CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

INFORMATION NOTE No. 64
on the case-law of the Court
May 2004

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

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APARICIO BENITO - Spain (N° 36150/03)
Decision 4.5.2004 [Section IV]

The applicant is detained in a prison with about a hundred other prisoners. The majority of detainees are smokers, while the applicant himself is a non-smoker. In the absence of a no-smoking area, the applicant is obliged to share the prison's communal areas, such as the TV rooms, dining room, study area and workshops, with prisoners who smoke. Referring to the risks to his health and the national campaign on the dangers of tobacco use, the applicant lodged a complaint with the judge responsible for the execution of sentences. The latter replied that, while the co-existence of smokers and non-smokers was a matter of considerable public debate, the prison legislation contained no provisions on the subject. The applicant filed unsuccessful appeals. The Constitutional Court confirmed that the legislation governing prison administration did not grant non-smoking prisoners a right to the introduction of no-smoking areas or to the prohibition of smoking in the prison's communal areas.
Communicated under Articles 2 and 8.

ARTICLE 3

INHUMAN OR DEGRADING TREATMENT
Detention incommunicado for 11 days: *no violation*.

YURTTAS - Turkey (Nº 25143/94 and Nº 27098/95)
Judgment (final) 27.5.2004 [Section III]

Extract (Article 3) – "The Court also notes that complete sensory isolation, coupled with total social isolation, can destroy the personality and constitutes a form of inhuman treatment which cannot be justified by the requirements of security or any other reason. On the other hand, the prohibition of contacts with other prisoners for security, disciplinary or protective reasons does not in itself amount to inhuman treatment or punishment (see, among other authorities, *Messina v. Italy* (dec.), no. 25498/94, ECHR 1999-V). Nor does the Court exclude the possibility that excessively long detention in complete isolation and in particularly difficult circumstances for the detainee constitutes treatment contrary to Article 3.
In the instant case, the Court notes that during his time in police custody the applicant was not kept in complete sensory isolation coupled with total social isolation. Admittedly, he was forbidden all contact with the outside world, but he did have contact with members of staff working on the premises and, for the most part, with his fellow detainees. In addition, in the absence of any questioning of the applicant, this detention amounted to a wait of eleven days before he was brought before the judges. This time-scale could not have surprised the applicant, since, at the material time, it complied with the domestic legislation. Nor could it be considered so excessively long as to affect the applicant's personality or cause him intense mental suffering."
The Court therefore considers that the applicant's detention in police custody in itself did not attain the minimum level of severity necessary to constitute inhuman or degrading treatment within the meaning of Article 3. Consequently, there has been no violation of that provision."

TRAITEMENT INHUMAIN OU DEGRADANT
Ill-treatment during police intervention in dispute in restaurant: *violation*.

R.L. and M.-J. D. - France (N° 44568/98)
Judgment 19.5.2004 [Section III]
(see Article 5(1)(e), below).

ARTICLE 5

Article 5(1)(c)

LAWFUL DETENTION
Detention of media tycoon who was exempt from prosecution under national law: *violation*.

GUSINSKIY - Russia (N° 70276/01)
Judgment 19.5.2004 [Section I]

Facts: The applicant, who is the former Chairman of a private media holding company, was interviewed by the General Prosecutor's Office (GPO) in relation to a fraudulent transfer of a broadcasting licence. The applicant was arrested and imprisoned between 13-16 June 2000 on suspicion of having committed a crime of fraud. His lawyers complained that the arrest was unlawful as the applicant was subject to an amnesty against imprisonment as a result of having been awarded the Friendship of Peoples Order, and that there were no exceptional circumstances to justify the detention before the laying of charges. The charges of fraud against the applicant were brought by the GPO on 16 June 2000, prior to the applicant's release from custody. Whilst the applicant was in prison, the Acting Minister for Press and Mass Communication offered to drop the charges against the applicant if he sold his media holding company to a State-controlled monopoly. The agreement was signed on 20 July 2000 but the company subsequently refused to honour it, claiming it had been entered into under duress. In the meantime, the applicant had left Russia to go to Spain. New charges of having fraudulently obtained loans were subsequently re-instigated by the GPO against the applicant and an international arrest warrant was issued against him. The applicant was arrested in Spain on 11 December 2000 and imprisoned the following day (he was released and confined to house arrest on 22 December 2000). Following proceedings in the Spanish courts, the Russian authorities' request for extradition was rejected. Further proceedings in the Russian courts concerning the lawfulness of the applicant's detention resulted in a finding that the wording of the GPO's initial detention order of 13 June 2000 had not been strained or hypothetical.

Law: Article 5(1) – The applicant's detention was based on a "reasonable suspicion" that he had committed a fraudulent transfer of a broadcasting licence. The investigating authorities had evaluated that substantial economic damage had resulted to a State-owned TV company. Thus, the evidence which had been gathered could "satisfy an objective observer" that the applicant might have committed such an offence. However, the applicant's detention had not been conducted "in accordance with a procedure prescribed by law". This expression implies that the national law authorising deprivation of liberty must be sufficiently accessible and precise, to avoid all risk of arbitrariness. Although the Code of Criminal Procedure permitted measures of restraint in "exceptional circumstances", such as remanding the applicant in custody before being charged, the Government had not submitted any instances of cases

which had been considered to disclose "exceptional circumstances" in the past. Thus, it had not been shown that the rule on the basis of which a person could be deprived of his liberty met the "quality of law" requirement of Article 5. Moreover, the "lawfulness" of a detention requires conformity with national law. Under the Amnesty Act, proceedings against the applicant should have been stopped as he was a holder of the Friendship of the Peoples Order. By 13 June 2000 the authorities had known or could reasonably have been expected to know about the applicant's award. It would be irrational to interpret the Amnesty Act as permitting detention on remand whilst establishing that criminal proceedings were to be stopped. Thus, there had been a breach of national law and, accordingly, a violation of Article 5(1).

Article 18 (in conjunction with Article 5) – The restriction of the applicant's liberty was permitted under Article 5(1)(c) for the purpose of bringing him before a competent legal authority on reasonable suspicion of having committed an offence. However, the fact that the applicant had been offered a commercial agreement whilst in prison, in exchange for the dropping of charges against him, suggested that his prosecution had been used to intimidate him. In such circumstances, the restriction of his liberty had been applied not only for the purposes provided for in Article 5(1)(c), but also for alien reasons. Accordingly, there had been a violation of Article 18 in conjunction with Article 5.

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

Article 5(1)(e)

PERSONS OF UNSOUND MIND
Placement with psychiatric services of a restaurateur arrested during a dispute with a neighbouring restaurateur: *violation*.

R.L. and M.-J. D. - France (N° 44568/98)
Judgment 19.5.2004 [Section III]

Facts: Following a series of incidents with neighbouring restaurateurs, the applicants, owners of a restaurant in Paris, were summoned to the police station for making excessive noise at night. The applicants refused to attend. Three plain-clothes police officers then came to their restaurant and used force in disputed circumstances. The first applicant was finally arrested and taken to the police station. He was placed in a psychiatric unit overnight and released the following day. The applicants obtained medical certificates stating that they had sustained numerous bruises. They filed a criminal complaint together with an application to join the proceedings as civil parties. A judicial investigation was opened on charges of deprivation of liberty, unlawful arrest, arbitrary detention, unlawful violence, and abuse of authority. A medical report established the existence of multiple injuries leading to total unfitness for work for 10 days in the first applicant's case and 6 days in the second applicant's case. The investigating judge issued an order finding that there was no case to answer. The court of appeal upheld this order. In particular, it noted that the police officers had not committed deliberate or unjustified acts of violence, but had used force only on account of the resistance put up by the applicants, who were very agitated; the first applicant's agitation had been sufficiently severe to give rise to fears for the neighbouring restaurateurs' safety and to justify in law his transfer to a psychiatric unit. The applicants appealed unsuccessfully on points of law.

Law: Article 3 – During their intervention, the police officers, without deliberately striking the applicants, had used force to bring them under control; the latter had put up resistance and fought. The bruises and swellings found on the applicants were too numerous and too large, and the resulting periods of unfitness for work too long to correspond to the use of force made absolutely necessary by the applicants' conduct.
Conclusion: violation (four votes to three).

Article 5(1)(c) – The first applicant had never been brought before a judge after his arrest. His arrest had not been justified in the light of the acts which could be held against him: the offence of committing a nuisance by making noise at night, which was punishable only by a fine, could not justify his arrest, and although the offence of insulting a police officer could have justified his arrest, the first applicant had not subsequently been prosecuted on that charge.
Conclusion: violation (four votes to three).

Article 5(1)(e) – The first applicant's continued detention in the psychiatric unit between 4.15 a.m. and 10.45 a.m. was explained only by the fact that the doctor was not empowered to release him; it had therefore had no medical justification.
Conclusion: violation (unanimously).

Article 5(5) – In view of the above findings of violations of Article 5(1)(c) and (e), and since the applicant had not obtained satisfaction as a result of the domestic proceedings instituted by him, there had also been a breach of this provision.
Conclusion: violation (unanimously).

Article 41 – The Court awarded compensation for the physical and psychological damage sustained by the applicants. It made an award in respect of costs and expenses.

PERSONS OF UNSOUND MIND
Pre-placement detention in a remand centre for more than 15 months pending transfer to a custodial clinic: *violation*.

MORSINK – Netherlands (N° 48865/99)
Judgment 11.5.2004 [Section II]

Facts: The applicant, who had a record of theft, criminal damage and assault, was convicted by the Regional Court of assault causing serious bodily harm and sentenced to fifteen months' imprisonment. As the applicant's mental faculties were so poorly developed, in combination with the prison sentence he received an order for confinement in a custodial clinic ("TBS" order). The judgment was upheld by the Court of Appeal. On 5 February 1998 the applicant completed his prison sentence and the TBS order took effect. However, he was not transferred to a custodial clinic and was held in pre-placement detention in an ordinary remand centre. Domestic legislation establishes that when there is a lack of capacity in custodial clinics a person who has received a TBS order can be kept in ordinary detention for six months, and thereafter, for successive periods of three months on decision of the Minister of Justice. On the basis of this legislation, the applicant was kept in an ordinary remand centre until 17 May 1999, when he was admitted to a custodial clinic. Whilst in pre-placement detention the applicant filed consecutive appeals against the apparently *ex officio* prolongations by the Minister of his pre-placement detention. In June 1999, the Appeals Board quashed, on formal grounds, the Minister's prolongation for the period 31 January to 30 April 1999. It found, however, that the total duration of the applicant's pre-placement detention pending transfer to a clinic had not been unreasonable nor had the impugned decision breached relevant legislation. In November 1999, the Appeals Board ruled on the last prolongation period challenged by the applicant, finding this time a material breach of the law for the period of

pre-placement detention in excess of 15 months, which could be regarded as unreasonable and inequitable. The applicant was thus awarded compensation for the sixteen days of his pre-placement detention which had exceeded 15 months.

Law: The applicant could not claim to be a victim for the time he spent in pre-placement detention between 1 and 17 May 1999, as the Appeals Board had acknowledged in substance that his right to liberty and security had been breached and he had been afforded redress in the form of financial compensation. However, the Board had not found the applicant's first fifteen months in pre-placement detention to be unlawful, so he could claim to be a victim in respect of that period.

Article 5(1) – Although the applicant's pre-trial detention for the period under consideration had been lawful under domestic law, it also had to be established whether such a detention was in conformity with the purpose of Article 5(1), that is, to prevent arbitrary deprivations of liberty. In principle the "detention" of a person as a mental health patient will only be "lawful" for the purposes of 5(1)(e) if effected in a hospital, clinic or other appropriate institution. However, the Court did not accept the applicant's argument that the failure to admit him to a custodial clinic on 5 February 1998 rendered his detention after that date automatically unlawful. It was not contrary to Article 5(1) to commence the procedure for selecting the most appropriate custodial clinic after the TBS order had taken effect, and it would be unrealistic to expect immediate placement after the selection had taken place. A balance had to be struck between the competing interests, giving particular weight to the applicant's right to liberty. A significant delay in admission to a custodial clinic would obviously affect the prospects of a treatment's success. In the circumstances, a reasonable balance had not been struck. Whilst there was a problem of a structural lack of capacity in custodial clinics, as the authorities were not faced with an exceptional or unforeseen situation, a delay of fifteen months in admission to a custodial clinic was not acceptable. To hold otherwise would entail a serious weakening of the fundamental right to liberty to the detriment of the person concerned and thus impair the very essence of the right. Accordingly, there had been a violation of Article 5(1).

Article 41 – The Court awarded the applicant 6,000 euros in respect of non-pecuniary damage.
[NB: A similar judgment of the Court was delivered in the case of *Brand v. Netherlands*, no. 49902/99.]

PERSONS OF UNSOUND MIND
Deferral of discharge from detention in psychiatric hospital: *admissible*.

KOLANIS - United Kingdom (N° 517/02)
Decision 4.5.2004 [Section IV]

The applicant, who had been convicted of causing grievous bodily harm and found to be suffering from a mental illness, was detained in hospital. She subsequently applied for her discharge from detention. A review by a Mental Health Review Tribunal ("MHRT") took place in May 1999. Despite the contrary view of two psychiatrists, the MHRT concluded that the applicant was to be conditionally discharged on condition that she reside at the home of her parents and continue to take medication under proper psychiatric supervision. The discharge was deferred until arrangements had been made to meet these conditions. However, no psychiatrist or institution was found who was willing to supervise the applicant in accordance with the conditions imposed. The health authority concluded there were no further steps it could take. The applicant's application for judicial review was rejected by the High Court, which found that the health authority was not under an absolute duty to implement the MHRT conditions but rather to take all reasonable steps to attempt to satisfy those conditions.

In August 2000, a differently constituted MHRT considered the applicant's case afresh, concluding that the applicant should be conditionally discharged. After the necessary arrangements had been made to meet the conditions, the applicant was discharged from hospital in December 2000.
Admissible under Articles 5 and 13.

Article 5(5)

COMPENSATION
Absence of right to compensation in respect of unlawful detention: *violation*.

R. L. and M.-J. D. - France (N° 44568/98)
Judgment 19.5.2004 [Section III]
(see Article 5(1)(e), above).

ARTICLE 6

Article 6(1) [civil]

APPLICABILITY
Refusal of registration as candidate in presidential elections: *Article 6 not applicable.*

GULIYEV - Azerbaijan (N° 35584/02)
Decision 27.5.2004 [Section I]
(see Article 3 of Protocol No. 1, below)

RIGHT TO A COURT
Delay by the authorities in executing final judgments ordering restitution of property: *violation*.

PRODAN - Moldova (N° 49806/99)
Judgment 18.5.2004 [Section IV]

Facts: The applicant, whose parents' house had been nationalised by the Soviet authorities in 1946, lodged an action for the restitution of the house. In support of her claim she invoked a Law of 1992 enabling the recovery of confiscated or nationalised property. In a judgment of March 1997, the District Court found in favour of the applicant and ordered the restitution of the house. As the house had been divided into six apartments the court ordered the eviction of the tenants from all of the apartments; they were to be re-housed by the Municipal Council. The judgment became enforceable in August 1998, when it was upheld by the Supreme Court. However, the Municipal Council informed the applicant it could not execute the judgment due to lack of funds to construct apartments for the evicted tenants. The applicant lodged an action seeking damages for the delay in enforcement, which was rejected. She subsequently brought a new action claiming money from the Municipal Council in lieu of restitution of the apartments (in respect of five of these). In October 2000, the District Court partially amended the manner in which the initial judgment was to be enforced, ordering the Municipal Council to pay the applicant the market value for the five apartments. This judgment became enforceable in January 2001. The Municipal Council paid the applicant the legally stipulated

amount in November 2002. As regards the eviction of the tenants from the applicant's sixth apartment, the Municipal Council has to date still not enforced the March 1997 judgment on grounds of lack of funds.

Law: Government's preliminary objections – (i) non-exhaustion: the Government had not raised the applicant's failure to make use of two proceedings in the old Code of Civil Procedure at the stage of admissibility, nor had they sufficiently established the effectiveness of a new remedy in the new Civil Code: objection dismissed; (ii) victim status: the payment to the applicant in respect of five of the apartments had not involved any acknowledgement of the violations alleged; moreover, the initial judgment ordering eviction of all the tenants remained unenforced in respect of the sixth apartment; thus, the applicant could claim to be a victim: objection dismissed.

Article 6(1) – The execution of a judgment must be regarded as an integral part of the "trial" for the purposes of Article 6. It is not open to a State authority to cite lack of funds or alternative accommodation as an excuse for not honouring a judgment. A delay in the execution of a judgment may be justified in particular circumstances, but should not be such as to impair the essence of the right protected. In the instant case, the applicant should not have been prevented from benefiting from the success of litigation, which as regards the March 1997 judgment concerned the eviction of the occupants from all the apartments, and as regards the October 2000 judgment concerned the award of the market value of five of the apartments. By failing for years to take the necessary measures to comply with final judicial decisions, the authorities had deprived the provisions of Article 6(1) of all useful effect.
Conclusion: violation (unanimously).

Article 1 of Protocol No. 1 – The impossibility for the applicant to obtain the execution of both the March 1997 and October 2000 final judgments until much later constituted an interference with her right to peaceful enjoyment of her possessions. The failure to comply with these judgments meant that the applicant was prevented from receiving the money she could reasonably have expected to receive and from having the occupants evicted. The Government had not advanced any justification for this interference and the lack of funds and of alternative accommodation did not justify such an omission. Accordingly, there had been a violation of Article 1 of Protocol No. 1.
Conclusion: violation (unanimously).

Article 41 – The Court awarded the applicant 14,000 euros under both heads of damage. It reserved its decision under this Article in respect of the continuing situation concerning the non-restitution of the sixth apartment.

RIGHT TO A COURT
Delay in the enforcement of judgments: *admissible*

KONOVALOV - Russia (N° 63501/00)
Decision 27.5.2004 [Section I]

The applicant, who was a retired military serviceman and as such entitled to free housing under domestic legislation, applied for an apartment. As his request was refused, he brought an action against the town authority. In January 1996, the courts ordered that he be provided a free flat. The town authority did not comply with the judgment so the applicant brought a new action against it. In April 1998, the courts adopted a judgment ordering the town authority to pay the applicant a certain amount so that he could purchase a flat. The payment was made conditional on the town authority receiving funds from the State budget. The authorities subsequently informed the applicant that given a lack of funds they could not pay the compensation. In April 2000, the courts increased the amount of compensation which was to

be paid to the applicant (again making it subject to the receipt of funds from the State budget). This judgment was not executed either on account of lack of funds. In November 2000, the 1998 judgment was quashed on supervisory review (two and a half years after it had been adopted). In a fresh examination of the case, the applicant withdrew his action as he was assured he would be given free housing.

Admissible under Articles 6(1) and Article 1 of Protocol No. 1, as regards the judgment of April 1998.

Inadmissible under Articles 6(1) and Article 1 of Protocol No. 1, as regards the judgments of January 1996 and April 2000, as these complaints were either incompatible *ratione temporis* or out of time.

ACCESS TO COURT
Rejection of appeal on points of law as inadmissible on account of registrar not having signed it : *violation*.

BOULOUGOURAS - Greece (N° 66294/01)
Judgment 27.5.2004 [Section I]

Extract (Article 6(1)): "...The Court notes that the finding of inadmissibility reached in the instant case by the Court of Cassation penalised the applicant for a clerical error committed when his appeal was filed. The applicant could not be held responsible for that error. The Court considers that, given that the domestic legislation provides that the person who takes receipt of the appeal on points of law must also countersign the document containing the grounds of appeal, compliance with this condition is primarily the responsibility of the person authorised to take receipt of the appeal, in the instant case the registrar of the criminal court. This is particularly important since the domestic legislation does not provide that a copy of an appeal on points of law should be appellant or his counsel in every case, which would reduce the likelihood of overlooking any errors by the public authority authorised to take receipt of the appeal. Admittedly, the parties may request a copy of the said document on their own initiative but, in the Court's opinion, this possibility does not entail an obligation on the parties to proceedings to check whether the public authority which takes receipt of the appeal has correctly carried out all the procedures inherent in this role..."

ACCESS TO COURT
Refusal to recognise jurisdiction of courts in respect of a dispute concerning the right to use a religious building: *admissible*.

PAROISSE GRECO CATHOLIQUE SÂMBĂTA BIHOR – Romania (N° 48107/99)
Decision 25.05.2004 [Section II]
(see Article 9, below).

EQUALITY OF ARMS
Adoption of retroactive legislation during court proceedings involving the State: *no violation*.

OGIS-Institut Stanislas, OGEC St. Pie X et Blanche de Castille and others - France
(N° 42219/98 and N° 54563/00)
Judgment 27.05.2004 [Section I]

Facts: The applicants are management bodies (OGECs), each of which manages a private school under a partnership contract with the State. The State was responsible for teachers'

salaries and corresponding social-security contributions. A 1977 law established the principle of equality of treatment for teachers in private and state schools, particularly with regard to social-security measures; a decree was to determine the proportion of such payments which the State would assume in order to ensure this equalisation. Following the introduction of a supplementary pension scheme for teachers in private schools, such schools were obliged to make an additional social-security payment at a rate of 1.5%. However, the equalisation rule established the principle that the State was responsible for paying the social-security charges. Nonetheless, since private schools were not excluded from the payment of contributions, the management bodies brought proceedings against the State to obtain reimbursement of the contributions. In May 1992 a judgment by the *Conseil d'Etat* allowed an application for full reimbursement of these contributions at a rate of 1.5%, noting that the envisaged decree, which should have determined the State's share of contributions, had not been adopted. Following the judgment, the OGECs applied for reimbursement in full of the contributions. One OGEC won its claim. While the applicants' proceedings were pending, the legislature adopted section 107 of the Act of 31 December 1995, which was intended to settle, with retroactive effect, the question of the level of reimbursement to be borne by the State for those proceedings in which a final ruling had not been given. The Act provided for reimbursement by the State at a rate to be fixed by decree. A decree of 16 July 1996 fixed the rate at 0.062% and the applicants obtained reimbursement at that rate.

Law: Article 6(1) – When the applicants applied for reimbursement in full of the disputed contributions, they had not yet obtained judgment granting them a right to reimbursement in full, and the proceedings brought by them had not progressed beyond the appeal stage. Section 107 of the Act of 30 December 1995 had the officially recognised purpose of providing a financial settlement to the disputes to which the State was a party and of altering the outcome of the pending proceedings. In consequence, the applicants had been able to obtain the requested reimbursement only at the rate of 0.062%, rather than the anticipated 1.5%. Thus, the right to reimbursement as such had not been infringed by the legislative measure; only the level of such reimbursement was affected. Accordingly, the question arose whether, at the outset, the applicants had legitimately been able to claim reimbursement in full of the contributions. The judgment of May 1992 had set a "default" amount for the disputed reimbursements on account of the "position of the legislation in force at the material time". The applicants could not have failed to be aware that the State was not obliged to reimburse contributions at the rate of 1.5% and that this rate had been chosen by the *Conseil d'Etat* for pragmatic reasons alone and in order to fill a vacuum created by the lack of a decree fixing the State's proportion of the contribution. Consequently, the legislature had intervened in this case to correct a technical flaw in the law. By fixing the rate for reimbursement of social-security contributions and altering the outcome of the pending proceedings, the legislature had intended to fill a legal vacuum and re-establish parity and equality in the position of teachers working in private and state schools. In reality, by bringing proceedings, the outcome of which had been altered by the adoption of the Act of December 1995 and the decree of July 1996, the applicants had sought to obtain a windfall by taking advantage of a loophole in the regulations, and were aware, or ought to have been aware, that the State would for its part seek to remedy the legal shortcoming highlighted by the *Conseil d'Etat* in its 1992 judgment. In applying to the courts, the applicants had not therefore legitimately been able to claim full reimbursement of the contributions. In short, the legislature's intervention had been entirely foreseeable and had been clearly and compellingly justified in the general interest. In those conditions, the applicants could not legitimately complain of a breach of the principle of equality of arms.
Conclusion: no violation (unanimously).

Article 1 of Protocol No. 1 – The legislation required the State to reimburse the contributions paid by the OGECs, without exceeding what was required to comply with the principle of equalisation of the position of teachers in private and state education. Accordingly, the applicants had a definite right to payment from the State, in principle if not with regard to the

amount. However, the law had provided that the method of calculating the State's contribution would be fixed by decree. Accordingly, the proportion of social-security contributions assumed by the State in order to ensure equal treatment for teachers had not been fixed, given that no such decree existed; equally, the amount due to the OGECs had not been determined. The Court did not rule categorically on whether the applicants' claims constituted "possessions" within the meaning of the Convention, but accepted for the sake of argument that the applicants had acquired rights to reimbursement which were "equivalent" to "possessions". The State's participation was to have been fixed by decree, but this decree had not yet been adopted when the *Conseil d'Etat* had handed down its judgment in May 1992 and, in the absence of such a decree, fixed the rate of reimbursement at 1.5%. Consequently, the *Conseil d'Etat*'s judgment could not be considered a judicial decision having final effect which recognised and determined the claims of all French OGECs. In addition, when the applicants had applied to the courts, their expectation of obtaining reimbursement of the contributions had been "legitimate" only with regard to the proportion necessary for ensuring equal treatment between the private and state sectors. Further, the legislature's retrospective intervention had not infringed the applicants' right to reimbursement as such; it had merely fixed the value of the claim at less than the sum hoped for by the applicants. The Court was of the opinion that the general interest in dispelling all doubt as to the rate of reimbursement of the contributions that was necessary to ensure equal treatment had to be regarded as overriding and taking precedence over the applicants' interest in requesting full reimbursement of the contributions paid and thereby seeking to take advantage of a loophole in the regulations.
Conclusion: no violation (unanimously).

Article 6(1) and Article 1 of Protocol No. 1 taken together with Article 14 – The Court held that there was no need to examine separately these other complaints.

REASONABLE TIME
Numerous adjournments of hearing on account of repeated absence of applicant: *no violation*.

LIADIS - Greece (N° 16412/02)
Judgment 27.5.2004 [Section I]

Extract (Article 6(1)): "...With regard to the parties' conduct, the Court notes that the applicant's absence was the reason for all the adjournments of the case before the Athens Court of First Instance, with the exception of the hearing ... postponed on account of the lawyers' strike. Those adjournments, coupled with the excessive delay with which the applicant on each occasion requested that a new hearing date be fixed, were the cause of a delay of more than twenty years for which the State cannot not be held responsible. In particular, the Court notes that so long as the applicant showed no interest in resuming the proceedings before the Athens Court of First Instance, the latter had no room for manoeuvre. According to the principles governing the organisation of proceedings and the responsibility of the parties, set out in Articles 106 and 108 of the Code of Civil Procedure, progress in proceedings depends entirely on the parties' diligence; if the latter abandon the proceedings temporarily or definitively, the courts cannot of their own motion oblige them to resume proceedings. This situation cannot be compared with the case of ongoing proceedings, where the courts must ensure that they follow the proper course by, for example, acting attentively when asked to agree to a request for adjournment, hear witnesses or monitor the time-limits established for the preparation of an expert's report..."

Article 6(1) [criminal]

FAIR HEARING
Alleged failure to inform accused of proceedings prior to conviction *in absentia*: *violation*.

SOMOGYI - Italy (N° 67972/01)
Judgment 18.5.2004 [Section II]

Facts: The applicant is a Hungarian national. In the course of proceedings concerning drug trafficking in Italy, notice of the date for the preliminary hearing, translated into Hungarian, was served by registered post on the accused, a Hungarian citizen living in Hungary, the spelling of whose first name was not exactly the same as that of the applicant, and whose place and date of birth did not correspond to those of the applicant. The acknowledgment of receipt for the notice was returned to the registry of the court with a signature which, according to the applicant, was not his. Having failed to attend the preliminary hearing, the accused was declared to be unlawfully absent. In June 1999 the accused was sentenced *in absentia* to a term of imprisonment. The applicant was arrested in Austria. The Italian authorities considered that the person convicted in the judgment of June 1999 was in fact the applicant and ordered that the judgment be rectified to indicate the applicant's first name and his date and place of birth. The applicant was then extradited to Italy and imprisoned. He appealed against the judgment, claiming that he had been unaware of the proceedings against him. He pointed out that the address on the registered letter in question had been erroneous, and stated that the signature on the acknowledgment of receipt for the notice fixing the date of the hearing had not been his; he asked for an assessment by a handwriting expert. Applications for reopening of the proceedings were unsuccessful. The Court of Cassation considered, *inter alia*, that there was no evidence to show that notice of the date of the trial had been received by someone sharing the applicant's name and living at an address which was similar or almost identical to the applicant's.

Law: Article 6 – The Court was unable to ascertain whether the applicant had received notice of the date for the preliminary hearing. The applicant had on several occasions disputed the authenticity of the signature attributed to him, which was the only means of proving that the accused had been informed of the opening of proceedings. The applicant's allegations had not been immediately devoid of merit. Nonetheless, the Italian courts had dismissed all his appeals and refused to reopen the proceedings or to extend the time-limit for filing an appeal, and had not checked whether the signature on the acknowledgement of receipt was indeed the applicant's, despite the latter's requests to that effect, although that question had been at the very heart of the case. The right to a fair trial imposed an obligation on every national court to check whether the accused had had an opportunity to take cognisance of the proceedings against him if, as in the instant case, a dispute arose on a ground that did not immediately appear to be manifestly devoid of merit. In the absence of scrupulous supervision to determine beyond any reasonable doubt whether the applicant's decision not to appear had been unequivocal, the methods used by the Italian authorities had not enabled the standard required by Article 6 to be reached. Although the applicant had allegedly learnt of the proceedings through a journalist, this was not sufficient to meet the obligations arising under the Convention.
Conclusion: violation (unanimously).

Article 41 – The Court considered that the finding of a violation in itself constituted just satisfaction for the non-pecuniary damage suffered by the applicant. It awarded him a sum in respect of costs and expenses.

The Court added that where it found that an applicant had been convicted despite a potential infringement of his right to participate in his trial, the most appropriate form of redress would, in principle, be to grant him a retrial or to reopen the proceedings without undue delay and in compliance with the requirements of Article 6 of the Convention.

FAIR HEARING
Conviction partly based on statements by co-accused who made an arrangement with the prosecution: *inadmissible.*

CORNELIS - Netherlands (N° 994/03)
Decision 25.5.2004 [Section II]

The applicant was charged with participation in a criminal organisation and drug trafficking after Z. declared that he had been involved in a shipment of cocaine. Z. subsequently signed an arrangement with the public prosecution services which stipulated that in exchange for further truthful statements on the role of the applicant in drug trafficking, a recommendation for his partial pardon would be made. On the basis of additional evidence of Z. the Regional Court convicted the applicant and sentenced him to six years' imprisonment. The applicant filed an appeal and requested that all the documents related to the proceedings in which Z. had been convicted, as well as those related to the arrangement he had concluded with the prosecution services, be included in his case file. He further requested that tape-recorded conversations between Z. and a public prosecutor be heard in public. The applicant's requests were rejected. The Court of Appeal acknowledged some shortcomings in the proceedings but not of such a nature that the applicant's right to a fair trial had been harmed. It quashed the Regional Court's judgment and convicted the applicant anew, sentencing him to nine years' imprisonment.

Inadmissible under Article 6 (1) (access to documents): Whilst there is an obligation under this provision for the prosecution authorities to disclose all material evidence against an accused, the documents in respect of which the applicant sought access could not, as such, be regarded as material evidence. The applicant had had ample opportunity to examine the lawfulness of the arrangement between Z. and the prosecution services in the course of the appeal proceedings. Thus, the decisions of the Court of Appeal refusing him access to such documents had not deprived him of a fair hearing: manifestly ill-founded.

Inadmissible under Article 6(1) (lawfulness of the arrangement): Although the use of statements by witnesses in exchange for immunity could raise a question as to the fairness of proceedings, in the instant case both the applicant and domestic courts had been aware of the arrangement and had extensively questioned Z. to test his reliability and credibility. It could therefore not be said that the applicant had been convicted on the basis of evidence in respect of which he had not been able to exercise his defence rights: manifestly ill-founded.

Article 6(3)(c)

DEFENCE WITH LEGAL ASSISTANCE
Detention incommunicado for 11 days: *no violation*.

YURTTAS - Turkey (Nº 25143/94 and Nº 27098/95)
Judgment (final) 27.5.2004 [Section III]

Extract (Article 6(3)(c) – (no assistance from a lawyer during police detention)): "[The] Court notes that, in the instant case, the applicant was not questioned by the police during his detention and made no statement to the police which could subsequently have been used against him in criminal proceedings. In addition, it notes that the applicant's statement before the public prosecutor at the State Security Court had no impact on the criminal proceedings against him, given that he had an opportunity to make a statement on the same day before a judge and later before the State Security Court itself, assisted by his lawyers. It also notes that the prosecutor's accusations to the effect that the applicant was seeking to bring about the collapse of the State through the use of force (Article 125 of the Criminal Code) were accepted by neither the first-instance court nor the Court of Cassation. Finally, it notes that the national criminal courts, which convicted the applicant on the basis of his public statements, recorded by various technical means, drew no conclusions from his silence during his detention and attached no weight to this fact in their deliberations.
The Court does not exclude the possibility that the lack of legal assistance during police detention may raise issues under Article 6 of the Convention. However, it considers that the circumstances of the instant case do not enable it to conclude that the applicant's defence rights were irretrievably prejudiced during his detention and that he was deprived of a fair trial on account of the lack of communication with a lawyer during this period.
Consequently, there has been no violation of Article 6 of the Convention on account of the lack of assistance from a lawyer during police detention."

Article 6(3)(d)

SECURE ATTENDANCE OF WITNESSES
Refusal of appeal court to hear defence witnesses examined at first instance: *violation*.

DESTREHEM - France (N° 56651/00)
Judgment 18.5.2004 [Section II]

Facts: The applicant was prosecuted on suspicion of damaging an unmarked police car with a hammer during a demonstration. Two police officers who were inside the car had identified the applicant as the person having caused the damage. Four witnesses present at the scene, who were called by the applicant, gave evidence on his behalf to the court of first instance. The court concluded that there was serious doubt as to the perpetrator of the impugned acts, acquitted the applicant and dismissed the complaints by the police officers who had applied to join the proceedings as civil parties. The latter appealed. The applicant asked the court of appeal to order examination of the defence witnesses who had been heard by the first-instance court. The court refused, on the ground that their statements to the first-instance court had been duly recorded in the case-file available to the court of appeal, and that those statements were sufficient. It further held that there was a fundamental contradiction between the evidence of one of the defence witnesses and that of the three others and that, in the absence

of a witness capable of refuting the evidence of the police officers, and having regard to the genuineness and sincerity of the officers' evidence, there was no reason to doubt their accusations. Accordingly, the court overturned the judgment, found the applicant guilty as charged and sentenced him, *inter alia*, to eight months' imprisonment, of which five months were suspended, two years' probation and one year's deprivation of civil, political and family rights, a penalty it described as "harsh" because the applicant had deliberately damaged the police car. The applicant appealed unsuccessfully on points of law.

Law: Article 6(1) and (3)(d) – The court of appeal had ruled essentially on the basis of evidence given at first instance. This evidence was included in the record of the hearing and it was on that basis alone that the court of appeal had examined the statements by the defence witnesses. Accordingly, the court of appeal had grounded the applicant's conviction on a fresh interpretation of the evidence given by witnesses it had not itself examined. The applicant had thus been found guilty on the basis of testimony which the court of first instance had found sufficiently unconvincing to justify an acquittal. In those circumstances, the fact that the court of appeal had refused to hear witnesses whose re-examination had been requested by the applicant before finding him guilty had considerably restricted his defence rights. Such a restriction on the rights of the defence had rendered the proceedings unfair.
Conclusion: violation (unanimously).

Article 41 – The Court made an award for non-pecuniary damage and for costs and expenses.

ARTICLE 7

RETROACTIVITY
Alleged retroactive application of a law on recidivism: *admissible*.

ACHOUR - France (N° 67335/01)
Decision 11.3.2004 [Section I]
(see Article 34, below).

ARTICLE 8

PRIVATE LIFE
Absence of no smoking areas for detainees: *communicated*.

APARICIO BENITO - Spain (N° 36150/03)
Decision 4.5.2004 [Section IV]
(see Article 2, above).

FAMILY LIFE
Prolonged placement of young child with French-speaking family, with a prohibition on the Russian mother speaking to her in her mother tongue: *communicated*.

ZAKHAROVA - France (N° 57306/00)
[Section IV]

The applicant is a Russian national, who was also acting on behalf of her daughter, who was born in 1995 to a French father and has French and Russian nationality. They live in France.

After her divorce, the applicant lived with her daughter. She stated that, until the age of three and a half years, her daughter spoke mainly in Russian. In December 1998, following a complaint by the mother alleging assault against her daughter, the children's judge placed the child with social services and authorised the applicant to see her daughter in the presence of a third party. The mother's insistent and invasive behaviour towards the child, who showed signs of distress, caused the authorities to reduce the mother's visits and telephone calls. As the mother's command of French was poor, a Russian interpreter was appointed; subsequently, in June 1999 the children's judge obliged the applicant to speak to her daughter in French, restricting the use of Russian to customary expressions of affection. At the end of September 1999 the applicant's access rights were suspended, and then restored for one visit per month as of April 2000. The meetings were to be held in French. In December 2000 the judge decided that the meetings would take place in the presence of a Russian interpreter. In April 2001 the children's judge noted that the mother sometimes used Russian words which her daughter, then aged almost six, did not understand, and that the daughter, who spoke French with increasing ease, used French words which the mother did not understand. The mother made an unsuccessful request for her daughter to attend Russian classes. The child's placement had been extended several times since the finding that there was no case to answer, delivered following the above-mentioned criminal complaint, and in March 2003 it was extended until March 2005; the mother was granted fortnightly visiting rights. The applicant's appeals have been dismissed.
Communicated under Article 8.

FAMILY LIFE
Refusal to extend residence permits of a retired Russian military officer and his wife: *communicated*.

NAGULA - Estonia (N° 39203/02)
Decision 11.5.2004 [Section IV]

The applicant, who is a Russian national and former military officer of the Russian armed forces, arrived in Estonia in 1982 with his wife, son and mother-in-law. He was discharged from the military forces in 1995, and the year after obtained a temporary residence permit in Estonia for five years. In 1997, the applicant benefited from an aid programme provided by the United States from which he got an apartment in Sochi, Russia. In 2001, when he and his wife applied for extensions of their residence permits, these were refused. The reasons given by the Minister of the Interior were, firstly that the applicant had served as a member of the armed forces of a foreign country, and secondly that he and his wife had committed themselves to leaving Estonia by receiving accommodation abroad within the framework of an international aid programme. The applicant's complaints were dismissed by the courts, relying on the Foreigners' Act and upholding the arguments invoked by the Minister of Interior. The applicant alleges that the refusal to extend their residence permits violated his rights under Article 6, 8, 13, 14, Articles 2 and 3 of Protocol No. 4 and Article 1 of Protocol No. 7.
Communicated under Article 8.

HOME
Eviction of a family from a local authority gypsy caravan site: *violation.*

CONNORS – United Kingdom (N° 66746/01)
Judgment 27.5.2004 [Section IV]

Facts: The applicant and his family, who are gypsies, were granted a licence in 1998 to occupy a plot at a gypsy site run by a local authority. Apart from one year in which they had

moved into a rented house, they had lived at the site permanently for thirteen years. One of the conditions in their licence for the occupation of the plot was that no nuisance was to be caused by the occupier, his guests or any member of his family. A year later the applicant's adult daughter was also granted a licence to occupy the adjacent plot. The local authority complained of the unruly conduct of the applicant's children and guests and warned him that the incidents of nuisance could jeopardise his occupation of the plot. In January 2000, notice to quit was served on the family, requiring them to vacate both plots. No detailed reasons were given. In March 2000, the local authority issued two sets of proceedings for summary possession, relying on domestic legislation which established that the contractual right of occupiers of gypsy caravan sites could be determined by four week's notice. The applicant's application for leave to apply for judicial review was refused by the High Court. In June 2000, the County Court granted a possession order. As the family had not given up possession on the date indicated in the court order, the local authority commenced enforcement of the eviction in August 2000. The applicant and his son were arrested for obstruction during the eviction operation. The family took up occupation on land nearby which was also owned by the local authority and where the presence of gypsies was sometimes tolerated. The local authority commenced new eviction proceedings against another group of gypsies on this piece of land and included the applicants as "unknown persons". The applicant alleges that following the eviction from this land he and his family were required to move on repeatedly. He subsequently separated from his wife, who chose to move into a house with the younger children. The son who stayed with him did not return to school as they were unable to remain in any place for more than two weeks, and his own health problems were aggravated.

Law: Article 8 – The parties agreed that the eviction of the applicant and his family from the caravan site disclosed an interference with his Article 8 rights which was "in accordance with the law" and pursued the legitimate aim of protecting the rights of other occupiers of the site. It was not for the Court to assess if the incidents of nuisance complained of by the local authority were true or not. The local authority had relied on domestic legislation which permitted it to give the applicant 28 days' notice before regaining summary possession without having to prove any breach of licence. The central issue was therefore whether the applicable legal framework provided the applicant with sufficient procedural protection of his rights. Given the seriousness of the interference with the applicant's rights, which required weighty reasons of public interest, the State's margin of appreciation was to be correspondingly narrowed. The Government argued that exempting local authority gypsy sites from security of tenure provisions was necessary to address their nomadic lifestyle needs and anti-social behaviour on sites. However, most local authority sites were nowadays residential in character. The mere fact that anti-social behaviour occurred on local authority gypsy sites could not either, in itself, justify a summary power of eviction. The Court was not persuaded there were any particular features about the local authority gypsy sites which would render their management unworkable if they were required to give reasons for evicting long-standing occupants. As the local authority was not required to establish any substantive justification for the eviction of the applicant, judicial review could not provide an opportunity for an examination of the facts in dispute between the parties. Even allowing for the margin of appreciation which was to be afforded to the State in such circumstances, the Government had not sufficiently demonstrated the need for a statutory scheme which had permitted the summary eviction of the applicant and his family. The power to evict without the burden of reasons liable to be examined as to their merits by an independent tribunal had not been shown to respond to any specific goal. The eviction of the applicant had not been attended by the requisite procedural safeguards and thus could not be regarded as justified by a "pressing social need" or proportionate to the legitimate aim pursued. There had accordingly been a violation of Article 8.

Article 41 – The Court awarded the applicant 14,000 euros in respect of non-pecuniary damage.

ARTICLE 9

FREEDOM OF RELIGION
Refusal to allow use of local church for worship: *admissible.*

PAROISSE GRECO CATHOLIQUE SÂMBĂTA BIHOR – Romania (N° 48107/99)
Decision 25.05.2004 [Section II]

The applicant church is a local parish affiliated to the Greek Catholic (Uniate) Church, which was outlawed in 1948 and granted recognition again in 1990; its assets had been confiscated by the State in 1948 and transferred to the Orthodox Church. In 1996, the applicant church brought an action against the Sâmbăta Orthodox Church for the purpose of receiving authorisation to use the local church building, which had belonged to it prior to 1948, for religious services. The applicant church won its case at first instance and on appeal. However, the court of appeal found against it in a judgment of January 1998, declaring its request inadmissible. In accordance with the prevailing case-law of the Supreme Court of Justice, the court of appeal ruled that the courts did not have jurisdiction to settle disputes concerning property and usage rights for religious buildings.

Admissible under Article 6(1), Article 9 and Article 1 of Protocol No. 1, taken separately and together with Article 14, and under Article 13. The Court noted that it could examine of its own motion a complaint under an Article which the applicant had not relied on, and that a "complaint" was characterised by the fact that it denounced a situation. It considered that, *inter alia* in the statement of facts in the application form, the applicant had set out complaints which, in substance, were based on Article 1 of Protocol No. 1 and Articles 13 and 14, taken together with Article 6 and Article 1 of Protocol No. 1. The Government's objection that the application was out of time was therefore dismissed.

ARTICLE 10

FREEEDOM OF EXPRESSION
Award of damages against an association for the protection of the environment following its criticism of a mayor and its denunciation of administrative malpractice: *violation*.

VIDES AIZSARDZIBAS KLUBS - Latvia (N° 57829/00)
Judgment 27.5.2004 [Section I]

Facts: The applicant association is a Latvian association for environmental protection. It adopted a resolution addressed to the relevant authorities expressing its concerns about the conservation of an area of dunes along a stretch of coastline. The resolution, which was published in a regional newspaper, contained, *inter alia*, allegations that the chair of the district council, I.B., had signed illegal decisions and certificates, thus facilitating illegal construction work in the area of the dunes, and had deliberately failed to comply with instructions to halt the work. The resolution asked the relevant authorities to carry out checks. The Environmental Protection Act authorised non-governmental organisations to give their views on this subject and to issue requests to the relevant authorities. Checks were carried out and several instances of illegal activity were detected in the municipality in question. I.B. had provided a statement with "erroneous details" of the distance to the sea, which had enabled a building to be constructed inside the protected area. I.B. claimed that the statements in the

resolution were incorrect and brought an action for compensation against the applicant organisation, requesting the publication of an official retraction. The relevant court found in favour of I.B. The court of appeal, to which the applicant association appealed, found that there was no proof that I.B. had illegally signed documents facilitating illegal building work in the dunes. Even if I.B. had provided a document containing incorrect references to distance, the municipality had nonetheless itself undertaken to put an end to the violation; as the impugned document was considered a collective decision of the district council, it could not engage I.B.'s personal responsibility. Consequently, the court of appeal gave judgment against the applicant association. The Senate of the Supreme Court dismissed an appeal on points of law by the applicant association.

Law: Article 10 – The order to pay damages, made against the applicant association in a civil action, constituted interference with the exercise of its right to freedom of expression. This interference, prescribed by law, had been grounded on the protection of "the reputation and rights of others". The Court had therefore to determine whether it had been necessary in a democratic society. The resolution had been intended to draw the relevant authorities' attention to a sensitive matter of public interest, namely malpractice in an important sector managed by local government. As a non-governmental organisation specialising in this field, the applicant association had thus fulfilled the role of "watchdog" conferred on it by the Environmental Protection Act. Like the role of the press, such participation by a voluntary association was essential in a democratic society. In order to fulfil its mandate, an association had to be able to report facts that were likely to interest the public and thus contribute to transparency in the public authorities' actions. The applicant association had further complied with its obligation to demonstrate the truth of the factual allegations for which it had been criticised. Bearing in mind the relatively wide powers conferred on mayors by Latvian legislation, and the particular scope of the limits of acceptable criticism of a political figure, the fact of criticising the mayor for the policy of the local authority as a whole could not be described as abuse of freedom of expression. In addition, the description of I.B.'s behaviour as "illegal" was a value judgment and its truthfulness could not be proven. Finally, the Government could not seriously argue that the applicant association had in substance accused I.B. of having committed a criminal offence, and it would be completely contrary to the purpose and spirit of Article 10 of the Convention to grant the national authorities a right to interpret the applicant association's spoken or written statements improperly, thereby giving them a meaning that had clearly never been intended. In short, the reasons put forward by the Government did not suffice to demonstrate that the interference complained of was "necessary in a democratic society".
Conclusion: violation (unanimously).

Article 41 – The Court made an award in respect of non-pecuniary damage. It also made an award in respect of costs and expenses.

FREEDOM OF EXPRESSION
Definitive suspension of distribution of a book containing information relating to a late Head of State and covered by medical confidentiality: *violation*.

PLON (SOCIETE) - France (N° 58148/00)
Judgment 18.5.2004 [Section II]

Facts: The applicant company had acquired publishing rights in respect of a book entitled "*Le Grand Secret*" from a journalist and a Dr Gubler, who had been private physician to François Mitterrand, President of the French Republic, for several years. The book dealt with the cancer suffered by President Mitterrand from the beginning of his first term of office, about which the public was not officially informed until much later. The book described the relations between President Mitterrand and his doctor, and the difficulties Dr Gubler had

encountered in concealing the illness, given that the President had undertaken to issue a health bulletin every six months. The book was published on 17 January 1996, about ten days after President Mitterrand's death. The following day, the urgent applications judge, to whom the President's widow and children had applied, issued an interim injunction prohibiting its continued distribution. The court of appeal upheld the injunction and gave the applicants a month to apply to a trial court, failing which the measure would cease to have effect on expiry of the said period. The applicants applied to the trial court for an order prohibiting resumption of the publication of the book. In a judgment of October 1996 on the merits of the case, the Paris *tribunal de grande instance* maintained the ban on distribution of the book and ordered Dr Gubler, the applicant company and its legal representative jointly to pay damages to the President's widow and children. The court of appeal upheld the continued ban on distribution of the book, as well as the order to pay damages. It noted that the book disclosed information covered by medical confidentiality and emphasised that, under Article 10 of the Convention, the exercise of freedom of expression could be subject to certain restrictions. The applicant company's appeal on points of law was dismissed.

Law: Article 10 – The applicant company had suffered "interference" as a result both of the interim injunction and the subsequent order prohibiting distribution of the book which it had published, and of the order to pay damages on account of this publication. Those measures had been reasonably foreseeable and had pursued legitimate aims, namely "to prevent the disclosure of information received in confidence" and to protect "the rights of others". As to their necessity in a democratic society, the Court made a distinction between the interim and the final measure. The former had been justified, since it had been imposed barely eleven days after President Mitterrand's death, when emotion among politicians and the public was still strong, the damage done by the book to the President's reputation was serious and its distribution so close to the time of his death could only deepen the suffering of his family, who had appealed to the urgent applications judge in a context of grief. The interference had also been proportionate to the aims pursued since the validity of the measure had been reasonably limited in time.
Conclusion: no violation (unanimously).
On the other hand, the decision in October 1996 to maintain the ban on the book's distribution, although based on relevant and sufficient reasons, had no longer met a "pressing social need". This ruling had come nine and a half months after the President's death; the context was different from that in which the urgent applications judge had ruled. The greater the period of time which had elapsed, the less pressing the need to prevent the family's legitimate grief from being deepened; at the same time, the public interest in discussion of the history of the President's two terms of office was taking precedence over the requirement to protect the President's right to medical confidentiality. Once the latter had been breached, the passage of time had to be taken into account in considering a measure as serious as a blanket ban on a book. Moreover, when the final measure was taken, 40,000 copies of the book had already been sold and it had been published on the internet and been the subject of much comment in the media, so that most of the information it contained was no longer confidential. Accordingly, preserving medical confidentiality could no longer constitute a preponderant imperative. In short, the continuation of the ban beyond October 1996 had no longer been justified by a "pressing social need".
Conclusion: violation (unanimously).

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

FREEDOM OF EXPRESSION
Temporary prohibition on distribution of book: *no violation*.

PLON (SOCIETE) - France (N° 58148/00)
Judgment 18.5.2004 [Section II]
(see above).

FREEDOM OF EXPRESSION
Dismissal of teacher on account of racist and hate writings: *inadmissible*.

SEUROT - France (N° 57383/00)
Decision 18.5.2004 [Section II]

The applicant taught history and geography in a secondary school. He wrote an article which was published in the school's internal newspaper and distributed to all the pupils and their parents. Some of the published remarks were considered to be violently and offensively racist and likely to incite hatred. For those reasons, the applicant was convicted of the offence of incitement to racial hatred, and his teaching contract was terminated. The applicant appealed unsuccessfully.

Inadmissible under Article 10: The specific duties and responsibilities incumbent on teachers, who symbolised authority in the eyes of their pupils, also applied with regard to their related activities in the school in which they taught. Education for democratic citizenship, one of the Council of Europe's major tasks, was essential for fighting against racism and xenophobia. Such education presupposed the mobilisation of responsible players, specifically teachers. In the instant case, the termination of the applicant's teaching contract represented interference, prescribed by law, which had pursued the legitimate aim of "protection of the reputation" and "of the rights of others". The indisputably racist content of the applicant's article was incompatible with his duties and responsibilities. The serious measure taken against him had not been disproportionate. The interference had been "necessary in a democratic society": manifestly ill-founded.

LICENSING OF BROADCASTING ENTERPRISES
Refusal of a broadcasting licence to a television company which had been on the air for a number of years: *communicated*.

MELTEX LTD - Armenia (N° 37780/02)
Decision 13.5.2004 [Section III]

The applicant, which is a television company, was granted a five-year broadcasting licence in 1997 by the Ministry of Communication. A Law on Television and Radio was adopted in 2000 introducing a new licensing procedure and entrusting the granting of licences to a Commission on Radio and Television. The applicant company's licence was renewed by the Commission until licensing competitions took place. In February 2002, several competitions were announced, including one for the frequency which was until then being used by the applicant. The applicant and two other companies with no previous experience in the field of television submitted bids. Prior to the announcement of the winners, the applicant instituted proceedings against the Radio and Television Commission, alleging it had exceeded its authority in defining the terms and conditions of the competition and had breached its freedom of expression. In April 2002, when one of the other companies was announced as winner, the applicant lodged an additional claim with the Commercial Court requesting that the Commission provide reasons for its decision. The claims were rejected as was the

subsequent appeal on points of law and procedure to the Court of Cassation. The day the winner had been announced, the electricity supply of the applicant company's transmitter was cut and its broadcasts ceased. The applicant company submitted bids for other frequency competitions which were subsequently announced, but it was on each occasion refused a licence.
Communicated under Article 10.

ARTICLE 11

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

CHRISTIAN DEMOCRATIC PEOPLE'S PARTY - Moldova (N° 28793/02)
Decision 11.5.2004 [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 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 its activities. Although the ban was subsequently lifted, the applicant party challenged this measure in the courts, arguing that the party could not be held liable for the actions of its members. The Court of Appeal dismissed the applicant's action, finding that the meetings of voters had been unauthorised demonstrations and thus that the Ministry of Justice's sanction had been legal. The Supreme Court of Justice upheld this ruling.
Communicated under Articles 10 and 11.

ARTICLE 13

EFFECTIVE REMEDY
Impossibility of obtaining payment of compensation due by the State: *admissible*.

TÜTÜNCÜ and others - Turkey (N° 74405/01)
Decision 13.05.2004 [Section III]

The three applicants, who were temporary municipal employees, had been laid off in 1999 without receiving either salary or compensation from the municipality. They were awarded compensation in a court ruling of November 1999, to which default interest was to be added at the statutory rate. They brought enforcement proceedings against the municipality. On the date of the Court's decision, they had received no payments. Two of the applicants had applied for attachment of the municipality's bank account and of certain immovable property, but the law provided that assets belonging to a municipality and assets intended for public use could not be attached. The applicants complained of the delay in payment of their compensation, the inadequacy of the default interest rate applied to State debts and the lack of a remedy in domestic law to oblige the municipality to pay the compensation due.
Admissible under Article 13 and Article 1 of Protocol No. 1.

ARTICLE 34

VICTIM
Annulment of additional penalty of exclusion order, by virtue of a new 2003 law: *loss of victim status*.

ACHOUR - France (N° 67335/01)
Decision 11.3.2004 [Section I]

The applicant is an Algerian citizen who was born in France. In 1997 he was sentenced by a criminal court to eight years' imprisonment and excluded from France for ten years for contravening the drugs legislation in 1995. The court of appeal extended the sentence to twelve years' imprisonment and upheld the exclusion order. The court considered that, having already been sentenced in 1984 to three years in prison for the same offence, the applicant could be classified as a recidivist in law under Article 132-9 of the new Criminal Code, which entered into force on 1 March 1994. The applicant appealed on points of law, arguing in particular that the finding that he was to be classified in law as a recidivist contravened the principle of the application of successive criminal laws, the court of appeal having, in his opinion, retrospectively applied the harsher provisions of the new law. The Court of Cassation dismissed the appeal in February 2000. Subsequently, pursuant to the Immigration Control, Residence of Aliens and Nationality Act (Law no. 2003-1119) of 26 November 2003, which reformed the system of "double punishment", the additional penalty excluding the applicant from France was lifted as of right.
Admissible under Article 7.

Inadmissible under Article 8: The above-mentioned Act of 26 November 2003 protected four categories of foreigners from expulsion and exclusion from France. The Court considered that, by reforming the system of "double punishment", regard being had to the categories of persons against whom exclusion orders could no longer be made, this Act necessarily precluded the risk of such orders being incompatible with Article 8 of the Convention for persons belonging to those categories. In the instant case, although an exclusion order had indeed been made against the applicant and had had final effect, no steps had been taken to start enforcing it and the order had been lifted automatically as of right. Accordingly, the domestic authorities had acknowledged, at least in substance, the violation of Article 8 by preventing exclusion orders from being made against persons in the applicant's position, and had afforded redress for the violation by allowing such orders to be lifted as of right where, as in the instant case, they had been made before the relevant law had come into force. Accordingly, the applicant could no longer claim to be the "victim", within the meaning of Article 34, of the alleged violation of Article 8.

VICTIM
Belated payment of debt, following enforcement procedure: *retention of victim status*.

METAXAS - Greece (Nº 8415/02)
Judgment 27.5.2004 [Section I]

Extract (Article 34): "... the applicant was obliged to resort to enforcement proceedings in order to obtain repayment of his debt. In the Court's opinion, it is inappropriate to require an individual who has obtained the right to payment of a debt by the State, following legal proceedings, to bring subsequent enforcement proceedings to obtain satisfaction. It follows

that the belated payment of the sums due to the applicant through enforcement proceedings cannot remedy the national authorities' failure over a protracted period to comply with judgment no. 550/2000 and does not provide sufficient satisfaction..."

ARTICLE 35

Article 35(1)

EXHAUSTION OF DOMESTIC REMEDY (Russia)
Supervisory review procedure: *inadmissible*.

DENISOV - Russia (N° 33408/03)
Decision 6.5.2004 [Section I]

The applicant brought proceedings against a local authority. The Town Court, on two occasions, refused to initiate the proceedings unless the applicant accompanied his action with a court fee. This position of the Town Court was upheld on appeal by the Regional Court in December 2002. On an unspecified date, the applicant lodged a supervisory review complaint against these decisions, which was refused.

Article 35(1): As supervisory review was more akin to a retrial and, once launched, could last indefinitely, to admit such a procedure as a remedy to be exhausted would create uncertainty and render the six-month rule nugatory. The date to take into account in calculating the six-month period was therefore the date of the "final" appeal decision at the cassation level, that is, the decision of the Regional Court of December 2002 (not the date of the decision to refuse supervisory review), which implied the application was out of time.

SIX MONTH PERIOD
Six month issue raised by the Court of its own motion: *inadmissible*.

BELAOUSOF and others - Greece (N° 66296/01)
Judgment 27.05.2004 [Section I]

Extract (Article 35(1)): The six-month rule, "in reflecting the wish of the Contracting Parties to prevent past decisions being called into question after an indefinite lapse of time, serves the interests not only of the Government but also of legal certainty as a value in itself. It marks out the temporal limits of supervision carried out by the Court and signals to both individuals and State authorities the period beyond which such supervision is no longer possible. It is therefore not open to the Court to set aside the application of the six-month rule solely because a Government has not made a preliminary objection based on it..."

SIX MONTH PERIOD
Complaints formulated "in substance" in the application.

PAROISSE GRECO CATHOLIQUE SÂMBĂTA BIHOR – Romania (N° 48107/99)
Decision 25.05.2004 [Section II]
(see Article 9, below).

Article 35(3)

ABUSE OF THE RIGHT OF PETITION
Defamatory allegations about the integrity of certain judges of the European Court and members of its Registry: *inadmissible*.

ŘEHÁK - Czech Republic (N° 67208/01)
Decision 18.5.2004 [Section II]

The applicant, who was an anti-communist dissident, was detained in 1980 and criminal proceedings were opened against him. Although the proceedings were discontinued just a few months later, the decision was not served on the applicant until 1995. Prior to this – in 1991 – the applicant instituted proceedings for damages against the State, which are still pending. The applicant, who had previously submitted an application to the Court which had been declared inadmissible by a committee, made serious defamatory accusations against members of the Registry and judges in his correspondence with the Court concerning the present complaint about the length of proceedings.

Inadmissible under Article 35(3): Although an application may in principle only be rejected as abusive if it was knowingly based on untrue facts, in the present case the allegations were intolerable and misplaced, had exceeded the bounds of normal criticism and had amounted to contempt of court. Even supposing that the applicant's complaint had been substantiated, the applicant's conduct had been contrary to the right of individual petition.

ARTICLE 41

JUST SATISFACTION
Reopening of criminal proceedings.

SOMOGYI - Italy (N° 67972/01)
Judgment 18.5.2004 [Section II]
(see Article 6(1) [criminal], above).

ARTICLE 1 OF PROTOCOL No. 1

POSSESSIONS
Debts of an undetermined amount due by the State.

OGIS-Institut Stanislas, OGEC St. Pie X and Blanche de Castille and Others - France
(N° 42219/98 and N° 54563/00)
Judgment 27.05.2004 [Section I]
(see Article 6(1) [civil], above).

PEACEFUL ENJOYMENT OF POSSESSIONS
Reimbursement at a lower rate than that expected by the applicants, following retroactive legislative intervention during court proceedings involving the State: *no violation*.

OGIS-Institut Stanislas, OGEC St. Pie X and Blanche de Castille and others - France
(N° 42219/98 and N° 54563/00)
Judgment 27.05.2004 [Section I]
(see Article 6(1) [civil], above).

PEACEFUL ENJOYMENT OF POSSESSIONS
Delay by the State in paying sums together with interest at a lower rate than the rate of inflation: *admissible*.

TÜTÜNCÜ and others – Turkey (N° 74405/01)
Decision 13.05.2004 [Section III]
(see Article 13, above).

PEACEFUL ENJOYMENT OF POSSESSION
Belated payment, following enforcement proceedings, of a pension awarded by a final decision: *violation*.

METAXAS - Greece (N° 8415/02)
Judgment 27.5.2004 [Section I]
(see Article 34, above)

DEPRIVATION OF PROPERTY
Claim for restitution of confiscated property: *inadmissible*

KAREL DES FOURS WALDERODE - Czech Republic (N° 40057/98)
HARRACH - Czech Republic (N° 77532/01)
Decisions 18.5.2004 [Section II]

The applicants, whose applications had been declared inadmissible on 4 March and 27 May 2003 respectively, challenged the Court's decisions and the impartiality of Registry staff. The inadmissibility decisions adopted by the Court were, however, confirmed and the requests to reopen the cases were dismissed.
[See summaries in Case-law Reports Nº 51 (March 2003) and Nº 53 (May 2003).]

ARTICLE 3 OF PROTOCOL No. 1

STAND FOR ELECTION
Refusal of registration as candidate in presidential elections: *inadmissible*.

GULIYEV - Azerbaijan (N° 35584/02)
Decision 27.5.2004 [Section I]

The applicant, who currently resides in the United States, held key posts between 1990 and 1993 in the country's oil sector, as well as in Government and Parliament. In 1996, he

resigned from office and left the country. While abroad, he founded a political party (DPA) with headquarters in Baku. In 1998, the Prosecutor General indicted the applicant for misappropriation of public funds, abuse of power and fraud. In 2000, a District Court ordered his detention on remand pending trial. As a condition for returning to Azerbaijan and standing trial, the applicant asked for the replacement of the detention on remand by house arrest pending trial. His petition and subsequent appeal were dismissed. The criminal proceedings against the applicant are pending and the detention order remains unimplemented as he is still abroad. Moreover, in the summer of 2003 his political party, the DPA, nominated him as a candidate for the presidential elections. The Central Election Commission rejected the applicant's nomination.

Inadmissible under Article 6(1): The dispute concerned the applicant's political right and did not have any bearing on his "civil rights and obligations": incompatible *ratione materiae*.

Inadmissible under Article 3 of Protocol No. 1: This provision only applied to the "choice of the legislature." In this case, the presidential elections could not be construed as falling within the meaning of that term: incompatible *ratione materiae*.

Other judgments delivered in May

Article 3

Toteva - Bulgaria (Nº 42027/98)
Judgment 19.5.2004 [Section I]

ill-treatment of 67-year old woman by police and lack of effective investigation – violation.

Article 5(3) and Article 6(1)

Cezary Sobczuk - Poland (Nº 51799/99)
Judgment 25.5.2004 [Section IV]

length of detention on remand and length of criminal proceedings – friendly settlement.

Article 6(1)

Kadlec and others – Czech Republic (Nº 49478/99)
Judgment 25.5.2004 [Section II]

dismissal of constitutional complaint on ground of failure to comply with formality – violation.

Rychliccy – Poland (Nº 51599/99)
Gęsiarz – Poland (Nº 9446/02)
Judgments 18.5.2004 [Section IV]

Szakály - Hungary (Nº 59056/99)
Judgment 25.5.2004 [Section II]

Domańska - Poland (Nº 74073/01)
Hajnrich - Poland (Nº 44181/98)
Judgments 25.5.2004 [Section IV]

length of civil proceedings – violation.

Dostál – Czech Republic (Nº 52859/99)
Judgment 25.5.2004 [Section II]

length of eight sets of civil proceedings – violation (three sets)/no violation (five sets).

Lalousi-Kotsovos – Greece (Nº 65430/01)
Palaska – Greece (Nº 8694/02)
Judgments 19.5.2004 [Section I]

length of administrative proceedings – violation.

Hourmidis – Greece (Nº 12767/02)
Judgment 19.5.2004 [Section I]

length of proceedings before the Audit Court – violation.

Granata - France (no. 3) (Nº 39634/98)
Judgment 27.5.2004 [Section I]

length of administrative proceedings – friendly settlement.

Gadliauskas - Lithuania (Nº 62741/00)
Judgment 25.5.2004 [Section III]

length of criminal proceedings – friendly settlement.

Akçakale - Turkey (Nº 59759/00)
Judgment 25.5.2004 [Section IV]

independence and impartiality of State Security Court and length of criminal proceedings – violation.

Article 6(1) and (3)

Yavuz - Austria (Nº 46549/99)
Judgment 27.5.2004 [Section I]

length of administrative criminal proceedings and failure to hear accused personally – violation.

Articles 6(1) and 10

Rizos and Daskas - Greece (Nº 65545/01)
Judgment 27.5.2004 [Section I]

application of special procedure for defamation via the press, minimum level of damages, and alleged failure of court to give adequate reasons – no violation; award of damages against journalists for defamation of prosecutor – violation.

Article 6 and Article 1 of Protocol No. 1

Steno Monti - Italy (Nº 63833/00)
Judgment 27.5.2004 [Section I]

staggering of granting of police assistance to enforce eviction orders, prolonged non-enforcement of judicial decision and absence of possibility of court review of prefectoral decisions – friendly settlement.

Kaya and others - Turkey (Nº 36564/97)
İ.I. - Turkey (Nº 38420/97)
H.B. and others - Turkey (Nº 38883/97)
Baransel and others - Turkey (Nº 41578/98)
Judgments 27.5.2004 [Section III]

delay in payment of compensation for expropriation – violation.

Articles 9 and 14

Lotter and Lotter - Bulgaria (Nº 39015/97)
Judgment 19.5.2004 [Section I]

withdrawal of residence permits of Jehovah's Witnesses – friendly settlement (payment of compensation and annulment of decisions).

Article 1 of Protocol No. 1

Koçak and others - Turkey (Nº 42432/98)
Cıbır - Turkey (Nº 49659/99)
Judgments 19.5.2004 [Section III]

delays in payment of compensation for expropriation – violation.

Judgments which have become final

Article 44(2)(b)

The following judgments have become final in accordance with Article 44(2)(b) of the Convention (expiry of the three month time limit for requesting referral to the Grand Chamber) (see Information Note Nos. 60-61):

VOGGENREITER - Germany (N° 47169/99)
Judgment 8.1.2004 [Section III]

GRELA – Poland (N° 73003/01)
Judgment 13.1.2004 [Section IV]

KÖNIG – Slovakia (N° 39753/98)
D.P. – Poland (N° 34221/96)
G.K. – Poland (N° 38816/97)
Judgments 20.1.2004 [Section IV]

SORRENTINO PROTA – Italy (N° 40465/98)
BELLINI – Italy (N° 64258/01)
Judgments 29.1.2004 [Section I]

MENHER - France (N° 60546/00)
Judgment 3.2.2004 [Section II]

PARISI and others – Italy (N° 39884/98)
Judgment 5.2.2004 [Section I]

D.P. - France (N° 53971/00)
Judgment 10.2.2004 [Section II]

PUHK – Estonia (N° 55103/00)
Judgment 10.2.2004 [Section IV]

VENKADAJALASARMA – Netherlands (N° 58510/00)
THAMPIBILLAI – Netherlands (N° 61350/00)
Judgments 17.2.2004 [Section II]

YIARENIOS – Greece (N° 64413/01)
Judgment 19.2.2004 [Section I]

CSEPYOVÁ – Slovakia (N° 67199/01)
Judgment 24.2.2004 [Section IV]

GÖRGULÜ – Germany (N° 74969/01)
Judgment 26.2.2004 [Section III]

Statistical information[1]

Judgments delivered	May	2004
Grand Chamber	0	6
Section I	17(18)	69(75)
Section II	8	53(61)
Section III	9(10)	58(63)
Section IV	7	48(49)
former Sections	0	2
Total	**41(43)**	**236(256)**

Judgments delivered in May 2004					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	0	0	0	0	0
Section I	14(15)	3	0	0	17(18)
Section II	8	0	0	0	8
Section III	8(9)	1	0	0	9(10)
Section IV	6	1	0	0	7
Total	**36(38)**	**5**	**0**	**0**	**41(43)**

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

Judgments delivered in 2004					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	5	0	0	1	6
former Section I	0	0	0	0	0
former Section II	1	0	0	1	2
former Section III	0	0	0	0	0
former Section IV	0	0	0	0	0
Section I	57(59)	10(14)	1	1	69(75)
Section II	45(53)	6	1	1	53(61)
Section III	54(59)	4	0	0	58(63)
Section IV	41(42)	6	1	0	48(49)
Total	**203(219)**	**26(30)**	**3**	**4**	**236(256)**

Decisions adopted		May	2004
I. Applications declared admissible			
Section I		28	116(124)
Section II		22	49(50)
Section III		14(16)	64(67)
Section IV		17(38)	59(82)
Total		**81(104)**	**288(323)**
II. Applications declared inadmissible			
Grand Chamber		0	1
Section I	- Chamber	14	60(62)
	- Committee	631	2509
Section II	- Chamber	11	35
	- Committee	428	1643
Section III	- Chamber	3	19
	- Committee	227	995
Section IV	- Chamber	9(20)	40(51)
	- Committee	212	1272
Total		**1535(1546)**	**6574(6587)**
III. Applications struck off			
Section I	- Chamber	8	30
	- Committee	10	32
Section II	- Chamber	5	16
	- Committee	8	28
Section III	- Chamber	62	89
	- Committee	1	9
Section IV	- Chamber	5	21
	- Committee	4	17
Total		**103**	**242**
Total number of decisions[1]		**1719(1753)**	**7104(7152)**

1. Not including partial decisions.

Applications communicated	May	2004
Section I	64	236(254)
Section II	30	159(183)
Section III	41	202(203)
Section IV	53	110
Total number of applications communicated	**188**	**707(750)**

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