the manner prescribed by domestic legislation – that is, before the Supreme Court had given judgment on the merits. Under domestic law, where the conclusion likely to be reached in a judgment conflicts with existing case-law, the President of the Supreme Court may rule, as long as the judgment has not been delivered, that the application should be examined by the civil divisions sitting as a full court. This examination by an enlarged bench may be requested by the parties or State Counsel's Office before judgment is delivered; it must be proposed by the judges of the Supreme Court (the rapporteur, the other judges or the division presidents).
Admissible under Articles 2, 6(1) and 14 of the Convention. The objection as to non-exhaustion of domestic remedies was joined to the merits.

ACCESS TO COURT
Non execution of a final court decision given the immunity from execution granted to foreign States: *inadmissible*.

MANOILESCU and DOBRESCU - Romania and Russia (N° 60861/00)
Decision 3.3.2005 [Section III]
(see Article 1, above).

FAIR HEARING
Registered car owner fined for having failed to disclose the exact address of the person who had been speeding with her car: *no violation.*

RIEG – Austria (N° 63207/00)
Judgment 24.3.2005 [Section I]

Facts: The car of which the applicant was the registered owner was caught by a radar-trap exceeding the speed limit. The District Administrative Authority ordered the applicant to disclose within two weeks the full name and address of the person who had been driving her car at the time. The applicant provided the driver's first and family name in full and indicated that he was living in Mostar, Bosnia-Herzegovina. The Administrative Authority then issued a provisional penal order in which it sentenced the applicant to pay a fine. It eventually dismissed her objection and issued a penal order confirming its previous decision on the basis that she had failed to give complete information. The applicant appealed to the Independent Administrative Panel, submitting that she had replied to the Administrative Authority's order but had been unable to find out the driver's exact address. Moreover, the obligation imposed on her to disclose details of the driver of her car violated the presumption of innocence and her right not to incriminate herself. Her

appeal was dismissed and the Constitutional Court eventually declined to deal with her complaint. The applicant was never prosecuted for exceeding the speed limit.

Law: The Court noted that the application raised the same issue as *Weh v. Austria* (no. 38544/97, 8 April 2004). The heart of the applicant's complaint was that her right to remain silent and not to incriminate herself had been violated, in that she had been punished for having refused to give information which might have incriminated her in the context of criminal proceedings for speeding. However, at no time were proceedings for speeding conducted against her. Without a sufficiently concrete link with such proceedings, the imposition of a fine to obtain information about the driver of the applicant's car did not raise an issue concerning the applicant's right to remain silent and her privilege against self-incrimination. The present case could not therefore be distinguished from the *Weh* case in which the Court had found nothing to show that the applicant had been "substantially affected" so as to consider him being "charged" with the offence of speeding within the autonomous meaning of Article 6(1). It was merely in his capacity as the registered car owner that he had been required to state a simple fact (the identity of the driver of his car) which had not been incriminating in itself.
Conclusion: no violation (5 votes to 2).

REASONABLE TIME
Administrative proceedings to be included when calculating the overall length of proceedings, whenever an applicant was required to exhaust such a preliminary procedure.

KIURKCHIAN – Bulgaria (N° 44626/98)
Judgment 24.3.2005 [Section I]

The applicants complained *inter alia* that the length of proceedings under the Territorial and Urban Planning Act had exceeded a reasonable time. The Court recalled that when an applicant is required by national legislation to exhaust a preliminary administrative procedure before having recourse to a court, the proceedings before the administrative body are to be included when calculating the length of the proceedings for the purposes of Article 6. The Court noted that prior to the court proceedings, in 1992, the applicants had filed objections with the competent municipal authorities against their neighbours' request for legalisation of a construction allegedly interfering with the applicants' use of their home. Hence the period to be taken into consideration for the purpose of Article 6 had started to run in 1992 and had lasted over five years and six months, comprising the proceedings before the municipal authorities and two court levels.

REASONABLE TIME
Constitutional Court decision examining the length of proceedings must be capable of covering their overall length.

BAKO – Slovakia (N° 60227/00)
Decision 15.3.2005 [Section IV]
(see Article 34, below).

REASONABLE TIME
Length of constitutional proceedings related to expropriations during the communist regime: *inadmissible*.

VON MALTZAN and Others, VON ZITZEWITZ and Others and MAN FERROSTAAL and ALFRED TÖPFER STIFTUNG - Germany (N° 71916/01, N° 71917/01 & N° 10260/02)
Decision 2.3.2005 [Grand Chamber]
(see Article 1 of Protocol No. 1, below).

INDEPENDENT AND IMPARTIAL TRIBUNAL
Indépendance et impartialité des chambres maritimes : *violation*.

BRUDNICKA and Others - Poland (N° 54723/00)
Judgment 3.3.2005 [Section III (former composition)]

Facts: Following the sinking of a ferry, proceedings to establish the causes of the accident were conducted before several maritime disputes divisions, which were under the jurisdiction of the maritime authorities. Among the causes of the shipwreck and the ensuing deaths, the maritime disputes divisions found that there had been negligence on the part of the crew. The applicants were the relatives of sailors who died in the shipwreck; they were parties to the domestic proceedings.

Law: Article 6(1) – The respondent Government disputed that the applicants were victims, as their relatives, the sailors, had not been held individually liable in the decisions complained of. The Court considered that the proceedings had not solely concerned the sailors' liability and the question whether each of them individually had been negligent. The proceedings had been directed at the whole crew. The Court considered that whether a person was a victim did not depend solely on whether his or her reputation had been found to have been injured. The mere possibility that a person's good reputation had been called into question entitled anybody to defend it. The Court also held that the Convention's applicability in the present case should not depend on a finding of negligence for each crew member separately. It noted that in the final decision of the maritime appeals division liability had been attributed to the crew as a whole. The applicants, as heirs of the sailors who had died in the shipwreck, could claim to be victims within the meaning of Article 34 of the Convention of the alleged violation. As the proceedings had concerned the right of the shipwreck victims to a good reputation, Article 6 was applicable in its civil aspect.
The members of the maritime disputes divisions (the president and vice-president) were appointed and removed from office by the Minister of Justice, with the agreement of the Minister for Maritime Affairs. Consequently, they could not be considered irremovable and the relationship between them and the ministers was one of hierarchical subordination. The applicants could have had objectively founded doubts about their independence and impartiality.
Conclusion: violation (unanimously).

Article 41 – The Court awarded each of the applicants a specified sum for non-pecuniary damage.

Article 6(2)

PRESUMPTION OF INNOCENCE
Judgment in access proceedings suggesting sexual abuse by father but revoking his access on different ground: *communicated.*

J. S.C. – Norway (N° 12148/03)
[Section I]

The applicant has two sons with H.T. After a dispute had arisen as to the applicant's access to the children the mother, in 1997, reported him to the police for allegedly having sexually abused one of the children, L. In 1998 the State Prosecutor discontinued the investigation. In 2000 the applicant brought proceedings claiming a right of access. In 2001 the City Court granted the request and devised a plan for stepping up access, finding the applicant more suitable than the mother to assume the daily care. It rejected the mother's accusations that the applicant had sexually abused L. and found that this allegation had been the result of manipulation and fabrication as part of the mother's strategy to obstruct the applicant's access. On the mother's appeal the High Court, in 2002, overturned the judgment and refused the applicant access, *inter alia* after taking fresh expert evidence according to which L. was feeling great anxiety about the idea

of meeting his father. The court-appointed expert had not attempted to establish whether sexual abuse had occurred but had nevertheless highlighted certain points on the subject. The High Court considered both the mother's allegations of sexual abuse and L.'s strong objection to, and anxiety, about access. On the first point the High Court described the mother's criminal complaint and the discontinued criminal proceedings. It went on to state that the fact that there had been insufficient evidence for criminal conviction was not decisive in the case before it and recalled that no risk could be taken in the case of access to minors. It added: "In view of the information available in the case, and the fact that quite detailed descriptions have been provided of the abuse, together with L.'s strong objections to seeing his father, ... there are many elements that may indicate that abuse has occurred. The High Court has nevertheless not found it necessary to go into or take a stance on this." Having moved on to considered L.'s own objection to access, the High Court concluded that terminating the applicant's access altogether would, on balance, best serve the children's interest. The applicant was refused leave to appeal to the Supreme Court.
The applicant complains that the High Court's judgment and the refusal of the Appeals Selection Committee of the Supreme Court to grant him leave to appeal violated Articles 6(1) and 6(2). Without having carried out a real assessment of the evidence and without explaining the reasons for its assessment, the High Court could not ascertain that sexual abuse had occurred. Having been labelled a sexual abuser, the applicant has allegedly suffered serious psychological and social problems.

Communicated under Article 6(1) and 6(2) as well as Article 8.

Article 6(3)(b)

ADEQUATE TIME
Alleged lack of time for defence counsel to familiarise himself with case files and expert opinions: *inadmissible.*

MATTICK - Germany (Nº 62116/00)
Decision 31.3.2005 [Section III]

The applicant was placed in interim police custody on suspicion of attempted homicide. The bill of indictment stated that due to the applicant's previous convictions he met the requirements to be placed in compulsory confinement. The defence counsel requested access to the applicant's present and previous case files to prepare the defence. The Regional Court, where the proceedings had been opened, granted access to these files on 2 June 1999. A copy of an expert opinion which concluded that the requirements for compulsory confinement were met, as well as additional files of previous convictions of the applicant that the court had just received, were given to the defence counsel on 28 June 1999. Four hearings took place during 1 - 21 July 1999. The defence counsel's request that the trial be suspended for lack of time to prepare the applicant's defence was rejected. Two experts were heard and delivered opinions in the course of the hearings. The applicant was sentenced to 5 years and six months' imprisonment and placed in compulsory confinement.

Inadmissible under Article 6(3)(b): The defence counsel had received the available case files one month before the first hearing, which was sufficient time to become familiar with them. As regards the expert opinion and remaining case files, which were only at the defence's disposal three days before the first hearing, the defence counsel had additional time to study those documents between the hearings which took place from 1 to 21 July. On the finding that the time between the hearings counted as preparatory time, the Court concluded that the defence had had ample time to examine the expert opinion and additional case files: manifestly ill-founded.

Article 6(3)c)

DEFENCE THROUGH LEGAL ASSISTANCE
Refusal to allow representation of an absent appellant: *violation*.

HARIZI - France (N° 59480/00)
Judgment 29.3.2005 [Section IV]

Facts: The applicant, an Algerian national resident in France, was the subject of a deportation order and attempts were made to remove him from French territory. He refused to board an aeroplane for his country of origin, as a result of which criminal proceedings were instituted against him. While the appeal proceedings were pending, the applicant was forcibly removed to Algeria. As he faced a sentence of more than two years' imprisonment, the applicant, in accordance with the legislation in force at the time, was unable to be represented by his lawyer at the trial in his absence. His lawyer applied for a temporary pass allowing the applicant to return to France lawfully without being at risk of expulsion, so that he could appear in person at the trial in the Court of Appeal. He was not issued with a pass. The applicant did not appear and his lawyer was not entitled to take part in the proceedings. The Court of Appeal tried the applicant *in absentia*. He was found guilty as charged. He did not apply to set aside the judgment as he was required to be present in French territory for such an application to be valid.

Law: Article 6(1) and (3)(c) – The applicant had been denied the opportunity to be represented in the appeal proceedings, a situation which the Court had already found to be contrary to the Convention. He had been entitled to apply to have his conviction on appeal set aside. However, since he had been excluded from French territory and was a long distance away, such a remedy, even supposing he could have used it, would not have been valid and would, moreover, have been unlikely to redress his grievances, seeing that the domestic courts had consistently delivered unfavourable decisions in that regard. There had subsequently been a shift in the position adopted by the French courts so that an absent defendant was now entitled to be represented, but this had not occurred until more than three years after the events complained of in the present case.
Conclusion: violation (unanimously).

Article 41 – The Court awarded the applicant part of the sum claimed in respect of lawyers' fees.

ARTICLE 7

Article 7(1)

NULLUM CRIMEN SINE LEGE
Criminal conviction of a prosecutor for abusing his functions in the preparation of a bill of indictment and for insulting State authorities: *communicated*.

KAYASU - Turkey (N° 76292/01)
[Section II]

The applicant was a public prosecutor at the material time. He issued an indictment in which charges were brought against the main protagonists in the military *coup d'état* of 12 September 1980. The applicant himself was subsequently charged with abusing his office as a public prosecutor and publicly vilifying the armed forces. Among other things, he was accused of having failed to satisfy any of the requirements of a preliminary investigation, such as obtaining evidence against and examining the accused; of having disregarded Transitional Article 15 of the Constitution, which provided for immunity from prosecution for those involved in the 1980 coup; of having used expressions designed to vilify the army in the indictment; of having insisted on entering the indictment on the list of cases for hearing; and, lastly, of having disclosed the content of the indictment to the press and made certain statements about the case he was

dealing with. The applicant was found guilty of abusing his office and insulting the State's supreme bodies and was given a suspended fine.

Communicated under Articles 7, 10 and 17.
Inadmissible under Article 6(1) (fair hearing).

ARTICLE 8

PRIVATE LIFE
Transcription of first name and patronymic of a Russian origin citizen in his Ukrainian passports: *admissible*.

BULGAKOV - Ukraine (N° 59894/00)
Decision 22.3.2005 [Section II]

The applicant is a Ukrainian citizen of Russian origin. His original first name is *Dmitriy,* his surname is *Bulgakov* and *Vladimirovich* is his "patronymic", a kind of second forename formed from the father's first name together with the appropriate suffix. Ukrainian citizens normally have two passports. The internal passport is the basic identity document and provides proof of the holder's identity in all administrative and socio-economic dealings within the country. The external passport is a travel document used abroad. On page 2 of the applicant's internal passport (written in Ukrainian), his first name and patronymic were given in the form of their Ukrainian equivalents, i.e. *Dmytro Volodymyrovych*. On page 3 (written in Russian), all the components of his name appeared in their original form. In the applicant's external passport his first name was also given in its Ukrainian form on the first page, written in Ukrainian and English (there was no mention of his patronymic). The applicant contested the use of the Ukrainian forms of his first name and patronymic, contending that only their original forms should be given. His applications were dismissed. The courts held that, in accordance with Ukrainian law, the applicant's personal details also had to appear in Ukrainian, which meant that the first name and patronymic had to "conform to the requirements of the Ukrainian language, in accordance with the rules of literary translation". The applicant argued that the requirement to "write his name in Ukrainian" as laid down in domestic regulations merely implied that it could be transliterated into the Ukrainian alphabet, rather than allowing a Russian first name or patronymic to be replaced by their Ukrainian equivalents. He also complained of discrimination on the ground of his association with the Russian minority. He contended that in the transcription of foreign forenames and surnames in Ukrainian documents, persons of Russian origin were treated differently from those of different foreign origins, whose names were transliterated into the Ukrainian alphabet, whereas the names of persons of Russian origin were replaced by their Ukrainian etymological equivalents.

Admissible under Articles 8 and 14. The Government objected that domestic remedies had not been exhausted. They submitted, among other things, that by signing the two passports the applicant had given his consent to everything contained in them. The Court pointed out that passports were basic identity documents required in order to exercise numerous fundamental political and socioeconomic rights. Seeing that the applicant had submitted his complaints to the Ukrainian courts, which had examined them on the merits, the Court accepted that, as the applicant maintained, signing the passports could not deemed equivalent to his consenting to the practice in question.
Inadmissible under Articles 3 and 6(1).

PRIVATE LIFE
Disciplinary sanction applied to civil servants for living together out of marriage: *communicated*.

AKGÜN and TURABI - Turkey (N° 46731/99)
[Section II]

The applicants are civil servants who work in a detention centre. They lived in a flat together. Their superiors considered that their living together without being married undermined the dignity of their office, and reprimanded them. The Civil Servants Act provides, without any further clarification, that a reprimand is to be given as a disciplinary sanction to persons who, outside their official duties, act in such a way as to discredit their office.
Communicated under Article 8.

PRIVATE LIFE
Impossibility to nullify a marriage allegedly entered into without the consent of the wife: *communicated*.

KARAKAYA (YALÇIN) - Turkey (N° 29586/03)
[Section II]

The applicant states that she was forced by her husband to marry him after he had abducted her with the help of two other people. She lodged a criminal complaint. The public prosecutor instituted proceedings against the three suspected kidnappers. Under Turkish law, where an accused person who has abducted a woman marries her, the proceedings against him are stayed and can be resumed only if the couple are divorced on a ground attributable to the husband. The Assize Court decided on that basis to stay the criminal proceedings against the husband, and ruled that the prosecution of the other defendants had become barred. The applicant subsequently filed a petition for divorce on the ground of incompatibility. The court decided to stay its ruling pending an application by the applicant to have the marriage annulled for lack of consent. Both applications were ultimately dismissed. The courts considered that it could be regarded as established that the applicant had freely consented to the marriage and that the alleged incompatibility between the spouses could not be made out. The applicant appealed but without success.
Communicated under Articles 8 and 13.

PRIVATE LIFE
Requirement of father's consent to continued storage and implantation of fertilised eggs: *communicated.*

EVANS – United Kingdom (N° 6339/05)
[Section IV]

Before having her ovaries removed to prevent the spread of cancer the applicant had her last eggs used to create six embryos that remain stored by a private clinic in the United Kingdom. She wishes to have the opportunity to have those embryos implanted as this represents her only chance to bear a child to which she is genetically related. The Human Fertilisation and Embryology Act 1990 permits her former partner to refuse to permit the embryos to be implanted and to require the clinic to destroy them. During the proceedings in the domestic courts the storage of the embryos was continued by agreement between the two. At any rate, embryos may be stored for only five years and this period will expire in October 2006. The applicant complains of a breach of her rights under Articles 8 and 14 as well as of the embryos' rights under Article 2.

Communicated under Article 8 and granting of *priority* under Rule 41. *Interim measure* indicated under Rule 39 to the effect that the Government should "take appropriate measures to ensure that the embryos are not destroyed by the clinic at which they are stored until the Court has had the possibility to examine the case".

FAMILY LIFE
Alleged prohibition to receive visits from family members whilst in detention: *admissible.*

OSTROVAR - Moldova (Nº 35207/03)
Decision 22.3.2005 [Section IV]

The applicant was arrested on charges of bribe-taking (later modified to corruption) and sentenced to ten years' imprisonment. He served two periods of detention in a remand centre which he argues was overcrowded and had unhygienic living and sanitary conditions. He claims that smoking was not prohibited in the cell and because of its poor ventilation the asthma condition he suffered was aggravated. In particular, as he was refused medication he had to endure several asthma attacks without any medical assistance. He also complains of the quality of the food and the lack of opportunities for recreation at the centre. In addition, the applicant brings complaints under Article 8 as he claims that prison officials interfered with his correspondence (letters from his lawyer and the prosecutor's office, with the Council of Europe Information Office and the Court, and incoming correspondence from his mother). He also alleges that he was denied the right of being visited by his wife and daughter. On this last question he complained to the Public Prosecutor's Office, which dismissed the complaint. The applicant challenged the refusal in the District court, which in a decision allegedly not sent to the applicant, dismissed the claim. The Court of Appeal also dismissed the applicant's appeal.

Admissible under Articles 3, 8 (concerning the applicant's right to correspondence with his mother) and 13. The Government's objection (non-exhaustion): The Court was not convinced that the remedies advanced by the Government could have improved the applicant's conditions of detention, nor that they were effective concerning his complaints under Article 8. It therefore concluded that the application could not be declared inadmissible on the grounds of such an objection.

Inadmissible under Article 8 (concerning the applicant's right to correspondence with his lawyer, the prosecutor's office, the Information Office of the Council of Europe and the Court): there was no evidence that such correspondence had been opened or read by the prison authorities: manifestly ill-founded.

FAMILY LIFE
Requirement of father's consent to continued storage and implantation of fertilised eggs: *communicated.*

EVANS – United Kingdom (Nº 6339/05)
[Section IV]
(see above under "Private life").

CORRESPONDENCE
Censorship of a prisoner's correspondence with his lawyer and the Court – Amendments to the relevant legislation following the present application: *striking out of the list.*

MERIAKRI - Moldova (Nº 53487/99)
Judgment 1.3.2005 [Section IV]
(see Article 37(1), below).

ARTICLE 10

FREEDOM OF EXPRESSION
Newspaper owner convicted of defamation for having published articles expressing value judgments about politicians: *violation.*

UKRAINIAN MEDIA GROUP – Ukraine (N° 72713/01)
Judgment 29.3.2005 [Section II – former composition]

Facts: The applicant owns a daily newspaper, *The Day* (*газета "День"*). In two articles about the 1999 Ukrainian presidential campaign the author made a number of critical statements about two politicians, Natalia Vitrenko (leader of the Progressive Socialist Party of Ukraine) and Petro Symonenko (leader of Ukraine's Communist Party), both of whom were presidential candidates. The applicant company maintained that the articles commented on the personal and managerial abilities of the two presidential candidates, their abilities to form a team, to deliver their promises and provide national leadership.
Ms Vitrenko lodged a complaint against *The Day* concerning the first article, and Mr Symonenko filed a complaint concerning the second. They considered that information contained in the articles was untrue and damaging to their dignity and reputation. The District Court found the first article to be untruthful, as the applicant had failed to prove the truth of the statements published, and partly allowed Mr Symonenko's complaint. The applicant was ordered to pay the complainants compensation for non-pecuniary damage and to publish corrections alongside the operative part of the judgments.
The applicant complained that the Ukrainian courts had not been able to distinguish between value judgments and facts in their assessment of the two newspaper articles at issue and that the courts' decisions were a form of political censorship interfering with the applicant's right to impart information freely.

Law: Articles 37(1) *in fine* and 38(1)(b) – A settlement reached by the Ukrainian Government and the applicant company was rejected by the Court, given the serious nature of the complaints and the special circumstances regarding respect for human rights as defined in the Convention and its Protocols which required the further examination of the application on its merits.

Article 10 – The interference with the applicant company's right to freedom of expression was prescribed by law and was intended to pursue the legitimate aim of protecting the reputation and rights of Mr Symonenko and Ms Vitrenko. At the time, however, Ukrainian law on defamation made no distinction between value judgments and statements of fact, in that it referred uniformly to "statements" (відомості) and proceeded from an assumption that any statement was amenable to proof in civil proceedings.
In the Court's view the impugned statements had been value judgments, used in the context of political rhetoric, which were not susceptible of proof. The publications had contained criticism of the two politicians in strong, polemical and sarcastic language. No doubt the plaintiffs had been offended and might even have been shocked. However, in choosing their profession, they had laid themselves open to robust criticism and scrutiny. Considering the relevant texts as a whole and balancing the conflicting interests, finding the applicant guilty of defamation was clearly disproportionate to the aim pursued. The interference with the applicants' right to freedom of expression did not correspond to a pressing social need outweighing the public interest in the legitimate political discussion of the electoral campaign and the political figures involved in it. Moreover, the standards applied by the Ukrainian courts in the case were not compatible with the principles embodied in Article 10, and the reasons put forward to justify the interference could not be regarded as "sufficient".
Conclusion: violation (unanimously).

Article 41 – The Court awarded the applicant EUR 588 for pecuniary damage and EUR 33,000 for non-pecuniary damage. It also made an award for costs and expenses.

FREEDOM OF EXPRESSION
Temporary ban on a political party alleged to have interfered with its right to freedom of expression: *admissible.*

CHRISTIAN DEMOCRATIC PEOPLE'S PARTY - Moldova (Nº 28793/02)
Decision 22.3.2005 [Section IV]
(see Article 11, below).

FREEDOM OF EXPRESSION
Criminal conviction of a prosecutor for abusing his functions in the preparation of a bill of indictment and for insulting State authorities: *communicated*.

KAYASU - Turkey (Nº 76292/01)
[Section II]
(see Article 7, above).

ARTICLE 11

FREEDOM OF PEACEFUL ASSEMBLY
Prohibition to demonstrate in parks: *communicated*.

ATAMAN - Turkey (Nº 74552/01)
[Section IV]

A demonstration in the form of a march by forty to fifty people carrying placards and banners took place in a public park in Istanbul. The law prohibits demonstrations and marches in parks and authorises the security forces to intervene once a warning has been given. The demonstrators did not obey warnings by the security forces called to the scene and continued their march. The security forces used tear-gas bombs to disperse the demonstrators and subsequently carried out arrests.
Communicated under Articles 3 and 11 of the Convention.
Inadmissible under Article 5(1) and (2).

FREEDOM OF PEACEFUL ASSEMBLY
Temporary ban on a political party on account of allegedly illegal demonstrations: *admissible.*

CHRISTIAN DEMOCRATIC PEOPLE'S PARTY - Moldova (Nº 28793/02)
Decision 22.3.2005 [Section IV]

The applicant is an opposition political party. As a sign of protest against a government proposal to make the study of Russian compulsory in schools, it informed the Municipal Council of its intention of holding a meeting with its voters in front of the seat of the Government. Although the Municipal Council initially granted authorisation for the meeting, it subsequently suspended it awaiting the official position of Parliament as to which law was to apply to the gathering. In the meantime, the party's voters held a number of meetings without having complied with formalities. The Ministry of Justice required a halt to the meetings and, after giving the applicant party a warning, imposed a one-month ban on the party for having breached several pieces of legislation. Following an inquiry by the Council of Europe Secretary General and the approaching local elections, the Ministry of Justice lifted the ban and authorised the party to restart its activity. Despite the lifting of the ban, the applicant party challenged the measure in the courts. The Court of Appeal dismissed the applicant's action, finding that the meetings of voters had transformed into demonstrations which required an authorisation. It also found that the demonstrations had blocked public roads and that the participation of minors in them was in breach of several laws. The

Supreme Court of Justice found that the sanction imposed on the party had not been disproportionate. In another set of proceedings undertaken by the Government seeking a declaration that the demonstrations were illegal, the Supreme Court of Justice ruled in favour of the Government and effectively declared the gatherings illegal.

Admissible under Articles 10 and 11. The Government's objection (victim status): During the suspension period the applicant party had risked the freezing of its accounts, the seizure of its assets and the measure had had a "chilling effect" on the party's freedom to exercise its freedom of expression. Even though the ban had been subsequently lifted, the authorities had not acknowledged an alleged breach of the Convention nor afforded a redress for it. The applicant could thus claim to be a victim.

ARTICLE 13

No provision in domestic law for non-pecuniary damage even if civil liability of police were to be established: *violation.*

BUBBINS – United Kingdom (N° 50196/99)
Judgment 17.3.2005 [Section III]
(see above under Article 2).

ARTICLE 14

DISCRIMINATION (Article 8)
Transcription of first name and Russian origin foreign names in Ukrainian passports: *admissible*.

BULGAKOV - Ukraine (N° 59894/00)
Decision 22.3.2005 [Section II]
(see Article 8, above)

ARTICLE 34

VICTIM
Victim status of daughter and executors complaining, two years after his death, about the arrest and fining of a person: *inadmissible.*

FAIRFIELD and Others – United Kingdom (N° 24790/04)
Decision 8.3.2005 [Section IV]

The applicant, the daughter and the executors of the estate of the late Harry Hammond (an evangelical Christian), complained about his arrest for breach of the peace and his conviction and fine for having been preaching in a public place with a sign including the words "Stop Homosexuality". Mr Hammond had refused to take down the sign and leave the area after an angry crowd had gathered and a disturbance had occurred. On his death in 2002, during the Administrative Court proceedings, his daughter and executors had obtained permission to pursue his case. The Divisional Court found no breaches of Articles 9 or 10 on account of his arrest and conviction.
Before the Court the applicants complained under Articles 9 and 10 that the arrest and conviction of Mr Hammond had infringed his freedom of religion and freedom of expression. He had been prevented from teaching his religion by preaching and had been penalised for the content of his message and for expressing his opinion, although he had not used offensive or degrading language or incited the use of violence.

The Court noted that Harry Hammond had died in 2002, whereas the application had been lodged in 2004 by his daughter and the executors of his estate. The executors relied on the fact that the Divisional Court had granted them standing to pursue the appeal after Mr. Hammond's death as evidencing their standing and interest and his daughter relied on the approach in *Dalban v. Romania* [GC], no. 28114/95, § 39, ECHR 1999-VI, where the Court had held that the applicant's widow had a legitimate interest in obtaining a ruling that her husband's conviction constituted a breach of his right to freedom of expression.

Article 34 requires that an individual applicant should claim to have been actually affected by the violation he alleges; it does not institute for individuals a kind of *actio popularis* for the interpretation of the Convention or permit individuals to complain about a law simply because they feel that it contravenes the Convention. The same applies to events or decisions which are alleged to infringe the Convention. The existence of a victim, that is to say, an individual who is personally affected by an alleged violation of a Convention right, is indispensable for putting the protection mechanism of the Convention into motion, although this criterion is not to be applied in a rigid, mechanical and inflexible way throughout the proceedings (*Karner v. Austria*, no. 40016/98, § 25, ECHR 2003-IX). The present case therefore had to be distinguished from *Dalban* which had been introduced by the applicant himself and only continued by his widow after his subsequent death. Similarly, although in *Karner* the Court had held that a case could be continued after the death of an applicant, and even in the absence of heirs wishing to continue, where the issues transcended the interests of the applicant and raised an important question of public interest relevant to human rights standards in Contracting States, that applicant had also died after the introduction of the application before the Convention organs. While it is also true that individuals, who are the next-of-kin of persons who have died in circumstances giving rise to issues under Article 2 of the Convention, may apply as applicants in their own right, this is a particular situation governed by the nature of the violation alleged and considerations of the effective implementation of one of the most fundamental provisions in the Convention system. In the present case the applicants did not have the requisite standing under Article 34: incompatible *ratione personae*.

VICTIM
Failure to show status as victim of discrimination: *inadmissible.*

SKENDER – The former Yugoslav Republic of Macedonia (N° 62059/00)
Decision 10.3.2005 [Section III]

The applicant, a national of the former Yugoslav Republic of Macedonia, of Turkish origin, has two daughters. Under the Primary Education Act members of minorities shall have the right to education in their own language but shall also study Macedonian. Whereas under the same law pupils shall attend State primary schools in their place of residence, the primary school in the applicant's district (Centar Župa) had no Turkish-speaking classes at the outset. In 1996 the applicant's older daughter therefore attended a primary school in another district, where education in Turkish was being provided. In late 1996 those classes were allegedly interrupted by the police and the school director announced that pupils from other villages were no longer allowed to attend that school.
In 1997 the Ministry of Education and Sport refused the applicant's request that education in Turkish be provided in his own district. Following a Council of Ministers decision in 1999, however, the Ministry reversed its position and decided to provide education in Turkish in the relevant school for those pupils whose mother tongue was Turkish. In 2000 the Constitutional Court declared these two decisions null and void, finding them unconstitutional. Meanwhile, in 1997, the applicant asked the Turkish-speaking school in the other district to admit his older daughter. The Supreme Court eventually refused to examine the merits of his complaint as it could not be established that a lower instance had received his earlier submission. The Constitutional Court found it had no competence to examine his further complaint.
In 1998 the applicant requested, again in vain, that his younger daughter be enrolled in the Turkish-speaking primary school in the other district. He then applied to the Supreme Court to expand his existing claim concerning his older daughter with complaints concerning his younger daughter. The Supreme Court informed him that it was not possible and requested him to identify and provide, within fifteen

days, a copy of the administrative act against which his new claim was directed. It eventually refused to examine his complaint as he had not complied with that time-limit.
The applicant also filed an objection with the Ministry against the refusal of the primary school in the other district to enrol his younger daughter. The Supreme Court eventually dismissed his further complaint on the ground that under the Primary Education Act pupils were assigned to schools in accordance with their place of residence and that he had been informed that his younger daughter had to attend the school in his own district. The Supreme Court further relied on the Constitutional Court's decision of 2000 annulling the Government's decisions to provide education in Turkish in his district.
Meanwhile, from September 1999, following the Ministry's aforementioned decision of that year, children in the primary school in the applicant's district, including his younger daughter, have nevertheless been provided classes in Turkish.
The applicant complained under Article 14 of the Convention in conjunction with Article 2 of Protocol No. 1 that his younger daughter had been refused access to a Turkish-speaking school on the ground of his place of residence.
The Court recalled that Article 34 does not institute for individuals any *actio popularis* for the interpretation of the Convention; it does not permit individuals to complain against the state of law or any particular decision *in abstracto* simply because they consider that it contravenes the Convention. Nor, in principle, does it suffice for an applicant to claim that the mere existence of a law violates his rights under the Convention; it is necessary that the law should have been applied to his detriment. In order to be able to claim to be a victim in such a situation, an applicant must produce reasonable and convincing evidence of the likelihood that a violation affecting him personally will occur; mere suspicion or conjecture is insufficient.
The applicant's younger daughter had been receiving primary school education in Turkish since 1999, notwithstanding the Constitutional Court's finding that the provision of such language facilities to children whose mother tongue was Macedonian was contrary to the Constitution. It was therefore not apparent that he could claim that his daughter was a victim of any discrimination in the provision of education from that time. Even assuming that a potential issue were to arise from the allegedly uncertain situation with regard to future provision of classes in Turkish in the applicant's district, the applicant had not brought before the domestic courts the issue of discriminatory provision of education based on his place of residence. The fact that the applicant's earlier claim in respect of his older daughter had been unsuccessful on procedural grounds and that the Constitutional Court had ruled unconstitutional the decision to provide Turkish teaching in the school in the applicant's district, could not be regarded as indicating that an application concerning discrimination in the provision of Turkish-language teaching on grounds of the applicant's residence would inevitably have been ineffective or incapable of providing redress, thereby exempting the applicant from the requirement to put the substance of his Convention complaints before the appropriate domestic bodies before addressing the Court. In conclusion, the applicant had failed to show that his younger daughter had been a victim of any violation of the provisions invoked or that he had exhausted domestic remedies.
Inadmissible.

VICTIM
Loss of victim status in light of just satisfaction award by domestic court for excessive length of proceedings: *inadmissible.*

BAKO – Slovakia (N° 60227/00)
Decision 15.3.2005 [Section IV]

The applicant brought two sets of civil proceedings against his employer (one in 1993 and one in 1994), seeking compensation for unpaid salaries. The cases travelled back and forth between the District Court, the Regional Court and the Supreme Court. In 2004 the Constitutional Court agreed with the applicant's constitutional complaint in which he had argued, *inter alia*, that the proceedings had lasted too long. It limited its finding, in the first case to a period of some eight years during which the District Court had failed to proceed effectively and in the second case to various periods of inactivity likewise imputable to the District Court. It ordered the District Court to proceed with its examination without further delay and

granted the applicant SOK 120,000 (about EUR 3,000 at the time) as just satisfaction for non-pecuniary damage suffered because of the delays.
Before the Court the applicant complained *inter alia* that that the Constitutional Court had failed to take into account that the Regional Court had been responsible for delays totalling 17 months in the first set of proceedings. He also argued that the just satisfaction awarded to him by the Constitutional Court was not appropriate.
The Court noted that the Constitutional Court had examined separately the length of the proceedings before the District Court and the Regional Court respectively. This practice was based on the need for the Constitutional Court to separately identify the authorities which may be liable for a violation of the plaintiff's human rights and fundamental freedoms and which, as the case may be, it then orders to provide appropriate redress to the person concerned. This approach was different from that of the Court which consists in examining the overall length of the proceedings. The Court therefore had to satisfy itself in each individual case whether the protection of a person's right granted by the Constitutional Court of the Slovak Republic was comparable with that which the Court can provide under the Convention. In cases concerning the length of proceedings this requirement would only be met where the Constitutional Court's decision, while structured so as to make a separate assessment of each of the individual stages of proceedings, was capable of covering all stages of the proceedings complained of and thus, in the same way as decisions given by the Court, of taking into account their overall length.
The Court found no reason for disagreeing with the Constitutional Court's conclusion that the District Court was liable for substantive delays in the proceedings contrary to the requirements of Article 6(1) and that any delays imputable to the Regional Court were not such as to justify that conclusion. In these circumstances, and since the constitutional review covered both levels of the domestic proceedings, the protection provided by the Constitutional Court could not be said to have been inappropriate merely on the ground that no substantial delays were found at a particular stage of the proceedings. In sum, the Constitutional Court's finding constituted, in the particular circumstances of the case, a sufficient acknowledgment of the infringement of the applicant's right under consideration.
In examining whether the redress afforded by the Constitutional Court had been adequate and sufficient the Court noted that, under the existing case-law, there was no requirement that the domestic authorities should award the same sum by way of compensation as the Court would be likely to award under Article 41. The level of just satisfaction granted at national level must nevertheless not be manifestly inadequate in the particular circumstances of the case, in which event an applicant could still claim to be a victim of a violation of his or her rights under the Convention. The just satisfaction awarded in this case was lower than the sums usually awarded by the European Court for comparable delays. Whether the amount awarded could be regarded as reasonable, however, fell to be assessed in the light of all the circumstances of the case. These included not merely the duration of the proceedings in the specific case but the value of the award judged in the light of the standard of living in the State concerned, and the fact that under the national system compensation will in general be awarded and paid more promptly than would be the case if the matter fell to be decided by the European Court. In the light of all the material, including the promptness of the finding and award made by the Constitutional Court, the sum awarded to the applicant could not be considered as unreasonable. In conclusion, the applicant could no longer claim to be a “victim” within the meaning of Article 34 of the alleged violation of his right to a hearing within a reasonable time: manifestly ill-founded.

ARTICLE 35

Article 35(1)

EFFECTIVE DOMESTIC REMEDY (Poland)
Non-exhaustion of remedy capable of accelerating court proceedings and resulting in a compensation award: *inadmissible.*

CHARZYŃSKI – Poland (N° 15212/03)
Decision 1.3.2005 [Section IV]

A law introduced in September 2004 ("the 2004 Act") allows those involved in court proceedings to file a complaint concerning their length while they are still pending. The appellate court can find a violation of Article 6 and instruct the lower court to take measures to accelerate the proceedings. The appellate court can also award the complainant compensation of up to PLN 10,000 (approximately EUR 2,500). The 2004 Act was enacted in response to the Court's judgment in *Kudła v. Poland* [GC], no. 30210/96, ECHR 2000-XI, in which it held that the lack of an effective remedy for a breach of the right to a hearing within a reasonable time was in violation of Article 13. A Supreme Court resolution of January 2005 strengthened the application of the 2004 Act by providing that its provisions were to be applicable retroactively to the delays that had occurred before the date of its entry into force and which had not yet been remedied. Under a transitional provision the remedy under the 2004 Act was also available to individuals who had lodged applications with the European Court while their domestic proceedings had remained pending, even if those proceedings had subsequently been terminated, provided their applications had not yet been declared admissible by the European Court.
The applicant complained of having been denied a hearing within a reasonable time, in breach of Article 6, and of having no effective remedy within the meaning of Article 13. He argued that the remedy introduced by the 2004 Act could not be regarded as effective as the maximum amount of just satisfaction which could be awarded by the domestic courts could not exceed PLN 10,000, a much lower sum than would normally be awarded by the Court. Moreover, the new remedy had a very limited application in that, regardless of the circumstances of the case, only one complaint could be pursued within the same year. Finally, complainants were required to pay a court fee of PLN 100 (about EUR 25) for filing a complaint.
The Court noted that the criminal proceedings against the applicant had been pending before the domestic courts and the Court had not yet adopted a decision concerning the admissibility of his case. Accordingly, he was entitled to lodge a complaint under the 2004 Act. As to the effectiveness of the new remedy, the court fee did not appear to be excessive and did not constitute an unreasonable restriction on the applicant's right to lodge a complaint under the new legislation. In any event, the court fee would be reimbursed should his complaint be considered justified. The limitation that a fresh complaint could be filed at one-year intervals did not seem unreasonable. In addition to the maximum amount of just satisfaction which could be awarded under the 2004 Act, the complainant could file a civil claim for further compensation.
In sum, a complaint under the 2004 Act was capable of preventing the alleged violation of the right to a hearing within a reasonable time or its continuation, and of providing adequate redress for any violation that had already occurred, and thus satisfied the "effectiveness" test established in the *Kudła* judgment. Hence the applicant was required by Article 35(1) to lodge such a complaint and to ask for expedition of the proceedings and just satisfaction. *Non-exhaustion of domestic remedies.*

Article 35(3)

COMPETENCE *RATIONE PERSONAE*
Actions of a private-law foundation capable of engaging State responsibility when the State has delegated to it obligations arising out of an international agreement between States.

WOŚ – Poland (N° 22860/02)
Decision 1.3.2005 [Section IV]
(see above under Article 6(1) [civil]).

ARTICLE 37

Article 37(1)

SPECIAL CIRCUMSTANCES REQUIRING FURTHER EXAMINATION
Settlement rejected by the Court in accordance with Article 37(1) *in fine*.

UKRAINIAN MEDIA GROUP – Ukraine (N° 72713/01)
Judgment 29.3.2005 [Section II – former composition]
(see above under Article 10).

Article 37(1)(c)

CONTINUED EXAMINATION NOT JUSTIFIED
Government measures and undertakings to settle the case deemed satisfactory, notwithstanding applicant's opposition: *striking out of the list.*

MERIAKRI - Moldova (N° 53487/99)
Judgment 1.3.2005 [Section IV]

Facts: The applicant complained that, while he had been serving a sentence, the prison authorities had been opening his correspondence with, among others, the Court and his counsel. In order to settle the case the Government offered to pay the applicant the equivalent of EUR 890 (at the then applicable exchange rate) as compensation for any non-pecuniary damage caused to him by the interference with his correspondence with the Court and his lawyer. The Government also offered the applicant an official apology and submitted that they had already amended the relevant legislation to strengthen the protection of prisoners' rights. The applicant asked the Court to reject the offer.

Law: Article 37(1)(c) – Having regard to the scope and extent of the various undertakings in the Government's declaration, together with the amount of compensation proposed, it was no longer justified to continue the examination of the application. Moreover, respect for human rights as defined in the Convention and its Protocols did not require otherwise. The applicant was awarded EUR 2,000 for costs and expenses.

ARTICLE 38

FURNISH ALL NECESSARY FACILITIES
Failure to fulfil obligations under Article 38(1)(a).

AKKUM and Others – Turkey (N° 21894/93)
Judgment 24.3.2005 [Section I]
(see Article 2, above).

ARTICLE 46

EXECUTION OF JUDGMENT
No jurisdiction to examine a High Contracting Party's compliance with its obligations under a previous judgment or to oblige it to re-open domestic proceedings in similar cases: *inadmissible.*

KOMANICKÝ – Slovakia (N° 13677/03)
Decision 1.3.2005 [Section IV]

In 2002 the Court delivered judgment in application no. 32106/96 in which it found *inter alia* that there had been a violation of Article 6 in respect of the procedure followed by the national courts when examining the applicant's civil action relating to his dismissal. In 2002 the applicant filed a complaint with the Constitutional Court, requesting it to quash the ordinary courts' decisions relating to his dismissal. The Constitutional Court rejected the complaint for lack of jurisdiction, noting that the Constitutional Court Act contained no provision permitting it either to examine the legal consequences of a judgment in which the European Court had found a violation by Slovakia or to re-open domestic proceedings on the basis of such a finding.
In his follow-up case before the European Court the applicant principally complained about the Slovakian authorities' failure to effectively eliminate the consequences of the violation of his rights under Article 6. The Court noted that the proceedings relating to the control of execution of its judgment of 2002 were still pending before the Committee of Ministers. The Court had no jurisdiction to examine whether or to what extent a High Contracting Party had complied with its obligations under one of its judgments or to oblige a High Contracting Party to re-open domestic proceedings in similar cases. There was no right under the Convention to the re-opening of proceedings in which a final decision existed and the guarantees of Article 6(1) did not apply to proceedings concerning the re-opening of a civil case.
As regards the applicant's further complaints about shortcomings in the proceedings on his constitutional complaint, the Court noted that the Constitutional Court had rejected his complaint as falling outside the scope of its jurisdiction. Article 6(1) neither guaranteed any particular content for civil rights and obligations nor was it aimed at creating new substantive rights which had no basis in domestic law. Incompatible *ratione materiae* as a whole.

ARTICLE 1 OF PROTOCOL No. 1

POSSESSIONS
Compensation conditions of the heirs of persons that were victims of expropriations in the GDR and in the Soviet occupation zone in Germany: *inadmissible*

VON MALTZAN and Others, VON ZITZEWITZ and Others and MAN FERROSTAAL and ALFRED TÖPFER STIFTUNG - Germany (N° 71916/01, N° 71917/01 & N° 10260/02)
Decision 2.3.2005 [Grand Chamber]

Sixty-five of the applicants are natural persons who are the heirs of the owners of land or buildings that were expropriated under the land reform implemented in the Soviet Occupied Zone of Germany between 1945 and 1949. The two legal entities among the applicants also owned land that was expropriated during that period. After the reunification of Germany they unsuccessfully applied to the relevant authority for restitution of their land and/or buildings. Three of these applicants also applied to the administrative authorities under the Administrative Rehabilitation Act for the rehabilitation of their ascendants, but were unsuccessful. Five applicants are natural persons who are the heirs of owners of land or buildings that were expropriated after 1949 pursuant to a decision of the GDR authorities. After German reunification they applied for restitution of their land and/or buildings. The relevant authorities rejected the applications on the grounds laid down in the Property Act, namely that the third parties who had acquired the property

in the meantime had done so in good faith or that restitution was impossible in practice. Twenty-one of the applicants applied to the Federal Constitutional Court arguing that the Indemnification and Compensation Act of 1994 was incompatible with the Basic Law (*Grundgesetz*). In a leading judgment of 22 November 2000 the Federal Constitutional Court dismissed their application. The Federal Constitutional Court delivered four leading judgments on the land reform. They concern, in particular, the constitutionality of the various statutes governing property or rehabilitation issues enacted by the legislature after German reunification.

Inadmissible under Article 1 of Protocol No. 1: The case did not concern "existing possessions" of the applicants. Most of them were the heirs of persons whose property had been expropriated a long time ago and had thus not been in a position to exercise their ownership rights over the property concerned for more than half a century in most cases. The expropriations had been carried out either between 1945 and 1949 at the instigation of the Soviet occupying forces in Germany or after 1949 in the GDR, which was a separate State distinct from the FRG. The FRG did not have any responsibility for acts committed at the instigation of the Soviet occupying forces or for those perpetrated by another State against its own nationals, even though the GDR had subsequently been succeeded by the FRG, for it was "political" obligations that were at issue in the present case. Accordingly, the Court lacked competence *ratione temporis* and *ratione personae* to examine the circumstances in which the expropriations had been carried out or the continuing effects produced by them up to the present date.
The applicants claimed that they could legitimately expect to obtain restitution of their property or compensation (for expropriations between 1945 and 1949) or indemnification (for expropriations after 1949) of a particular amount commensurate with the real value of their possessions. Whether in respect of the expropriations between 1945 and 1949 in the Soviet Occupied Zone in Germany or those carried out after 1949 in the GDR, the Court did not find any domestic legal basis on which to ground a possibility of securing the restitution of their property or receiving indemnification and compensation of a particular amount commensurate with the real value of their property.
The German legislature had had a wide margin of appreciation in determining the terms of compensation, after reunification, for injustices or damage resulting from acts committed at the instigation of a foreign occupying force or by another sovereign State. It had had to make certain choices in the light of the public interest. Accordingly, legislation enacted after German reunification governing issues of property and rehabilitation after reunification had failed to meet the applicants' expectations of either restitution of their property or compensation or indemnification commensurate with the real value of their property, and no legal provision or decision had conferred rights on the applicants that went beyond those conferred by the statutes in question. The applicants' claims were therefore not based on a legal provision or solid basis in the domestic case-law. The applicants had not therefore had a "legitimate expectation" of realising a current and enforceable claim by means of obtaining either the restitution of their property or compensation (for the 1945-1949 expropriations) or indemnification (for the post-1949 expropriations) of a particular amount commensurate with the real value of their possessions. They could not therefore claim to have had "possessions" within the meaning of Article 1 of Protocol No. 1: incompatible *ratione materiae*.

Complaints under Article 1 of Protocol No. 1 and Article 8 taken together with Article 14: incompatible *ratione materiae*.

Inadmissible under Article 6(1): The proceedings before the Federal Constitutional Court had lasted nearly five years and five months. In the unique context of German reunification the case had been one of forty-two applications to the Federal Constitutional Court regarding the Indemnification and Compensation Act, and had raised fundamental questions about the criteria adopted by the legislature after reunification for compensating the heirs of persons whose property had been expropriated during the Soviet Occupation or in the GDR. The case had therefore been very complex. The Federal Constitutional Court had legitimately grouped together all cases on similar issues so as to obtain a comprehensive view of the matter, especially as it had been the only judicial body dealing with the cases. Admittedly, many of the applicants had been very elderly. However, since the payments of indemnification and compensation in question had not in any event been scheduled to be made before 2004 (the proceedings had ended in 2000), the stakes had not been so important as to impose on the court concerned a duty to deal with this

case as a matter of very great urgency as was the case for certain types of litigation: manifestly ill-founded.

PEACEFUL ENJOYMENT OF POSSESSIONS
Forfeiture of car following the owner's husband's conviction of fraud and a related confiscation order: *violation.*

FRIZEN – Russia (N° 58254/00)
Judgment 24.3.2005 [Section I]

Facts: In 1996 a company founded by the applicant's husband granted her an interest-free loan to buy a car. The total amount was transferred directly to the bank account of the car dealer. In 1998, the applicant's husband was convicted of large-scale fraud. The court sentenced him to four years' imprisonment and issued confiscation orders in respect of his property. The applicant's car and certain household items in her flat were seized. Before the European Court the applicant complained that her car had been confiscated for offences for which she had not been convicted and without any legal basis.

Law: The existence of public-interest considerations for the forfeiture of the applicant's vehicle, however relevant or appropriate they might have appeared, did not dispense the domestic authorities from the obligation to cite a legal basis for such decision. It observed that the domestic courts did not refer to any legal provision authorising the forfeiture, either in the criminal proceedings against the applicant's husband or in the civil proceedings which she initiated. Furthermore, the Russian Government had not invoked, explicitly or by reference, any domestic legal provision on which the decision to confiscate the applicant's car had been based.
The Court's power to review compliance with domestic law was limited, as it was in the first place for the national authorities to interpret and apply that law. Having regard to the Russian authorities' consistent failure to indicate a legal provision that could be construed as the basis for the forfeiture of the applicant's property, the interference with the applicant's property rights could not be considered "lawful".
Conclusion: violation (unanimously).

PEACEFUL ENJOYMENT OF POSSESSIONS
Persistant refusal of the authorities to use force for the eviction of occupants without a title, in relation to an owner that had received compensation: *violation*.

MATHEUS - France (N° 62740/00)
Judgment 31.3.2005 [Section I]

Facts: The applicant owned land on the island of Guadeloupe, which he had leased out. The tenants had illegally built a dwelling on the land. In June 1988 the applicant obtained a final court order for the termination of the tenants' lease and their eviction, if necessary with police assistance. The destruction of the dwelling was also ordered. Eviction proceedings were necessitated by the tenants' refusal to leave the land. The bailiffs repeatedly sought police assistance in enforcing the decision in the landlord's favour, but to no avail. The authorities gave priority to the tenants, a large family with few resources and no possibility of finding alternative accommodation, and feared that the presence of the police might disturb public order. Those considerations were subsequently dismissed by the services sent to inspect the site. The applicant sought compensation for the damage resulting from the authorities' lack of cooperation. He received awards for loss of enjoyment of his property and for the problems encountered in his everyday life during the period from June 1989 to September 2002. The applicant finally sold his property to the occupier in June 2004.

Law: The respondent Government submitted that the applicant was no longer a victim within the meaning of Article 34 of the Convention as he had profited from the sale of his land. In so far as the sale could not

be regarded as a form of acknowledgment or redress, on the part of the national authorities, in respect of the violations alleged by the applicant, he could still claim to be a "victim".

Article 6(1): Although the applicant had received compensation for the State's negligence on account of the authorities' refusal to cooperate in enforcing a court judgment, the compensation did not remedy the French authorities' shortcoming in failing to execute the judgment. The judgment had not been executed as the applicant had never been able to regain enjoyment of his right of property. The reasons given by the national authorities for deferring the execution of the final judgment had not justified such a lengthy period of inaction (sixteen years). As a result of the refusal to assist with the enforcement, the judgment had been deprived of all useful effect over the course of time, a situation not justified by any exceptional circumstances. The excessive period during which the judicial decision was not executed, and the resultant uncertainty suffered by the applicant as to the future of his property, had hindered his right to effective judicial protection as guaranteed by Article 6(1).
Conclusion: violation (unanimously).

Article 1 of Protocol No. 1: For sixteen years the State authorities and officials had refused to cooperate in enforcing the judgment in question although there were no public-order or social considerations to justify such an unreasonable delay. Accordingly, they had not done everything in their power to protect the applicant's pecuniary interests. Admittedly, they had been held liable for the negligence committed and the applicant had been awarded compensation which had in fact been paid. However, the Court considered that the award of such compensation was incapable of redressing the authorities' inaction. In view of the individual interests at stake, the authorities should, within a reasonable time, have taken the measures required to comply with the court decision. It had to be concluded that, in the absence of any public-interest justification, the refusal to provide police assistance had resulted in a form of private expropriation from which the unlawful occupant had benefited. In the absence of an effective system of enforcement, such a situation created a risk that, as observed in the Recommendation of the Committee of Ministers of the Council of Europe on enforcement, a form of "private justice" contrary to the rule of law might emerge.
Conclusion: violation (unanimously).

Article 41 – The Court awarded the applicant a specified sum in respect of non-pecuniary damage.

PEACEFUL ENJOYMENT OF POSSESSIONS
Non restitution of a building occupied by an embassy given the exemption from execution granted to foreign States: *inadmissible*.

MANOILESCU and DOBRESCU - Romania and Russia (N° 60861/00)
Decision 3.3.2005 [Section III]
(see Article 1, above).

ARTICLE 4 OF PROTOCOL No. 7

NE BIS IN IDEM
Decision of provisional psychiatric detention and non final order that there were no grounds for prosecution, followed by a criminal conviction for the same facts: *Article 4 of Protocol No. 7 not applicable*.

HORCIAG - Romania (N° 70982/01)
Decision 15.3.2005 [Section II]

The applicant confessed to a murder committed with a bladed weapon. The prosecution ruled that there was no case to answer since psychiatric assessments had concluded that the applicant, who suffered from psychological disorders, had committed the murder at a time when his powers of discernment had been

destroyed, so that he could not held criminally responsible and his actions could not be punished under the criminal law. As a security measure, the prosecution ordered his provisional internment until he was cured. That measure was confirmed by a court. Doctors expressed doubts as to the applicant's lack of criminal responsibility. The prosecuting authorities subsequently ordered the resumption of the proceedings with a view to carrying out further investigative measures. Two collective expert assessments concluded that the murder had been committed when the applicant's powers of discernment had merely been impaired and that he was fit to be detained in a prison environment. The criminal law was applied to the applicant and he was found guilty and sentenced to a term of imprisonment. The applicant considered that he had been prosecuted and tried twice for the same offence.

Inadmissible under Article 4 of Protocol No. 7: The *non bis in idem* principle applied only after a person had been finally acquitted or convicted in accordance with the law and penal procedure of the State concerned.
The prosecution had ruled that there was no case to answer, but its ruling could still be set aside by a higher authority and was therefore not final. The court had endorsed the applicant's provisional psychiatric internment without ruling on his criminal responsibility. The provisional measure had not ruled out the resumption of the proceedings. There could not be said to have been an "acquittal" within the meaning of the Article in question, but rather a preventive measure not entailing any examination or finding as to the applicant's guilt. In short, in the absence of a final decision irrevocably terminating the criminal proceedings, their resumption had merely amounted to the continuation of the initial proceedings. Article 4 of Protocol No. 7 was therefore not applicable: incompatible *ratione materiae*.

PROCEDURAL MATTERS

RULE 39 OF THE RULES OF COURT

PROVISIONAL MEASURES
Government should take appropriate measures to ensure that embryos are not destroyed by the clinic at which they are stored until the Court has had the possibility to examine the case.

EVANS – United Kingdom (N° 6339/05)
[Section IV]
(see above under Article 8).

Other judgments delivered in March

Article 2

Life

Türkoğlu - Turkey (N° 34506/97) 17.3.2005 [Section III] – no violation - violation.
Gezici - Turkey (N° 34594/97) 17.3.2005 [Section I] – violation.
Güngör - Turkey (N° 28290/95) 22.3.2005 [Section II] – no violation -violation.
Adali - Turkey (N° 38187/97) 31.3.2005 [Section I (former composition)] – no violation - violation.

Article 3

Inhuman and degrading treatment

Gezici - Turkey (N° 34594/97) 17.3.2005 [Section I] – no violation.
Güngör - Turkey (N° 28290/95) 22.3.2005 [Section II] – no violation.
Ay - Turkey (N° 30951/96) 22.3.2005 [Section II] – no violation.

Articles 3, 8 and 14

Adali - Turkey (N° 38187/97) 31.3.2005 [Section I (former composition] – no violation.

Article 5(1)

Detention for non-payment of local taxes or fines

cf. *Benham ; Perks*:
Lloyd and Others - United Kingdom (N° 29798/96 and 37 Others) 1.3.2005 [Section IV] – violation and no violation in application N° 42040/98.
Beet and Others - United Kingdom (N° 47676/99 and 4 Others) 1.3.2005 [Section IV] – violation in the case of Beet.

Article 5(1)(b)

Epple - Germany (N° 77909/01) 24.3.2005 [Section III] – violation.

Article 5(5)

cf. *Benham ; Perks*:
Lloyd and Others - United Kingdom (N° 29798/96 and 37 Others) 1.3.2005 [Section IV] – violation and no violation in application N° 42040/98.

Beet and Others - United Kingdom (N° 47676/99 and 4 Others) 1.3.2005 [Section IV] – violation in the case of Beet.

Article 6(1)

Independence and impartiality of State Security Court

violation (cf. *Özel ; Özdemir*):
Gümüş and Others - Turkey (N° 40303/98) 15.3.2005 [Section II]
Şirin - Turkey (N° 47328/99) 15.3.2005 [Section II]
Kilinç - Turkey (N° 48083/99) 15.3.2005 [Section II]
Özüpek and Others - Turkey (N° 60177/00) 15.3.2005 [Section II]
Ağin - Turkey (N° 46069/99) 29.3.2005 [Section II]

Legislation staying all civil proceedings relating to claims for damages resulting in respect of terrorist acts

violation (cf. *Kutić*):
Kljajić - Croatia (N° 22681/02) 17.3.2005 [Section I]
Lulić and Becker - Croatia (N° 22857/02) 24.3.2005 [Section I]

Non-disclosure in Court of Cassation proceedings of report of the *conseiller rapporteur*, available to the *avocat general* and presence of *avocat général* during deliberations

F.W. - France (N° 61517/00) 31.3.2005 [Section I] – violation (cf. *Reinhardt et Slimane-Kaïd ; Fontaine et Bertin*).

Prolonged non-enforcement of court decision

Gorokhov and Rusyayev - Russia (N° 38305/02) 17.3.2005 [Section I] – violation (cf. *Burdov*).
Sandor - Romania (N° 67289/01) 24.3.2005 [Section III] – violation.

Quashing of a final and binding judicial decision

Rosca - Moldova (N° 6267/02) 22.3.2005 [Section IV] – violation.

Access to court

Linnekogel - Switzerland (N° 43874/98) 1.3.2005 [Section IV] – violation.
Soudek - Czech Republic (N° 56526/00) 15.3.2005 [Section II] – violation (cf. *Zvolský et Zvolská*).

Fair hearing

M.S. - Finland (N° 46601/99) 22.3.2005 [Section IV] – violation.

Public hearing

Osinger - Austria (N° 54645/00) 24.3.2005 [Section III] – violation.

Oral hearing

Yakovlev - Russia (N° 72701/01) 15.3.2005 [Section IV] – violation.

Length of proceedings

violation - no violation :
Fabišik - Slovakia (N° 51204/99) 22.3.2005 [Section IV]

violation :
Gika and Others - Greece (N° 33339/02) 17.3.2005 [Section I]
Refene-Michalopoulou and Others - Greece (N° 33518/02) 17.3.2005 [Section I]
Apostolaki - Greece (N° 34206/02) 17.3.2005 [Section I]
Zmaliński - Poland (N° 52039/99) 22.3.2005 [Section IV]
Szenk - Poland (N° 67979/01) 22.3.2005 [Section IV]
Baburin - Russia (N° 55520/00) 24.3.2005 [Section I]
El Massry - Austria (N° 61930/00) 24.3.2005 [Section III]
Guiraud - France (N° 64174/00) 29.3.2005 [Section II]
Ege - Turkey (N° 47117/99) 29.3.2005 [Section IV]
Mackova - Slovakia (N° 51543/99) 29.3.2005 [Section IV]
Gudeljević - Croatia (N° 18431/02) 31.3.2005 [Section I]

Article 6(3)(c)

cf. *Benham ; Perks*:
Lloyd and Others - United Kingdom (N° 29798/96 and 37 Others) 1.3.2005 [Section IV] – violation.
Beet and Others - United Kingdom (N° 47676/99 and 4 Others) 1.3.2005 [Section IV] – violation except in the case of Beet.

Article 6(3)(c),(d) and (e)

Mariani - France (N° 43640/98) 31.3.2005 [Section I] – violation (cf. *Krombach*).

Article 8

Effects of inordinately lengthy bankruptcy proceedings on the bankrupt

Goffi - Italy (N° 55984/00) 24.3.2005 [Section III] – violation (cf. *Luordo*).

Right for correspondence

Matheron - France (N° 57752/00) 29.3.2005 [Section IV] – violation (cf. *Lambert*).

Article 10

Conviction for disseminating separatist propaganda

Ağin - Turkey (N° 46069/99) 29.3.2005 [Section II] – violation (cf. *İbrahim Aksoy*).

Conviction for incitement to hatred and hostility

Gümüs and Others - Turkey (N° 40303/98) 15.3.2005 [Section II] – violation (cf. *Ceylan*).

Conviction for insult or for defamation

Birol - Turkey (N° 44104/98) 1.3.2005 [Section IV] – violation.
Sokołowski - Poland (N° 75955/01) 29.3.2005 [Section IV] – violation.

Interim seizure of a book

Alinak - Turkey (N° 40287/98) 29.3.2005 [Section II] – violation.

Article 11

Adali - Turkey (N° 38187/97) 31.3.2005 [Section I (former composition)] – violation.

Article 13

Effective remedy

Death of relatives

Gezici - Turkey (N° 34594/97) 17.3.2005 [Section I] – violation.
Güngör - Turkey (N° 28290/95) 22.3.2005 [Section II] – violation.
Adali - Turkey (N° 38187/97) 31.3.2005 [Section I (former composition)] – violation.

Length of proceedings

Mackova - Slovakia (N° 51543/99) 29.3.2005 [Section IV] – violation (cf. *Čiž*).

Articles 13 and 3, 8, 14

Adali - Turkey (N° 38187/97) 31.3.2005 [Section I (former composition)] – no violation.

Article 34

Adali - Turkey (N° 38187/97) 31.3.2005 [Section I (former composition)] – no violation.

Article 1 of Protocol No. 1

Delay in payment of compensation for expropriation

Kokol and Others - Turkey (N° 68136/01) 29.3.2005 [Section II] – violation (cf. *Akkuş*).

Effects of inordinately lengthy bankruptcy proceedings on the bankrupt

Goffi - Italy (N° 55984/00) 24.3.2005 [Section III] – violation (cf. *Luordo*).

Prolonged non-enforcement of court decision

Gorokhov and Rusyayev - Russia (N° 38305/02) 17.3.2005 [Section I] – violation (cf. *Burdov*).
Sandor - Romania (N° 67289/01) 24.3.2005 [Section III] – violation.

Quashing of a final and binding judicial decision

Rosca - Moldova (N° 6267/02) 22.3.2005 [Section IV] – violation.

Article 2 of Protocol No. 4

Effects of inordinately lengthy bankruptcy proceedings on the bankrupt

Goffi - Italy (N° 55984/00) 24.3.2005 [Section III] – violation (cf. *Luordo*).

Article 2 of Protocol No. 7

Mariani - France (N° 43640/98) 31.3.2005 [Section I] – violation (cf. *Krombach*).

Striking out

Szyszkowski - San Marino (N° 76966/01) 29.3.2005 [Section II]

Friendly settlement

Wood - United Kingdom (N° 47441/99) 15.3.2005 [Section IV]
Taniyan - Turkey (N° 29910/96) 17.3.2005 [Section III]
Accardo - Italy (N° 62913/00) 17.3.2005 [Section III]
Toimi - Sweden (N° 55164/00) 22.3.2005 [Section II]
Mahmut Keskin - Turkey (N° 40156/98) 29.3.2005 [Section II]
Bozkurt - Turkey (N° 35851/97) 31.3.2005 [Section I]
Viaropoulos and Others - Greece (N° 19437/02) 31.3.2005 [Section I]

Referral to the Grand Chamber

Article 43(2)

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

SEJDOVIC - Italy (N° 56581/00)
Judgment 10.11.2004 [Section I]

The case concerns a conviction *in absentia* without the accused being informed of the proceedings or being able to have them reopened without showing that he was not a fugitive.

ACHOUR - France (N° 67335/01)
Judgment 10.11.2004 [Section I]

The case concerns the retroactive application of a more severe law concerning recidivism.

Ernestina ZULLO - Italy (N° 64897/01)
Riccardi PIZZATI - Italy (N° 62361/00)
COCCHIARELLA - Italy (N° 64886/01)
MUSCI - Italy (N° 64699/01)
Giuseppe MOSTACCIUOLO - Italy (N° 64705/01)
Giuseppe MOSTACCIUOLO - Italy (no. 2) (N° 65102/01)
Giuseppina and Orestina PROCACCINI - Italy (N° 65075/01)
APICELLA - Italy (N° 64890/01)
Judgments 10.11.2004 [Section I (former composition)]

The cases concern the criteria for assessing non-pecuniary damage sustained as a result of the length of proceedings.

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 No. 70):

KARELLIS - Greece (Nº 6706/02)
Judgment 2.12.2004 [Section I]

GENITEAU - France (Nº 49572/99)
Judgment 7.12.2004 [Section II]

VAN ROSSEM - Belgium (Nº 41872/98)
Judgment 9.12.2004 [Section I]

DRAGICEVIC - Croatia (Nº 11814/02)
ZOVANOVIC - Croatia (Nº 12877/02)
Judgments 9.12.2004 [Section I]

ELDEN - Turkey (Nº 40985/98)
GÖKDERE and GÜL - Turkey (Nº 49655/99)
REGA - France (Nº 55704/00)
Judgments 9.12.2004 [Section III]

PAUSE - France (Nº 61092/00)
NESME - France (Nº 72783/01)
BECVAR and BECVAROVA - Czech Republic (Nº 58358/00)
GELFMANN - France (Nº 25875/03)
Judgments 14.12.2004 [Section II]

SUPREME HOLY COUNCIL OF THE MUSLIM COMMUNITY - Bulgaria (Nº 39023/97)
Judgment 16.12.2004 [Section I (former composition)]

MASCOLO - Italy (Nº 68792/01)
Judgment 16.12.2004 [Section III]

TALAT TEPE - Turkey (Nº 31247/96)
ORMANCI and Others - Turkey (Nº 43647/98)
ŠKODAKOVA - Czech Republic (Nº 71551/01)
CENTRUM STAVEBNIHO INZENYRSTVI - Czech Republic (Nº 65189/01)
Judgments 21.12.2004 [Section II]

BUSUIOC - Moldova (Nº 61513/00)
Judgment 21.12.2004 [Section IV (former composition)]

MITEV - Bulgaria (Nº 40063/98)
BOJILOV - Bulgaria (Nº 45114/98)
ILIEV - Bulgaria (Nº 48870/99)
BLOMMEN - Belgium (Nº 47265/99)
STOETERIJ ZANGERSHEIDE - Belgium (Nº 47295/99)
MERGER and CROS - France (Nº 68864/01)
Judgments 22.12.2004 [Section I]

HANNAK - Austria (Nº 70883/01)
Judgment 22.12.2004 [Section III]

Article 44(2)(c)

On 30 March 2005 the Panel of the Grand Chamber rejected requests for referral of the following judgments, which have consequently become final:

NOWAK - Poland (Nº 27833/02)
Judgment 5.10.2004 [Section IV]

KJARTAN ÁSMUNDSSON - Iceland (Nº 60669/00)
Judgment 12.10.2004 [Section II]
(See Information Note No. 68)

CASALTA - France (Nº 58906/00)
Judgment 12.10.2004 [Section II]

CRNOJEVIC - Croatia (Nº 71614/01)
Judgment 21.10.2004 [Section I]

KONECNY - Czech Republic (Nº 47269/99, Nº 64656/01 and Nº 65002/01)
Judgment 26.10.2004 [Section II]

TREGUBENKO - Ukraine (Nº 61333/00)
Judgment 2.11.2004 [Section II (former composition)]
(See Information Note No. 69)

SEYHAN - Turkey (Nº 33384/96)
FABRE - France (Nº 69225/01)
VITASEK - Czech Republic (Nº 77762/01)
BELOEIL - France (Nº 4094/02)
Judgments 2.11.2004 [Section II]

QUFAJ CO. SH.P.K. - Albania (Nº 54268/00)
Judgment 18.11.2003 [Section III]
(See Information Note No. 69)

SVETLANA NAUMENKO - Ukraine (Nº 41984/98)
Judgment 9.11.2004 [Section II]
(See Information Note No. 69)

NURI ÖZKAN - Turkey (Nº 50733/99)
CROITORU - Romania (Nº 54400/00)
LEVSHINY - Russia (Nº 63527/00)
Judgments 9.11.2004 [Section II]

FINAZZI - Italy (Nº 62152/00)
CARLETTI and BONETTI - Italy (Nº 62457/00)
Judgments 10.11.2004 [Section I]

TAŞKIN and Others - Turkey (Nº 46117/99)
Judgment 10.11.2004 [Section III (former composition)]
(See Information Note No. 69)

ISSA and Others - Turkey (Nº 31821/96)
Judgment 16.11.2004 [Section II]
(See Information Note No. 69)

CANADY - Slovakia (Nº 53371/99)
Judgment 16.11.2004 [Section IV]

ZAZANIS - Greece (Nº 68138/01)
Judgment 18.11.2004 [Section I (former composition)]
(See Information Note No. 69)

PRAVEDNAYA - Russia (Nº 69529/01)
Judgment 18.11.2004 [Section I]

MELNYCHENKO - Ukraine (Nº 17707/02)
Judgment 19.10.2004 [Section II]
(See Information Note No. 68)

YORGIADIS - Turkey (Nº 48057/99)
Judgment 19.10.2004 [Section II]

ZAKIEWICZ - Poland (Nº 46072/99 and Nº 46076/99)
Judgment 30.11.2004 [Section IV]

Statistical information[1]

Judgments delivered	March	2005
Grand Chamber	0	1
Section I	19	85
Section II	14	47(48)
Section III	9	24
Section IV	17(58)	39(81)
former Sections	3	9
Total	**62(103)**	**205(248)**

Judgments delivered in February 2005					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	0	0	0	0	0
Section I	17	2	0	0	19
Section II	11	2	1	0	14
Section III	7	2	0	0	9
Section IV	15(56)	1	1	0	17(58)
former Section I	1	0	0	0	1
former Section II	1	0	0	0	1
former Section III	1	0	0	0	1
Total	**53(94)**	**7**	**2**	**0**	**62(103)**

Judgments delivered in 2005					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	1	0	0	0	1
former Section I	2	0	0	0	2
former Section II	2	0	0	0	2
former Section III	5	0	0	0	5
former Section IV	0	0	0	0	0
Section I	81	3	1	0	85
Section II	38	7(8)	2	0	47(48)
Section III	17	4	1	2	24
Section IV	35(77)	2	1	1	39(81)
Total	**181(223)**	**16(17)**	**5**	**3**	**205(248)**

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

Decisions adopted		March	2005
I. Applications declared admissible			
Grand Chamber		0	0
Section I		25	63(64)
Section II		37	59
Section III		15	32(34)
Section IV		14(16)	19(23)
Total		**89(93)**	**173(180)**
II. Applications declared inadmissible			
Grand Chamber		1(3)	1(3)
Section I	- Chamber	8	23
	- Committee	414	1966
Section II	- Chamber	11	26
	- Committee	522	1150
Section III	- Chamber	13	32
	- Committee	447	937
Section IV	- Chamber	17	31
	- Committee	482	1434
Total		**1915(1917)**	**5600(5602)**
III. Applications struck off			
Section I	- Chamber	10	13
	- Committee	5	18
Section II	- Chamber	6	16
	- Committee	7	15
Section III	- Chamber	9	12
	- Committee	14	22
Section IV	- Chamber	9	19
	- Committee	3	14
Total		**63**	**129**
Total number of decisions[1]		**2067(2073)**	**5902(5911)**

1. Not including partial decisions.

Applications communicated	March	2005
Section I	55	138
Section II	155	238
Section III	55	122
Section IV	46	74
Total number of applications communicated	**311**	**572**

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