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COUNCIL OF EUROPE

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

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Decision 19.5.2005 [Section II]

The applicants' sons were passengers in a car which was involved in a chase by the police. Three police officers received an order to stop the car for breach of various road-traffic regulations. In the initial part of the chase, the policemen fired a few warning shots in the air. However, when the car suddenly changed direction, the policemen fired some shots towards the car. A second police vehicle also got involved in the chase and one of the officers fired a shot towards the car's wheels. Soon after, the car was forced to stop, and the driver was arrested while trying to flee. The policemen found the bodies of the applicants' sons in the car, whose deaths were instantly confirmed on arrival of a medical team. Criminal proceedings were opened against the driver of the car for manslaughter in regard to the deaths of the applicants' sons. The applicants submitted their civil claims in these proceedings. The courts, at three levels of jurisdiction, acquitted the driver of the offence of manslaughter, noting that the deaths had been the result of "lawful actions of a third person who had used an official weapon". The applicants' civil claims against the driver were not examined. The criminal proceedings which were opened against one of the police officers, holding him responsible for the deaths, were discontinued by the prosecutor, emphasising that the swerving movements of the car had been the cause of the deaths. The District court rejected the applicants' appeals, concluding that the police officer had not exceeded the requirements of the relevant legal provisions in using his gun.
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ARTICLE 3

TRAITEMENT INHUMAIN
Imposition of death sentence following proceedings found to be unfair: *violation*.

ÖCALAN - Turkey (Nº 46221/99)
Judgment 12.5.2005 [Grand Chamber]

Facts: In October 1998 the applicant, a Turkish national and the former leader of the Workers' Party of Kurdistan ("the PKK"), was expelled from Syria. After staying in various countries, he was put up at the Greek Ambassador's residence in Nairobi, Kenya. On 15 February 1999 he was separated from the Greek Ambassador and taken by a Kenyan official to a Turkish-registered aircraft at the Nairobi Airport in which Turkish officials were waiting to arrest him. The Turkish courts had issued seven warrants for his arrest and a wanted notice had been circulated by Interpol. The applicant was transferred to Turkey and taken into custody in a prison on the island of İmralı on 16 February 1999, following which he was interrogated by members of the security forces. On 22 February 1999 the public prosecutor at the Ankara State Security Court questioned him. On 23 February 1999 he appeared before a judge of the State

Security Court who ordered his detention pending trial. In an indictment submitted in April 1999 the public prosecutor accused the applicant of carrying on activities with a view to bringing about the secession of part of the national territory and of having formed and led an armed organisation to that end. He sought the death penalty pursuant to Article 125 of the Criminal Code. During the trial the Constitution was amended so as to exclude military members from the composition of the state security courts. A civilian judge was therefore appointed to replace the military judge on the panel which was hearing the applicant's case. The applicant was found guilty of the offences as charged and was sentenced to death. On 25 November 1999 the Court of Cassation upheld that judgment.
Meanwhile, on 13 November 1999 the European Court decided to apply Rule 39 of the Rules of Court, requesting the Turkish Government to take all necessary steps to ensure that the death penalty was not carried out, so as to enable the Court to proceed effectively with the examination of the admissibility of the application. In September 2001 Delegates of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) visited the prison where the applicant was being held and made certain recommendations. Legislation introduced in August 2002 abolished the death penalty in peacetime and consequential amendments were made to the Criminal Code. In September 2002 the Turkish Government declared to the European Court that the applicant's death sentence could no longer be executed. In October 2002 the Ankara State Security Court commuted his sentence to one of life imprisonment. A Chamber of the European Court (First Section) rendered judgment on 12 March 2003 (see CLR 51). In November 2003 Turkey ratified Protocol No. 6 to the Convention concerning the abolition of the death penalty.

Law: Article 5 (4): As regards the special circumstances in which the applicant found himself while in police custody, the Grand Chamber saw no reason to disagree with the Chamber's finding that the circumstances of the case made it impossible for him to have effective recourse to the remedy referred to by the Government, namely to challenge, under the Code of Criminal Procedure, the lawfulness of his detention before a district court judge or to challenge an order by the public prosecutor's office that the applicant should remain in custody. The Grand Chamber further agreed that a claim for compensation under Law no. 466 could not constitute proceedings of the type required by Article 5(4).
Conclusions: Government's preliminary objection in respect of the complaints under Article 5(1), 4(3) and 5(4) dismissed; violation of Article 5(4) (unanimously).

Article 5(1): The applicant had been arrested by members of the Turkish security forces inside a Turkish-registered aircraft in the international zone at Nairobi Airport. Directly after being handed over to the Turkish officials by the Kenyan officials he had come under effective Turkish authority and had therefore been brought within the “jurisdiction” of that State for the purposes of Article 1 of the Convention, even though in this instance Turkey had exercised its authority outside its territory. The applicant's arrest and detention had been carried out in accordance with arrest warrants issued by the Turkish criminal courts with a view to bringing him before “the competent legal authority on reasonable suspicion” of having committed an offence. The arrest and detention had therefore been in accordance with Turkish domestic law. As for the applicant's interception in Kenya immediately before he was handed over to Turkish officials, various aspects of the case led the Grand Chamber to accept the Government's argument that at the material time the Kenyan authorities had decided either to hand the applicant over to the Turkish authorities or to facilitate such a handover. The applicant had not adduced evidence enabling concordant inferences to be drawn that Turkey had failed to respect Kenyan sovereignty or to comply with international law in the present case. Consequently, the applicant's arrest in February 1999 and his detention had to be regarded as having been in accordance with “a procedure prescribed by law” for the purposes of Article 5(1).
Conclusion: no violation (unanimously).

Article 5(3): Like the Chamber, the Grand Chamber could not accept the Government's argument that adverse weather conditions were largely responsible for the period of seven days it took for the applicant to be brought before a judge.
Conclusion: violation (unanimously).

Article 6(1) – composition of the State Security Court: The question whether a court is seen to be independent does not depend solely on its composition when it delivers its verdict. In order to comply with the requirements of Article 6 regarding independence, the court in question must be seen to be independent of the executive and the legislature at each of the three stages of the proceedings, namely the investigation, the trial and the verdict (those being the three stages in Turkish criminal proceedings according to the Government). Moreover, when a military judge has participated in one or more interlocutory decisions that continue to remain in effect in the criminal proceedings concerned, the accused has reasonable cause for concern about the validity of the entire proceedings, unless it is established that the procedure subsequently followed in the state security court sufficiently disposed of that concern. More specifically, where a military judge has participated in an interlocutory decision that forms an integral part of proceedings against a civilian the whole proceedings are deprived of the appearance of having been conducted by an independent and impartial court. In the applicant's case a military judge had been present at two preliminary hearings and six hearings on the merits when interlocutory decisions were taken. None of the decisions had been renewed after the replacement of the military judge and all had been validated by the replacement judge. In those circumstances, the Grand Chamber could not accept that the replacement of the military judge before the end of the proceedings disposed of the applicant's reasonably held concern about the trial court's independence and impartiality.
Conclusion: violation (eleven votes to six).

Article 6(1) taken together with Article 6(3)(b) and (6)(3)(c): The Grand Chamber agreed with the Chamber that there had been a violation of Article 6(1), taken together with Article 6(3)(b) and (c) in that the applicant had been denied a fair trial: he had been denied access to a lawyer while in police custody; he had been unable to communicate with his lawyers out of the hearing of third parties; he had been unable to gain direct access to the case file until a very late stage in the proceedings; restrictions had been imposed on the number and length of his lawyers' visits; and his lawyers had not been given proper access to the case file until late in the day. The overall effect of these difficulties had restricted the rights of the defence to such an extent that the principle of a fair trial, as set out in Article 6, had been contravened.
Conclusion: violation (unanimously).

Article 2, Article 14 taken together with Article 2, and Article 3 – implementation of the death penalty: The death penalty had been abolished in Turkey and the applicant's sentence had been commuted to one of life imprisonment. Furthermore, on 12 November 2003 Turkey had ratified Protocol No. 6 concerning the abolition of the death penalty.
Conclusion: no violation (unanimously).

Article 3 read against the background of Article 2 – imposition of the death penalty following an unfair trial: The Grand Chamber endorsed the Chamber's view that imposing a death sentence on a person after an unfair trial was to subject that person wrongfully to the fear that he would be executed. The fear and uncertainty as to the future generated by a sentence of death, in circumstances where there existed a real possibility that the sentence would be enforced, had to give rise to a significant degree of human anguish. Such anguish could not be dissociated from the unfairness of the proceedings underlining the sentence which, given that human life was at stake, became unlawful under the Convention. The risk that the death sentence imposed on the applicant would be executed had been a real one and had continued for more than three years, even though there had been a moratorium on the implementation of the death penalty in Turkey since 1984, the Turkish Government had complied with the Court's interim measure pursuant to Rule 39 to stay the applicant's execution and the applicant's file had not been sent to Parliament for approval of the death sentence as was then required by the Turkish Constitution. Like the Chamber, the Grand Chamber had found that the applicant had not been tried by an independent and impartial tribunal and that there had been a breach of the rights of the defence under Article 6(1), taken together with Article 6(3)(b) and (c). The death penalty had thus been imposed on the applicant following an unfair procedure which could not be considered compatible with the strict standards of fairness required in cases involving a capital sentence. Moreover, he had had to suffer the consequences thereof for more than three years. The imposition of the death sentence following an unfair trial amounted to inhuman treatment.
Conclusion: violation (thirteen votes to four).

Article 3 – conditions of transfer and detention: With regard to the applicant's transfer from Kenya to Turkey the Grand Chamber endorsed the Chamber's finding that while he had been handcuffed, blindfolded, filmed by a video camera and presented to the press wearing a blindfold, it had not been established "beyond all reasonable doubt" that his arrest and the conditions in which he had been transferred had exceeded the usual degree of humiliation that was inherent in every arrest and detention, or that it had attained the minimum level of severity required for Article 3 to apply. – As for the conditions of the applicant's ongoing detention on the island of İmralı, the Grand Chamber, while concurring with the CPT's recommendations that the long-term effects of his relative social isolation should be attenuated by giving him access to the same facilities as other high security prisoners in Turkey (such as television and telephone contact with his family), agreed with the Chamber that the general conditions in which he was being detained had not thus far reached the minimum level of severity required to constitute inhuman or degrading treatment within the meaning of Article 3.
Conclusion: no violation (unanimously).

Article 34 *in fine:* As regards the applicant's inability to communicate with his lawyers in Amsterdam following his arrest, the Grand Chamber noted that a group of representatives composed of lawyers chosen by the applicant subsequently applied to the Court and put forward all his allegations concerning the period in which he had had no contact with his lawyers. Hence there was nothing to indicate that he had been hindered in the exercise of his right of individual application to any significant degree. The Government's regrettable delay in replying to a request for information from the Chamber did not, in the special circumstances of the case, prevent the applicant from setting out his complaints about the proceedings against him. Accordingly, he had not been obstructed in the exercise of his right of individual application.
Conclusion: no violation (unanimously).

Article 41: The Grand Chamber unanimously agreed with the Chamber that the findings of a violation of Articles 3, 5 and 6 constituted sufficient just satisfaction for any damage sustained by the applicant. It awarded 120,000 euros to cover part of the costs incurred in the proceedings before the Court.

INHUMAN TREATMENT
Conditions of transfer following arrest outside the respondent State, and subsequent detention: *no violation*.

ÖCALAN - Turkey (N° 46221/99)
Judgment 12.5.2005 [Grand Chamber]
(see Article 3, above).

INHUMAN OR DEGRADING TREATMENT
Severe injuries caused by a smoke bomb thrown from a very short distance by the anti-rioting police: *communicated*.

IRIBARREN PINILLOS - Spain (N° 36777/03)
Decision 31.5.2005 [Section IV]

The applicant was seriously injured by the impact of a smoke bomb thrown by the riot police at very close range during violent clashes at a demonstration. A criminal investigation was opened on account of the seriousness of his injuries. Although it was noted that the applicant had taken 459 days to recover, the investigation ended with a partial finding that there was no case to answer because, while there was sufficient evidence that an offence of assault had been committed, it was impossible to identify who had thrown the device or been an accomplice as the police officers who had given evidence as suspects had not been present at the time of the incident. The applicant was registered as disabled with a degree of permanent disability assessed at 37%. He brought actions for damages against the State. The higher courts considered that the State could not be held liable for the incident because the applicant had himself taken

part in the violent and unlawful clashes in which the smoke bomb had been thrown. The Supreme Court held that the police must have been throwing smoke bombs for hours at demonstrators who were barricading the road with fire, so that the applicant had himself contributed to the dangerous situation of which he had ultimately been the victim, and concluded that the police's reaction had not been disproportionate and that the applicant's injuries had been accidental. The *Audienca Nacional* had previously held that the authorities were liable for the disproportionate action by the police in throwing the smoke bomb at the applicant's head at very close range.
Communicated under Articles 3 and 8.

DEGRADING TREATMENT
Gynaecological examinations whilst in police custody on suspicion of membership of an illegal organisation: *communicated*.

SIZ - Turkey (Nº 895/02)
Decision 26.5.2005 [Section III]

On 24 May 1999, the applicant was taken into police custody on suspicion of membership of an illegal organisation (the Revolutionary People's Liberation Party-Front). The same day she was taken to three different hospitals to undergo a gynaecological examination in order to establish her virginity status. Four days later she was taken again to the hospital for another examination. She did not give her consent during any of these occasions, so the doctors did not perform the examinations. The applicant was held on detention on remand from 30 May 1999 until 11 July 2000, when she was convicted by the State Security Court for her continued engagement in the activities of the referred illegal organisation, and sentenced to 12 years' six months' imprisonment. In the applicant's appeal to the Court of Cassation, which was rejected, she also referred to her ill-treatment in custody. The applicant complained under articles 3, 5, 6, 7, 9, 10 and 14.
Communicated under Article 3.

ARTICLE 5

Article 5(1)

LAWFUL ARREST OR DETENTION
Arrest by Turkish agents on a Turkish plane in the international zone of a Kenyan airport following the applicant's interception by Kenyan officials: *no violation*.

ÖCALAN - Turkey (Nº 46221/99)
Judgment 12.5.2005 [Grand Chamber]
(see Article 3, above)

ARTICLE 6

Article 6(1) [civil]

APPLICABILITY
Proceedings before Cathedral Chapter deciding to transfer priest of a State Church from one parish to another: *admissible.*

AHTINEN - Finland (N° 48907/99)
Decision 31.5.2005 [Section IV]

The applicant had been employed by the Evangelical Lutheran Church (a State Church in Finland) as a parish priest in Rovaniemi for some ten years when the Cathedral Chapter issued him with a warning and eventually decided to transfer him to another parish some 100 kilometres from his home. The applicant had been consulted in writing about the intended transfer and had stated his opposition thereto. As no ordinary appeal lay open he lodged an extraordinary appeal with the Supreme Administrative Court, alleging that the Cathedral Chapter had not been impartial as the Vicar of the Parish of Rovaniemi, who was also the chairperson of the local Church Council, had been present when the transfer had been decided. The applicant also claimed that he had not been heard properly prior to the decision. The Supreme Administrative Court invited the Cathedral Chapter to submit observations in reply and communicated these to the applicant, who submitted a rejoinder. As to the allegation of partiality, he submitted that the Cathedral Chapter's meeting on the question of his transfer had not been preceded by any written document, which meant that his transfer had been based solely on deliberations in which the Vicar of the Parish of Rovaniemi had taken part. The Supreme Administrative Court upheld the Cathedral Chapter's decision without examining the merits of the case.

Article 35(1): The Government argued that the applicant had lodged his application more than six months after the Cathedral Chapter's decision, whereas the applicant maintained that the six months' period had begun to run from the Supreme Administrative Court's decision in response to his extraordinary appeal. The Court observed that no ordinary appeal lay open and accepted, in the particular circumstances, that the six months' period should be counted from the Supreme Administrative Court's decision.

Admissible under Article 6(1) (alleged partiality of the Cathedral Chapter and allegedly unfair proceedings; question of applicability of Article 6 joined to the merits). *Inadmissible* (manifestly ill-founded) under Article 8 of the Convention (alleged violation of the applicant's right to respect for his family life) as well as under Article 13 of the Convention and Article 2 of Protocol No. 4.

FAIR HEARING
Court delays and failure to enforce contact orders in custody proceedings: *inadmissible*.

M.A. - United Kingdom (Nº 35242/04)
Decision 26.4.2005 [Section IV]
(see Article 8, below).

FAIR HEARING
Deficiencies in administrative and judicial proceedings concerning the annulment of the readmission of a lawyer to a Bar association: *violation*.

BUZESCU – Romania (Nº 61302/00)
Judgment 24.5.2005 [Section II]
(see Article 1 of Protocol No. 1, below).

IMPARTIAL TRIBUNAL
Presence of Vicar during Cathedral Chapter's deliberations leading to transfer of priest from one State Church parish to another: *admissible.*

AHTINEN - Finland (Nº 48907/99)
Decision 31.5.2005 [Section IV]
(see above, under Applicability).

Article 6(1) [criminal]

ACCESS TO COURT
Applicant's appeal declared inadmissible for non-respect of a time-limit although delay was attributable to State organs: *violation*.

KAUFMANN - Italy (Nº 14021/02)
Judgment 19.5.2005 [Section III]

Facts: In the course of civil proceedings, the applicant was required to notify the parties within a period of ninety days that he had appealed to the Court of Cassation. Some of the parties lived abroad and were notified of the appeal after the period had expired. The applicant sought an extension of the time-limit or an assurance that the appeal would not be dismissed for failure to comply with it; the steps he had had to take himself had been completed before the period had expired and only those steps which were the responsibility of the State authorities regarding notification in foreign countries had been completed out of time. The Court of Cassation declared the appeal inadmissible on the ground that the applicant had not complied with the binding time-limit he had been set.

Law: Article 6(1) – The applicant had carried out all the tasks assigned to him in good time, seventeen days before the expiry of the relevant period. However, the notification had taken place after the period had expired. The delay had related to the subsequent procedure for notification abroad, in which an Italian bailiff transmitted the file to the Ministry of Justice of the country concerned, which was responsible for handing over the documents. That stage of the subsequent notification procedure was beyond the control of a private individual. Nevertheless, the Court of Cassation had refused to extend the time allowed. That particularly strict application of a procedural rule had penalised the applicant to an unreasonable extent, since he had been *de facto* held partly responsible for the delays caused both by the Italian bailiffs and by the foreign authorities. In those circumstances, the decision to dismiss his appeal as being out of time had amounted to an unjustified restriction on his right of access to a court.
Conclusion: violation (unanimously).

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

FAIR HEARING
Alleged failure to carry out an adequate criminal investigation, depriving the applicants of their right to bring a civil action to establish liability and recover damages: *admissible*.

KALANYOS and Others - Romania (Nº 57884/00)
Decision 19.5.2005 [Section III]
(see Article 8, below).

FAIR HEARING
Self-incriminating statements allegedly made while being detained in an environment deliberately designed to be coercive and to exert psychological pressure: *inadmissible*.

LATIMER - United Kingdom (Nº 12141/04)
Decision 31.5.2005 [Section IV]

The applicant, a former member of the Ulster Defence Regiment (UDR), was convicted in 1986, along with three others, of murder. He claims that he was convicted on the basis of admissions which he made when arrested on 29 November 1983, but from which he retracted the following day. Likewise, he complains that he only obtained access to his solicitor after seven days of detention at Castlereagh Holding Centre. The trial judge found that the confession statements had been made freely. The Court of Appeal rejected the appeals of the applicant and his co-defendants on three occasions. The last time in 2004, after the Criminal Cases Review Commission had referred the case back to the Court of Appeal on the basis of their concerns about a report on the applicant's psychological vulnerability during detention and interrogation, and fresh evidence that witness A., who had given evidence stating that she had seen the applicant as a gunman, had a psychiatric history. The Court of Appeal considered that whilst more caution would have been necessary in accepting A.'s evidence, it still did not find that she had invented the whole incident. As to the applicant's vulnerability, this was not supported by the applicant's conduct during the interviews and trials. Finally, as to the denial of access to a solicitor during interrogation, the Court of Appeal observed that the Human Rights Act did not apply retrospectively to convictions before it came into force. Moreover, there was no mention in the custody records that the applicant had requested to see a solicitor.

Inadmissible under Article 6(1) and 6(3)(c): The applicant had not submitted any evidence showing that he had been prevented from consulting a solicitor during his detention. As to the essence of his complaint that he had made the incriminating statements as a result of the coercive environment at Castlereagh, the Court found no reason to depart from the assessment of the Court of Appeal, which after examining the applicant's confessions on three occasions in full adversarial proceedings, concluded that he was not of such vulnerability or had been subject to pressure during his detention, as to render unfair the reliance on the admissions. Consequently, notwithstanding the subsequent criticism made of the Castlereagh Holding Centre by the Committee for the Prevention of Torture, there was no indication the applicant had not received a fair trial: manifestly ill-founded.

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

ÖCALAN - Turkey (Nº 46221/99)
Judgment 12.5.2005 [Grand Chamber]
(see Article 3, above).

Article 6(2)

APPLICABILITY
Statements on applicant's guilt expressed in a procedure in which he was not accused but which took place in parallel to another procedure in which he did have this quality: *Article 6 applicable*.

DIAMANTIDES - Greece (N° 2) (N° 71563/01)
Judgment 19.5.2005 [Section I]

Facts: While criminal proceedings were pending against the applicant, the charges against him and the acts he was alleged to have committed were mentioned in a television programme. Considering himself to have been defamed, the applicant lodged a complaint. Most of the acts referred to in the statements he complained of constituted the offences for which he had been prosecuted. The domestic courts which dealt with the defamation proceedings instituted by the applicant considered that the statements in issue were truthful and that there had been no defamation. They found against the applicant in decisions which intimated that he had committed the offences. However, the applicant had either been acquitted of the offences in question with final effect or the criminal proceedings concerning them were still in progress.

Law: Article 6(2) – *Applicability*: The Government submitted that Article 6(2) was not applicable because the applicant had not been charged with an offence in the defamation proceedings complained of. However, although the statements as to his guilt had been made in judicial proceedings in which he had not been the defendant, those proceedings had taken place at the same time as and in connection with the criminal proceedings in which he had been charged. Article 6(2) was applicable.
Presumption of innocence: In the defamation proceedings the applicant had been *de facto* declared guilty of particular offences either before his guilt had been established by the criminal court responsible for examining all the relevant evidence, or despite the fact that he had been acquitted with final effect by the competent criminal court. The courts which had dealt with the defamation proceedings had used extremely vague and absolute terms that left no doubt that the applicant had indeed committed criminal offences, even though he had either already been acquitted of them or still faced charges.
Conclusion: violation (unanimously).

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

PRESUMPTION OF INNOCENCE
Court decisions reproaching applicant for committing infractions for which he had not been judged yet or acquitted of: *violation*.

DIAMANTIDES - Greece (N° 2) (N° 71563/01)
Judgment 19.5.2005 [Section I]
(see above).

PRESUMPTION OF INNOCENCE
Prime Minister's statements to media regarding investigation into suspected offences committed by senior judges: *inadmissible.*

ARRIGO and VELLA - Malta (N° 6569/04)
Decision 10.5.2005 [Section IV]

The applicants, two judges of the Criminal Court of Appeal, had been suspected*, inter alia*, of having accepted a sum of money in exchange for reducing a prison sentence in a case before them. During the investigation the Prime Minister called a press conference and issued a press release stating, *inter alia*, that days before a judgment of the Court of Appeal, it "[had] become known" that contacts had been made

on behalf of the accused with the (named) applicants so that the prison term to which the accused had been condemned be reduced by four years in return for money; that judgment had been given as allegedly had been agreed; and that after the judgment had been rendered "it [had] resulted" that money had been paid to the applicants.
The applicants were charged before the Court of Magistrates sitting as a Court of Criminal Inquiry but requested that the criminal proceedings be stayed while the Civil Court (First Hall), in its constitutional jurisdiction, would examine their complaint that the press conference and the surrounding publicity had prejudiced their rights to a fair trial and to the presumption of innocence. The Court of Criminal Inquiry referred the case to the Civil Court in so far as it concerned the press conference but rejected the applicants' allegations regarding the alleged prejudice suffered because of the publicity given to the statements of the Prime Minister. The Civil Court held that the declarations at the press conference could not be considered as statements of guilt; declared that the applicants' fundamental rights had not been breached; and directed the Court of Criminal Inquiry to continue the criminal proceedings. Following the applicants' appeal to the Constitutional Court it revoked the impugned decision and declared *inter alia* that there had been a violation of the applicants' rights to a fair trial and to be presumed innocent. It further ordered that a copy of its judgment be placed in the records of the criminal proceedings pending against the applicants. In his press release the Prime Minister had used the words "it became known" and "it resulted" which had been incompatible with the required caution and a clear declaration that the facts of which the applicants were accused had actually taken place, thus suggesting that the Prime Minister was considering the applicants guilty. This also resulted from some extracts of press articles which showed that the reservations made by the Prime Minister at the end of the press conference did not have much effect on public opinion which was *de facto* encouraged to believe that the accused had committed a criminal offence. Subsequently the Court of Criminal Inquiry rejected the applicants' request that the trial be suspended pending a decision from the European Court.
The applicants complained under Article 6(1) that their right to be tried by an impartial and independent tribunal had been violated; that the presumption of innocence guaranteed by Article 6(2) had not been respected; and that the violations of Article 6 in their case had not been redressed in an effective manner.

Article 6(1): According to the information available, the proceedings were still pending at first instance. Whereas it is not impossible that a particular procedural element could be so decisive that the fairness of the proceedings could be determined before they have come to an end, the applicants' submissions did not disclose any such circumstances: *manifestly ill-founded.*

Article 6(2): The Constitutional Court had declared that, by reason of the expressions used by the Prime Minister, the required caution had not been observed and that it had been suggested to the public that the applicants were to be considered guilty. This had led the highest jurisdiction in Malta to find a breach of the principle of the presumption of innocence and to order that its judgment be brought to the attention of the tribunal called upon to determine the criminal charges. This measure was aimed at providing redress for the violations found and at ensuring that all the safeguards contained in the Criminal Code were scrupulously applied. The highest court in Malta had thus made clear that the applicants' guilt or innocence should be established only on the basis of the evidence produced during the trial, thereby seeking to place the applicants, as far as possible, in the position they would have been in had the requirements of Article 6 not been disregarded. As the national authorities had acknowledged in a sufficiently clear way the failure to respect Article 6(2) and also had afforded sufficient redress the applicants could no longer claim to be victims within the meaning of Article 34: *incompatible ratione personae*.

Article 13: The applicants had the possibility of introducing a constitutional complaint concerning the alleged violation of their rights to a fair trial and to be presumed innocent. The Constitutional Court had not only found a breach of Article 6 but had ordered measures aimed at providing redress for the violations of the presumption of innocence and of the right to a fair trial. It had also sought to place the applicants, as far as possible, in the position they would have been in had the requirements of Article 6 not been disregarded: *manifestly ill-founded.*

Article 6(3)(b)

ADEQUATE TIME AND FACILITIES
Restrictions on detainee's access to criminal file, and late disclosure to lawyers, obliging them to respond hurriedly to a very extensive file: *violation*.

ÖCALAN - Turkey (N° 46221/99)
Judgment 12.5.2005 [Grand Chamber]
(see Article 3, above).

Article 6(3)(c)

DEFENCE THROUGH LEGAL ASSISTANCE
Denial of access to a lawyer for almost 7 days during custody, followed by restrictions on the number and length of consultations; lack of possibility for detainee to speak with lawyers outwith hearing of guards: *violation*.

ÖCALAN - Turkey (N° 46221/99)
Judgment 12.5.2005 [Grand Chamber]
(see Article 3, above).

ARTICLE 8

PRIVATE LIFE
Placement of microphones by police in a private place in the context of a judicial investigation: *violation*.

VETTER - France (N° 59842/00)
Judgment 31.5.2005 [Section II]

Facts: Anonymous witnesses had accused the applicant of homicide. As the applicant regularly went to a friend's home, the police installed listening devices there with the permission of the investigating judge. On the strength of the conversations that were recorded, the applicant was arrested and prosecuted for homicide. He applied to have the recording declared inadmissible in evidence, arguing in particular that it had not been provided for by law. The domestic courts considered that Articles 81, 100 et seq. of the Code of Criminal Procedure provided a legal basis for the recording. Articles 100 et seq. lay down specific procedural arrangements for the interception of telephone conversations. Those provisions were enacted after the *Kruslin* and *Huvig* judgments in which the Court held that Article 81 – which authorises the investigating judge to take any steps useful for establishing the truth – did not provide a sufficiently precise legal basis for telephone tapping. There are no specific procedural provisions in domestic law governing the installation of listening devices on private property.

Law: Article 8 – The point in issue was whether the use of listening devices was "in accordance with the law". The bugging of private premises was manifestly not within the scope of Articles 100 et seq. of the Code of Criminal Procedure, since those provisions concerned the interception of telephone lines. Article 81 of the Code did not indicate with reasonable clarity the scope and manner of exercise of the authorities' discretion in allowing the monitoring of private conversations (see *Kruslin* and *Huvig v. France*, judgments of 24 April 1990) and the respondent Government had not claimed that that shortcoming had been adequately remedied by the relevant case-law. Accordingly, the applicant had not enjoyed the minimum degree of protection to which citizens were entitled under the rule of law in a democratic society.
Conclusion: violation (unanimously).

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

PRIVATE LIFE
Student who had to finish his university year without his beard: *inadmissible*.

TIĞ - Turkey (N° 8165/03)
Decision 24.5.2005 [Section II]

While the applicant was in his third year at university, he was refused entry to the campus because he had a beard. The refusal was based on a university decree issued one year beforehand. The applicant asserted that he was entitled to have a beard and that the decree had no basis in law. He applied to have the decree set aside, but without success. He was subsequently able to continue and complete his course without a beard.

Inadmissible under Article 8: In the domestic courts the applicant had challenged, in general terms, the rules that had served as a basis for refusing him access to the campus. Accordingly, even accepting that having a beard was an aspect of his physical appearance constituting part of his private life, the measure in question had been relatively limited in scope in that he had not been refused entry to the campus until more than a year after the rules in question had been issued. In addition, he had been able to continue and complete his studies: manifestly ill-founded.

Inadmissible under Article 9: The applicant had submitted that he had a beard because it was part of his physical appearance; he had not claimed to have been inspired by any specific views or beliefs or, in particular, to be observing any religious precept. Accordingly, the measure in question could not as such have interfered with the applicant's freedom of religion and conscience: manifestly ill-founded.

Inadmissible under Article 10: Even supposing that the right to freedom of expression could encompass a person's right to express his views by the way in which he grew a beard, it had not been established that the applicant had been prevented from expressing a particular opinion within the meaning of Article 10 by the prohibition on beards: manifestly ill-founded.

Inadmissible under Article 2 of Protocol No. 1: Even accepting that Article 2 of Protocol No. 1 was applicable to higher education, the applicant had been admitted to university and had been able to complete his studies there, in spite of the implementation of the rules complained of. Accordingly, the measure in question had not amounted to interference with his right to education: manifestly ill-founded.

PRIVATE LIFE
Surgical interventions on persons suspected of drug trafficking after having swallowed packets with drugs: *communicated*.

KOMBA - Portugal (N° 18553/03)
BOGUMIL - Portugal (N° 35228/03)
[Section II]

At the instigation of the customs authorities, following checks at an airport, the applicants consented to a radiological examination, which revealed the presence of bags of drugs in their stomachs. The applicants were then ordered by the authorities to undergo surgery, during which the bags were extracted. They were charged with drug trafficking and were both sentenced to imprisonment and excluded from Portuguese territory. As Mr Komba argued that he had not given permission to be operated on, the court ruled that the bags of cocaine extracted during the surgery should not be taken into consideration.
Communicated. The examination of the cases was adjourned pending the Grand Chamber's judgment in the *Jalloh* case (no. 54810/00 – see Information Note no. 68).

PRIVATE LIFE
Use in court proceedings of medical reports concerning the applicant without his consent or without the intervention of a medical expert: *communicated*.

LE LANN - France (N° 7508/02)
Decision 19.5.2005 [Section II]

In the course of divorce proceedings, the courts had regard, among other things, to medical documents concerning the applicant which his wife had produced. The documents contained medical and personal data about the applicant. The Court of Appeal based its decision, in particular, on a letter from the applicant's doctor to another doctor, which the applicant had sought to have declared inadmissible.
Communicated under Article 8.

PRIVATE LIFE
Severe injuries caused by a smoke bomb thrown from a very short distance by the anti-rioting police: *communicated*.

IRIBARREN PINILLOS - Spain (N° 36777/03)
Decision 31.5.2005 [Section IV]
(see Article 3, above).

PRIVATE LIFE
Retention of fingerprints and DNA samples of suspects even when no guilt has been established or when the investigation has been discontinued: *communicated.*

S. and MARPER - United Kingdom (N° 30562/04 and N° 30566/04)
[Section IV]

The applicants were arrested on suspicion of having committed offences. Fingerprints and DNA samples were taken from them. One of them was eventually acquitted, whereas no charges were brought against the other. They both asked for the fingerprints and DNA samples to be destroyed but the police refused. Their application for judicial review was rejected by the Administrative Court and the Court of Appeal upheld that decision. The lead judgment of the House of Lords noted the considerable value of retained fingerprints and samples. Even assuming that such retention amounted to interference with the right to respect for private life, such interference was very modest and at any rate justified under Article 8(2). The House of Lords further rejected the applicants' complaint that the retention subjected them to discriminatory treatment in breach of Article 14 when compared to the general body of persons who had not had their fingerprints and samples taken in the course of a criminal investigation.
The applicants allege that the retention of the material concerning them violates their right to respect for private life. Moreover, as persons who were, but are no longer, suspected of a crime, they are in the same position as the rest of the unconvicted population of the United Kingdom, though they are being treated differently for reasons which are not compatible with Article 14.
Communicated under Articles 8 and 14 of the Convention.

FAMILY LIFE
Deficiencies in judicial process resulting in father's contact with his daughter being greatly minimised and negatively affected: *inadmissible*.

M.A. - United Kingdom (Nº 35242/04)
Decision 26.4.2005 [Section IV]

The applicant, a non-resident father, separated from his wife, a United Kingdom national. Thereafter, he was denied contact with his daughter during a five year period despite having been found by relevant experts to be a competent and caring father. He obtained numerous orders of the courts concerning contact, but given the mother's repeated and wilful failure to comply with court orders and the resulting alienation of his daughter, the court proceedings terminated with the applicant withdrawing his applications for residence and direct contact and accepting, by consent, a framework of indirect contact with his daughter. The High Court judge recognised that the applicant was entitled to feel let down by the system and that there were lessons to be learned from the case. In his full judgment he dealt with the wider aspects of the case in the public interest. He *inter alia* emphasised how the system more frequently failed non-resident fathers in custody cases, criticised the appalling delays in the court system and lack of judicial continuity, with an astonishing number of different judges involved, and the failure of the courts to enforce contact orders or deal effectively with groundless allegations by the mother. Referring to the Strasbourg jurisprudence, the judge considered that domestic approaches did not meet the standards of Articles 6 and 8 of the Convention, in particular how a five year timescale as in the case could be compatible with the Convention. Finally, the judge issued a public, although anonymous, apology for the system's failure to protect the applicant's rights. The applicant complains of the lack of fairness of the judicial process, a breach of his right to his family life and that he had been discriminated against as a father without residence.

Inadmissible under Articles 6, 8 and 14: The High Court judge had in substance acknowledged that the applicant's Convention rights had been infringed, setting out an analysis of the defects in the system and a list of recommendations for the future. As regards redress, the applicant had not claimed for damages in the domestic courts nor had he asked for any monetary compensation before the Court. In any event, it was open for the applicant to seek damages under the Human Rights Act 1998. Even if the Court were to continue the examination of the case it would be unable to improve on the detailed and expert examination of the domestic procedure. Accordingly, notwithstanding the tragic events in this case and the Court's considerable sympathy for the applicant, he could no longer claim to be a victim within the meaning of Article 34: manifestly ill-founded.

HOME
Burning of houses belonging to Roma villagers and alleged failure of the authorities to prevent the attack: *admissible*.

KALANYOS and Others - Romania (Nº 57884/00)
Decision 19.5.2005 [Section III]

The applicants, who are of Roma origin, live in a village which is also inhabited by non-Roma people. On 6 June 1991, a fight broke out between four Roma and a night watchman, for which the first applicant was sentenced to three years' imprisonment. Following the events, a crowd of non-Roma villagers assaulted and beat up two men, fatally injuring both of them. Two days later, they displayed a notice informing the Roma inhabitants that their houses would be set on fire the following day. The local authorities, who had been informed by the Roma, failed to intervene, “advising” the Roma to leave their homes for their own safety. On 9 June 1991, all twenty-seven Roma houses and their contents were set on fire and completely destroyed. During the following year, the Roma villagers were forced to live in nearby stables in dreadful conditions (without heating or running water). A police investigation was started, and the report registered the destruction by arson of 27 houses, pointing out that the causes of the events had been the fight on 6 June 1991. The applicants' lawyers were refused access to the case-file. In 1996, the Prosecutor's Office

closed the investigation on the grounds that the prosecution of the offences was statute-barred. The applicants appealed to the Prosecutor's Office of the Court of Appeal, and subsequently to the Prosecutor's Office of the Supreme Court of Justice, requesting that the investigative authorities identify the perpetrators, secure their conviction and correctly classify the crimes as more serious offences with a view to establishing the real value of the damage they had incurred. The Prosecutor's Office rejected the complaint, finding that the offences had been committed "as a result of serious acts of provocation of the victims", and that given the large number of persons involved it had been impossible to identify the perpetrators. The applicants rebuilt their houses between 1991 and 1993. The mayor of the village provided them with some materials for the reconstruction, and included the Roma settlement in its programme for extending the electricity network. The applicants claimed that they had to rebuild their houses with their own money and efforts, assisted by friends and relatives. It appears that they have yet to receive compensation for the belongings and furniture lost during the events.

Admissible under Articles 3, 6, 8, 13 and 14. The Government's objections: (i) non-exhaustion: the remedy advanced by the Government, that is, the possibility of the applicants lodging an action with the criminal courts after the Prosecutor's Office decision to close the investigation, was not expressly provided by law at the time of the events (objection dismissed); (ii) lack of victim status: the authorities had not recognised a violation of the applicants' rights, nor had they received any compensation for the loss incurred. The mere fact that their homes were rebuilt with some help from the authorities did not deprive them of their victim status (objection dismissed).

[Two similar cases concerning the destruction of houses belonging to Roma and their expulsion from villages are pending before the Court: *Gergely v. Romania* (Nº 57885/00) and *Tănase and Others v. Romania* (Nº 62954/00)].

ARTICLE 14

DISCRIMINATION
Destruction of houses belonging to Roma villagers, forcing them to live in poor conditions, allegedly due to the Roma ethnicity of the victims: *admissible*.

KALANYOS and Others - Romania (Nº 57884/00)
Decision 19.5.2005 [Section III]
(see Article 8, above).

ARTICLE 35

Article 35(1)

EFFECTIVE DOMESTIC REMEDY (Italy)
Applicant who did not appeal to the Court of Cassation: *preliminary objection allowed (non-exhaustion)*.

PELLEGRITI - Italy (N° 77363/01)
Decision 26.5.2005 [Section III]

The applicant, a medical practitioner in the private sector, was given a disciplinary sanction by the Council of the Medical Association for advertising in newspapers and telephone directories, in breach of the legislation in force. He appealed, arguing that the relevant law was not applicable, reasonable or consistent with Community law. At the same time, he applied to the Chairman of the Medical Association to have the sanction revoked, contending that in the absence of enforcement measures the law in question could not be applied and that such advertisements were permitted by previous regulations which were still

applicable. His submissions relied on a Constitutional Court judgment and a Court of Cassation judgment. The Court of Appeal confirmed that the advertisements published by the applicant had amounted to a breach of the law punishable by a disciplinary sanction. The sanction was reduced pursuant to a new law. The applicant did not appeal to the Court of Cassation. In his application he alleged a violation of Article 10 of the Convention, complaining that the damage he had sustained in not being able to inform the general public about his activities was the direct result of the content of the law in question and that a judgment of the Court of Cassation would not have been able to remedy that situation.

Inadmissible under Article 10 (non-exhaustion): An appeal to the Court of Cassation was among the remedies which, in principle, had to be exhausted in order to comply with Article 35(1). In the present case that remedy had been accessible to the applicant. Furthermore, the Court of Cassation could have quashed the impugned decision and set aside the disciplinary sanction; it could also have declared that the relevant law was not applicable, which would have rendered ineffective the provisions being challenged by the applicant. Such an appeal had therefore been capable of putting an end to the interference of which the applicant had complained in his application. As to that remedy's prospects of success, the applicant could have raised before the Court of Cassation the legal arguments which he had already submitted. While it was not for the Court to speculate as to how the Court of Cassation would have dealt with those submissions, it was to be noted that the applicant had relied on judgments of the Constitutional Court and the Court of Cassation itself that apparently supported his position. That being so, it could not be concluded that an appeal to the Italian Court of Cassation had no reasonable prospect of success: preliminary objection allowed (non-exhaustion).

EFFECTIVE DOMESTIC REMEDY (Poland)
Effectiveness of new remedy concerning length of judicial proceedings: *admissible*.

RATAJCZYK - Poland (Nº 11215/02)
Decision 31.5.2005 [Section IV]

The applicant had signed a lease contract with a co-operative. In April 1993, he brought a civil action concerning the early termination of the contract by the lessor. The first-instance judgment was given by the Regional Court in April 1997. The judgment was quashed on two successive occasions by the Court of Appeal, and remitted for re-examination. In 2000, the Regional Court decided to discontinue the proceedings considering that the defendant co-operative had been declared bankrupt. The applicant's appeal against this decision was dismissed by the Court of Appeal in April 2001.

Admissible under Article 6. The Government's objection (non-exhaustion): None of the various legal remedies designed to counteract and/or redress the undue length of judicial proceedings which had been introduced by the Law of 17 June 2004 (the so-called “Kudla law”) were applicable to the applicant's situation. As to whether the applicant could have brought a civil action for damages on the basis of Article 417 of the Civil Code read together with Section 16 of the Law of 2004, the Court observed that such an action was time-barred after the lapse of three years from the day on which the person who suffered the damage had learned of it. In the applicant's case, this period had started to run in April 2001, when the judicial decision in his case had become final. Consequently more than three years had elapsed between this date and the entry into force of the 2004 Law. In the light of the foregoing, such an action could not be regarded with a sufficient degree of certainty as an effective remedy. The applicant's complaint about the unreasonable length of the proceedings (seven years and eight months) therefore required an examination of the merits.

SIX MONTH PERIOD
Calculation of six-month period when the only judicial remedy is an extraordinary appeal: *preliminary objection rejected.*

AHTINEN - Finland (N° 48907/99)
Decision 31.5.2005 [Section IV]
(see above, under Article 6(1) [civil]).

ARTICLE 1 OF PROTOCOL No. 1

POSSESSIONS
Alleged loss of money on account of the authorities' delay in reimbursing a Chernobyl victim for her expenses for the purchase of a new apartment: *inadmissible*.

DANILYUK - Ukraine (Nº 5326/02)
Decision 19.5.2005 [Section II]

After the Chernobyl nuclear plant disaster, the applicant and her family moved from their hometown, situated 100 km from Chernobyl, and settled in another city in Crimea. In 1996, the applicant paid part of the price of the house that the authorities provided her with. She also spent money on it to have it repaired. In 1999 she applied to the authorities for the reimbursement of the expenses incurred in acquiring the apartment, to which she was entitled as a victim of the Chernobyl disaster. By September 2000 the applicant had received, in three instalments, a sum by way of reimbursement of the cost of purchasing the apartment. Alleging that the sum received did not cover the amount that she had to spend on the repair of the apartment and took no account of the effects of inflation, the applicant instituted proceedings against the Ministry of Chernobyl Affairs. The courts rejected the claim. The Supreme Court held that the case was not a civil but a public law dispute, and that the sum to be reimbursed could not be based on the actual expenses and losses of the applicant but had to be determined on the basis of relevant domestic legislation. The applicant's apartment in her hometown (which was leased from the State) is currently occupied by her son.

Inadmissible under Article 1 of Protocol No. 1. The Government's objection (lack of victim status): The Court considered that the applicant's allegations that she had lost money on account of the authorities' delay in reimbursing her expenses for an apartment was sufficient to demonstrate that she had a personal interest at stake, and could therefore claim to be a victim.
The present case was to be distinguished from *Akkus v. Turkey*, in which the State's failure to compensate inflation losses, resulting from a delay in reimbursing the applicant's estate, was found to be in breach of Article 1 of Protocol No.1. In the present case the applicant had never owned her apartment in her hometown and, moreover, after she had moved to the Crimea, her entitlement had been taken up by her son who currently occupied this apartment. Moreover, two instances of domestic courts had found that the sum reimbursed to the applicant had been calculated correctly by the authorities and that she had received the full amount to which she was entitled by relevant legislation. These courts had stated that full compensation for inflation losses as a result of the delay in reimbursement was not recognised under Ukrainian legislation. The Court found no reasons to question this assessment of the domestic courts. The proceedings initiated by the applicant did not, therefore, concern "existing possessions", within the meaning of Article 1 of Protocol No.1 or any "legitimate expectation": incompatible *ratione materiae*.

PEACEFUL ENJOYMENT OF POSSESSIONS
Annulment of the readmission of a lawyer to a Bar association which led to a loss of a part of his clientele: *violation*.

BUZESCU - Romania (Nº 61302/00)
Judgment 24.5.2005 [Section II]

Facts: The applicant, who practised as a lawyer, adhered to the Constanţa Bar in the late 1970's. When he left for the United States his membership to that Bar association was cancelled. Upon the applicant's return to Romania, he applied to be reinstated as a lawyer. In 1991, the Constanţa Bar re-registered him on the list of lawyers ineligible to practice, as he was still a member of another Bar. In 1996, the Constanţa Bar decided to fully re-instate the applicant and to register him on the list of practising lawyers. However, on 27 June 1996 the Romanian Union of Lawyers (UAR) considered that a reinstatement of a lawyer fell within its own field of competence, and that the Constanţa Bar had acted *ultra vires* in taking its decision of 1991. It appears that this decision was never notified to the applicant or to the Constanţa Bar. In the meantime, the applicant had submitted an application for a transfer to the Bucharest Bar, to which he never received a response. The applicant applied to the UAR to clarify and resolve his situation, and subsequently to the Court of Appeal seeking an annulment of the June 1996 UAR decision. As the applicant suspected that this decision had been fabricated at a later date, namely during the proceedings before the Court of Appeal, the applicant also requested the UAR's original Register of Decisions to be disclosed. The Court of Appeal dismissed the application, holding that the Constanţa Bar had acted *ultra vires* in taking its decision of 1991. This decision was upheld by the Supreme Court of Justice, finding that the UAR was the exclusive authority to determine applications relating to the admission or readmission of lawyers to Bars. Moreover, it considered that the annulment of the applicant's registration with the Constanţa Bar did not remove his right to apply to the competent authority to decide on his application for re-registration as a member of the Bar.

Law: Article 6(1) (fair hearing) – The parties agreed that the procedure leading to the adoption of the UAR's decision of 27 June 1996 had not complied with the requirements of Article 6(1). Whilst the contentious decision had subsequently been submitted to the domestic courts for a full judicial review, the Court considered that these had failed to determine a part of the subject matter of the case. In particular, the courts had not answered the applicant's main arguments, namely that he had acted in good faith when he had lodged an application for re-admission to the Constanţa Bar in 1991, and that in any case he could not be blamed for the Bar's failure to submit his application to the UAR or for the UAR's failure to review the validity of the Bar's decision. As regards the applicant's suspicion of forgery and his ensuing request for the disclosure of the UAR's original Register of Decisions, the Court found that there were considerable doubts as to the manner in which the Court of Appeal had initially acceded to the applicant's request and subsequently reversed its decision. Requesting the applicant to file a criminal complaint alleging forgery would have imposed a disproportionate burden on him. Thus, taking into account the proceedings as a whole, the Court concluded that the requirements of fairness had not been met.
Conclusion: violation (unanimously).

Article 1 of Protocol No. 1 – *Responsibility of the respondent State*: Although the Government argued that the State could not be held liable for the negative consequences of a decision taken by a professional body, the Court found to the contrary. The UAR was a legally constituted body, invested with administrative as well as rule-making prerogatives and which pursued an aim of general interest in relation to the legal profession. Hence, the State's responsibility had been engaged as a result of the administrative decisions of the UAR of which the applicant complained.

Applicability: The applicability of Article 1 of Protocol No. 1 can extend to law practices and their goodwill, as these are entities of a certain worth that have in many respects the nature of private rights and thus constitute assets. Bearing in mind that in order for the applicant to "exploit" his existing clientele he had to provide them with the full range of services of a Romanian lawyer, including their representation in court, the Court concluded that the applicant could claim to have a "possession" within the meaning of

this provision at the time of the UAR's decision of June 1996, namely as regards the goodwill he had built up in Romania between 1991 and 1996.

Compliance: Given the annulment of the applicant's registration with the Constanța Bar had led to a loss of that part of his clientele which was interested in his ability to provide the full range of services of a Romanian lawyer, and hence to a loss of income, there had been an interference with his right to the peaceful enjoyment of his possessions. Even assuming that the UAR's decision had not been incompatible with the principle of lawfulness, the Court found an element of uncertainty and imprecision in the domestic law and rules which empowered the UAR to annul Bar decisions. The interference had pursued an aim in the general interest, namely the review for re(admissions) to Bars by the UAR. However, as to the proportionality of the interference, given the UAR's legal obligation to review admissions to Bars, which it did not do in the applicant's case until 1996, the interference complained of was serious, depriving the applicant, five years after his readmission to the Constanța Bar, of his right to practise as a lawyer. Thereafter the authorities had failed to clarify the applicant's situation or advise him on how his request could be resolved. Thus, the annulment of the applicant's registration with the Constanța Bar did not represent a proportionate measure.
Conclusion: violation (unanimously).

PEACEFUL ENJOYMENT OF POSSESSIONS
Nullification of property titles of persons who had acquired nationalised property during the communist regime: *admissible*.

VELIKOV and Others - Bulgaria (Nº 43278/98)
Decision 12.5.2005 [Section I]

In 1968, the applicants bought jointly an apartment which had been nationalised by the communist regime in the late 1940s (the apartment was later divided into two apartments). The heirs of the pre-nationalisation owner of the apartment brought an action against the applicants with a view to recovering the apartments (they based their action on Article 7 of the Restitution Law, which provides that certain property acquired by third persons after nationalisation could be recovered by the former owners or their heirs if the third person in question had become owner in breach of the law, by virtue of their position in the Communist party or through abuse of power). In 1995, the District Court nullified the applicants' contract of 1968 and restored the plaintiffs' ownership rights. The court found that the contract had not been signed by the competent mayor. The judgment was upheld by the City court and the Supreme Court of Cassation, which added that there was circumstantial evidence that the first applicant might have abused his position when applying to purchase the apartment. In 2000, the applicants and their sons vacated the two apartments and the pre-nationalisation owners took possession of them. Some of the applicants are currently renting apartments at monthly rates of 100 Euros; several of them have unsuccessfully attempted to obtain municipal apartments at fixed rental rates. On an unspecified date the applicants received compensation by bonds which they alleged had a much lower real value than their nominal value. Moreover, due to an omission of the regional administration, their bonds had not been registered, and they were unable to sell them.
Admissible under Article 1 of Protocol No. 1.

DEPRIVATION OF PROPERTY
Deprivation of property by applying the principle of indirect expropriation: *violation*.

PASCULLI - Italy (Nº 36818/97)
Judgment 17.5.2005 [Section IV]

Facts: The applicant owned land in respect of which an expedited possession order was made by the administrative authorities for the purpose of constructing a public building. The authorities were to issue an expropriation order within the authorised period of possession, namely five years. On the expiry of the

period, however, the authorities had neither formalised the expropriation nor paid any compensation. The applicant complained of this in the courts. An expert assessment found that on the expiry of the authorised period of possession, the public works carried out had irreversibly transformed the land. The District Court found that the applicant's right of property had thus been extinguished, in accordance with the principle of constructive expropriation, and awarded him full compensation for the damage sustained. The Court of Appeal reduced the amount of compensation, applying a law that had been passed in the meantime. Complaining that the retrospective application of the law had deprived him of a substantial portion of the compensation, the applicant appealed to the Court of Cassation, but without success. The applicant had to institute enforcement proceedings in order to obtain payment of the award. With regard to the system of constructive expropriation, the Court found a violation of Article 1 of Protocol No. 1 in the *Belvedere Alberghiera* and *Carbonara and Ventura v. Italy* judgments of 30 May 2000. The Italian Court of Cassation, however, asserted in 2003 that the principle of constructive expropriation was compatible with the Convention.

Law: Article 1 of Protocol No. 1 – The constructive-expropriation system was not capable of ensuring a sufficient degree of legal certainty as required by the Convention. As a result of its application in the applicant's case, the loss of his property had been inconsistent with the requirement of lawfulness under the Convention. Although the Italian courts had considered that the applicant had been deprived of his possessions since January 1986, no legal certainty had existed in respect of the loss of his land until the Court of Cassation's judgment of February 2000. Furthermore, the authorities had been able to appropriate the applicant's land in breach of the rules governing the formal conditions for expropriation and without making any compensation available to him. Lastly, the compensation, which the applicant had had to obtain through court proceedings, had not afforded full redress for the damage sustained.
Conclusion : violation (unanimously).

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

Other judgments delivered in May

Strannikov - Ukraine (Nº 49430/99), 3.5.2005 [Section II]
Vasilenko - Ukraine (Nº 19872/02), 3.5.2005 [Section II]
Grischechkin and others - Ukraine (Nº 26131/02), 3.5.2005 [Section II]
Demchenko - Ukraine (Nº 35282/02), 3.5.2005 [Section II]
Scordino - Italy (no. 3) (Nº 43662/98), 17.5.2005 [Section IV]
Mason and others - Italy (Nº 43663/98), 17.5.2005 [Section IV]
Z.M. and K.P. - Slovakia (Nº 50232/99), 17.5.2005 [Section IV]
Udovik - Czech Republic (Nº 59219/00), 17.5.2005 [Section II]
Heger - Slovakia (Nº 62194/00), 17.5.2005 [Section IV]
Eko-Energie, spol. s r.o. - Czech Republic (Nº 65191/01), 17.5.2005 [Section II]
Mazgutova - Slovakia (Nº 65998/01), 17.5.2005 [Section IV]
Guez - France (Nº 70034/01), 17.5.2005 [Section II]
Horvathova - Slovakia (Nº 74456/01), 17.5.2005 [Section IV]
Chizhov - Ukraine (Nº 6962/02), 17.5.2005 [Section II]
Parchanski - Czech Republic (Nº 7356/02), 17.5.2005 [Section II]
Palgutova - Slovakia (Nº 9818/02), 17.5.2005 [Section IV]
Faber - Czech Republic (Nº 35883/02), 17.5.2005 [Section II]
M.Ö. - Turkey (Nº 26136/95), 19.5.2005 [Section III]
Acciardi and Campagna - Italy (Nº 41040/98), 19.5.2005 [Section I]
Turhan - Turkey (Nº 48176/99), 19.5.2005 [Section III]
Töre - Turkey (Nº 50744/99), 19.5.2005 [Section III]
Cali and others - Italy (Nº 52332/99), 19.5.2005 [Section I]
Le Duigou - France (Nº 61139/00), 19.5.2005 [Section I]
Vigroux - France (Nº 62034/00), 19.5.2005 [Section I]
Steck-Risch and others - Liechtenstein (Nº 63151/00), 19.5.2005 [Section III]
Rapacciuolo - Italy (Nº 76024/01), 19.5.2005 [Section III]
Stamos - Greece (Nº 14127/03), 19.5.2005 [Section I]
Makedonopoulos - Greece (Nº 16106/03), 19.5.2005 [Section I]
Moisidis - Greece (Nº 16109/03), 19.5.2005 [Section I]
Manolis - Greece (Nº 2216/03), 19.5.2005 [Section I]
Kaggali - Greece (Nº 9733/03), 19.5.2005 [Section I]
Suheyla Aydin - Turkey (Nº 25660/94), 24.5.2005 [Section II]
Acar and others - Turkey (Nº 36088/97 & Nº 38417/97), 24.5.2005 [Section IV]
J.S. and A.S. - Poland (Nº 40732/98), 24.5.2005 [Section IV]
Ozden - Turkey (Nº 42141/98), 24.5.2005 [Section II]
Intiba - Turkey (Nº 42585/98), 24.5.2005 [Section II]
Eksinozlugil - Turkey (Nº 42667/98), 24.5.2005 [Section II]
Sildedzis - Poland (Nº 45214/99), 24.5.2005 [Section IV]
Tiryakioglu - Turkey (Nº 45436/99), 24.5.2005 [Section II]
Tunc - Turkey (Nº 54040/00), 24.5.2005 [Section II]
Rimskokatolicka Farnost Obristv - Czech Republic (Nº 65196/01), 24.5.2005 [Section II]
Berkouche - France (Nº 71047/01), 24.5.2005 [Section II]
Altun - Turkey (Nº 73038/01), 24.5.2005 [Section II]
Dereci - Turkey (Nº 77845/01), 24.5.2005 [Section II]
Dumbraveanu - Moldova (Nº 20940/03), 24.5.2005 [Section IV]
Costin - Romania (Nº 57810/00), 26.5.2005 [Section III]
Zadro - Croatia (Nº 5410/02), 26.5.2005 [Section I]
Peic - Croatia (Nº 16787/02), 26.5.2005 [Section I]
Debelic - Croatia (Nº 2448/03), 26.5.2005 [Section I]
Wolfmeyer - Austria (Nº 5263/03), 26.5.2005 [Section I]

Mevlüde Akdeniz - Turkey (Nº 25165/94), 31.5.2005 [Section IV]
I.R.S. and others - Turkey (Nº 26338/95), 31.5.2005 [Section II]
Koku - Turkey (Nº 27305/95), 31.5.2005 [Section II]
Kismir - Turkey (Nº 27306/95), 31.5.2005 [Section II]
Togcu - Turkey (Nº 27601/95), 31.5.2005 [Section II]
Celikbilek - Turkey (Nº 27693/95), 31.5.2005 [Section II]
Ates - Turkey (Nº 30949/96), 31.5.2005 [Section II]
T.K. and S.E. - Finland (Nº 38581/97), 31.5.2005 [Section IV]
Emek Partisi and Senol - Turkey (Nº 39434/98), 31.5.2005 [Section IV]
Aslangiray - Turkey (Nº 48262/99), 31.5.2005 [Section IV]
Gultekin - Turkey (Nº 52941/99), 31.5.2005 [Section II]
Hefkova - Slovakia (Nº 57237/00), 31.5.2005 [Section IV]
Kayatepe - Turkey (Nº 57375/00), 31.5.2005 [Section II]
Dumont-Maliverg - France (Nº 57547/00 and Nº 68591/01), 31.5.2005 [Section IV]
Acunbay - Turkey (Nº 61442/00 and Nº 61445/00), 31.5.2005 [Section II]
Dinler - Turkey (Nº 61443/00), 31.5.2005 [Section II]
Antunes Rocha - Portugal (Nº 64330/01), 31.5.2005 [Section II]
Kopecka - Slovakia (Nº 69012/01), 31.5.2005 [Section IV]

Relinquishment in favour of the Grand Chamber

Article 30

MARTINIE - France (N° 58675/00)
[Section II]

The application mainly concerns the fairness of a trial before the Chancellor of the Exchequer in appeal proceedings concerning a judgment of a regional Currency Chamber in which a public accountant had been found liable of debt. The application was declared partially admissible under Article 6(1) on 13 January 2001.

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 Notes Nos. 71 and 72):

Fattell - France (N° 60504/00)
27.1.2005 [Section I]

Frangy - France (N° 42270/98)
Quemar - France (N° 69258/01)
SCP Huglo, Lepage & Associés, Conseil - France (N° 59477/00)
1.2.2005 [Section II]

Kolasiński - Poland (N° 46243/99)
Indra - Slovakia (N° 46845/99)
Ziliberberg - Moldova (N° 61821/00)
1.2.2005 [Section IV]

Zülcihan Şahin and others - Turkey (N° 53147/99)
Thaler - Austria (N° 58141/00)
Sylvester (no. 2) - Austria (N° 54640/00)
Riepl - Austria (N° 37040/02)
Ladner - Austria (N° 18297/03)
Fehr - Austria (N° 19247/02)
Blum - Austria (N° 31655/02)
Sadik Amet and others – Greece (N° 64756/01)
3.2.2005 [Section I]

Biyan - Turkey (N° 56363/00)
Fociac - Romania (N° 2577/02)
Iacob - Romania (N° 39410/98)
3.2.2005 [Section III]

Bifulco - Italy (N° 60915/00)
Schwarkmann - France (N° 52621/99)
Miller - Sweden (N° 55853/00)
Erdost - Turkey (N° 50747/99)
Hatun, Nural, Nihal, Emrah and Ahmet Güven - Turkey (N° 42778/98)
Bordovskiy - Russia (N° 49491/99)
8.2.2005 [Section II]

Panchenko - Russia (N° 45100/98)
L.M. - Italy (N° 60033/00)
8.2.2005 [Section IV]

Sukhorubchenko - Russia (N° 69315/01)
Andreadaki and Others - Greece (N° 33523/02)
Kalliri-Giannikopoulou and Others - Greece (N° 33173/02)

Kotsanas - Greece (Nº 33191/02)
Papamichaïl and Others - Greece (Nº 33808/02)
Kosti-Spanopoulou and Others - Greece (Nº 33819/02)
Mikros - Greece (Nº 34358/02)
Koutroubas and Others - Greece (Nº 34362/02)
Stathoudaki and Others - Greece (Nº 34366/02)
Stamatios Karagiannis - Greece (Nº 27806/02)
Karobeïs - Greece (Nº 37420/02)
Selianitis - Greece (Nº 37428/02)
Theodoros Anagnostopoulos - Greece (Nº 37429/02)
Charalambos Katsaros - Greece (Nº 32279/02)
Lagouvardou-Papatheodorou and Others - Greece (Nº 72211/01)
Veli-Makri and Others - Greece (Nº 72267/01)
Vasilaki and Others - Greece (Nº 72270/01)
Giamas and Others - Greece (Nº 72285/01)
Kouremenos and Others - Greece (Nº 72289/01)
Goutsia and Others - Greece (Nº 72983/01)
Kozyris and Others - Greece (Nº 73669/01)
Charmantas and Others - Greece (Nº 38302/02)
Vlasopoulos and Others - Greece (Nº 27802/02)
10.2 2005 [Section I]

Uhl - Germany (Nº 64387/01)
Graviano (nº 2) - Italy (Nº 10075/02)
10.2.2005 [Section III]

Philippe Pause - France (Nº 58742/00)
Mancar - Turkey (Nº 57372/00)
15.2.2005 [Section II]

Sardinas Albo - Italy (Nº 56271/00)
17.2.2005 [Section I (former composition)]

Steel and Morris - United Kingdom (N° 68416/01)
Zieliński - Poland (Nº 38497/02)
Sulaoja - Estonia (Nº 55939/00)
Vargová - Slovakia (Nº 52555/99)
Švolík - Slovakia (Nº 51545/99)
15.2.2005 [Section IV]

Kokkini - Greece (Nº 33194/02)
Oikonomidis - Greece (Nº 42589/02)
17.2.2005 [Section I]

Liuba - Romania (Nº 31166/96)
17.2.2005 [Section III] (striking out)

Popovăţ - Romania (Nº 32265/96)
17.2.2005 [Section III] (just satisfaction - striking out)

Novoseletskiy - Ukraine (Nº 47148/99)
Günter - Turkey (Nº 52517/99)
Meryem Güven and others - Turkey (Nº 50906/99)
Pakdemirli - Turkey (Nº 35839/97)
22.2.2005 [Section II]

Nowicky - Austria (Nº 34983/02/02)
Stift - Belgium (Nº 46848/99)
Birnleitner - Austria (Nº 45203/99)
Kern - Austria (Nº 14206/02)
Petrushko - Russia (Nº 36494/02)
Koltsov - Russia (Nº 41304/02)
Gasan - Russia (Nº 43402/02)
Plotnikovy - Russia (Nº 43883/02)
Makarova and Others - Russia (Nº 7023/03)
24.2.2005 [Section I]

Ohlen - Denmark (Nº 63214/00)
24.2.2005 [Section I] (striking out)

Veselinski - the Former Yugoslav Republic of Macedonia Nº 45658/99)
Djidroski - the Former Yugoslav Republic of Macedonia (Nº 46447/99)
Wimmer - Germany (Nº 60534/00)
24.2.2005 [Section III]

Statistical information[1]

Judgments delivered	**May**	**2005**
Grand Chamber	1	2
Section I	14	126
Section II	33	105(106)
Section III	7	45(46)
Section IV	19(21)	62(110)
former Sections	0	11
Total	**74(76)**	**351(401)**

Judgments delivered in May 2005					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	1	0	0	0	1
Section I	13	0	1	0	14
Section II	30	2	0	1	33
Section III	7	0	0	0	7
Section IV	19(21)	0	0	0	19(21)
Total	**70(72)**	**2**	**1**	**1**	**74(76)**

Judgments delivered in 2005					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	2	0	0	0	2
former Section I	3	0	0	0	3
former Section II	3	0	0	0	3
former Section III	5	0	0	0	5
former Section IV	0	0	0	0	0
Section I	120	4	2	0	126
Section II	101(102)	12(13)	5	1	119(121)
Section III	28(32)	4	1	2	35(39)
Section IV	54(98)	2	1	1	58(102)
Total	**316(365)**	**22(23)**	**9**	**4**	**351(401)**

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		May	2005
I. Applications declared admissible			
Grand Chamber		0	0
Section I		46(47)	124(126)
Section II		26(28)	102(104)
Section III		23	61(65)
Section IV		18	45(49)
Total		**113(114)**	**332(344)**
II. Applications declared inadmissible			
Grand Chamber		0	1(3)
Section I	- Chamber	8	34
	- Committee	200	2792
Section II	- Chamber	10	41
	- Committee	506	1975
Section III	- Chamber	7	43
	- Committee	879	2003
Section IV	- Chamber	33(35)	67(69)
	- Committee	433	2225
Total		**2076(2078)**	**9181(9185)**
III. Applications struck off			
Section I	- Chamber	4	18
	- Committee	4	26
Section II	- Chamber	5	26
	- Committee	11	31
Section III	- Chamber	2	16
	- Committee	7	35
Section IV	- Chamber	3	23
	- Committee	31	58
Total		**67**	**233**
Total number of decisions[1]		**2256(2259)**	**7746(9762)**

1. Not including partial decisions.

Applications communicated	May	2005
Section I	48	242
Section II	41	336
Section III	43	194
Section IV	33(34)	125(126)
Total number of applications communicated	**165(166)**	**897(898)**

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