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ARTICLE 2

LIFE
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BUBBINS - United Kingdom (Nº 50196/99)
Decision 27.11.2003 [Section III]

The applicant is the sister of Michael Fitzgerald, who was shot dead by a police officer following a series of events which took place at his home. Michael Fitzgerald returned to his flat and, having left his keys in a pub, climbed through a window to get in. His girlfriend, who arrived at the flat around the same time, mistook him for a burglar and called the police. Michael Fitzgerald, who was very drunk, confronted the police from inside the house with what seemed like a gun. Further police officers were called; some took up position to the front and others to rear of the flat. The man was seen waving a firearm and making threatening gestures with it on several occasions. Warnings were shouted. In the meantime, efforts were being made to trace Michael Fitzgerald, who the police did not believe to be in the house. At one point, Michael Fitzgerald moved from the ground floor to the first floor of the flat, and pointed the gun from an upstairs window at one of the armed officers. Fearing for his own safety and after having shouted a warning to drop the gun or that he shoot, the officer fired one shot and killed Michael Fitzgerald, who was found with a replica firearm beside him. The applicant complains that the use of lethal force was not absolutely necessary and was the result of police incompetence in failing to secure information that would have allowed the incident to be brought to a conclusion without loss of life. She further contends that the inquest proceedings, which led to a verdict of lawful killing, were inadequate and unfair (unjustified anonymity of police officers during the proceedings, and withholding of the investigation report and other evidence from family).
Admissible under Articles 2, 6 and 13.

POSITIVE OBLIGATIONS
Impossibility for mother to obtain criminal conviction of driver responsible for an accident in which her unborn child was killed : *communicated*.

ADELAIDE - France (No 78/02)
[Section II]

In 1995, the applicants were victims of a road traffic accident in which they were injured, seriously in the case of the female applicant, who was six months pregnant. She gave birth prematurely four days later and the child did not survive. By a judgment of 1997, the criminal court held that the child was viable at the time of the accident and that his death was directly linked with the shock of the accident; the court found the person who had caused the accident guilty of the manslaughter of the child. However, in 1998 the Court of Appeal set aside the judgment; although it found that the child's death was the consequence of the accident, it observed that the criminal law only protected a child whose heart was beating at birth and who has breathed; as the applicant's child was stillborn, the impugned facts did not constitute the offence of manslaughter. In 2001, the Court of Cassation dismissed the applicants' appeal on a point of law, stating that, in accordance with the principle that the criminal law is to be given a strict interpretation, there could not have been an offence of manslaughter of an unborn child, who was therefore not protected by the criminal law.

Communicated under Articles 2, 8 and 13 and under Article 13 in conjunction with Article 2. The Court decides to give priority to the application (Rule 41 of the Rules of Court). (This case raises questions similar to those dealt with at a hearing on 10 December 2003 in the case of *Vo v. France*, no. 53924/00.)

ARTICLE 3

INHUMAN TREATMENT
Ill-treatment in custody of lawyers active in the human rights field: *violation*.

ELCI and others - Turkey (Nº 23145/93)
Judgment 13.11.2003 [Section IV]

Facts: The sixteen applicants were practising defence lawyers before the State Security Court, who were involved in the protection of individuals and had denounced human rights abuses in Turkey. They were taken into detention in November and December 1993, purportedly on suspicion of being involved with the PKK terrorist organisation, on the basis of incriminating statements made against them by G., a "confessor" who was on trial for membership of the PKK. Following a preliminary investigation, the public prosecutor at the State Security Court drew up an indictment against twenty-three people, including the applicants, on charges of being members of and acting for the PKK. The applicants claim that whilst they were in gendarme custody they were tortured and ill-treated (blindfolded, subjected to continuous loud music, death threats, slapping or being stripped naked and doused with cold water), as well as subjected to undue pressure and unlawful interrogation, with a view to the signing of confessions. The applicants' offices and/or homes were searched and documents and materials were seized. Most of the search reports drawn up by the law enforcement authorities were disputed by the applicants. At the end of their detention, the prosecutor at the State Security Court took statements from the applicants in which they all rejected the charges against them as well as the allegations of G. and the records of confrontations with him. Those who had signed statements admitting that they had worked as PKK couriers said that they had been forced to do so. In February 2001, the State Security Court suspended the proceedings for five years, to be taken up again should any of the applicants commit an offence of the same or a more serious kind during that time; otherwise the proceedings would be definitively closed. Delegates of the European Commission of Human Rights heard witnesses in Turkey.

Law: Government's preliminary objection (non-exhaustion): The applicants had put their complaints clearly to the prosecution and the State Security Court and none of these authorities had investigated their allegations. In these circumstances, the applicants were not required to embark on other attempts to obtain redress, for example compensation claims under administrative or civil law: objection dismissed.

Article 3 – The applicants' testimony about their conditions of detention - cold, dark and damp, with inadequate bedding, food and sanitary facilities - as well as the allegations of some of the applicants that they were insulted, humiliated, slapped and terrified into signing confessions, were credible and consistent. The Court also accepted that at crucial moments they were blindfolded. The collective medical examination which they were given was superficial and cursory, whereas the medical evidence of the subsequent pneumonia contracted by one of the applicants and the small bruises on another lent credence to their claims. Given the circumstances of the case as a whole, the fact that the applicants' complaints were not taken seriously or investigated by the authorities and that the Government had not presented any evidence to undermine their accounts, it was established that four of the applicants had suffered physical and mental violence of a particularly serious and cruel nature

at the hands of the gendarmerie, amounting to torture, and that four others had also been subjected to ill-treatment of somewhat less severity, amounting to inhuman treatment. In view of the total inactivity of the judicial authorities in investigating the applicants' allegations of ill-treatment, there had also been a breach of Article 3 in its procedural aspect.
Conclusion: violation (6 votes to 1).

Article 5 – Basing "reasonable suspicion" on the statements of a PKK confessor who was himself accused of a terrorist crime, as the authorities did, involved particular risks. However, in view of the conclusion reached by the Court concerning the lawfulness of the detention, the Court did not find it necessary to decide whether there existed reasonable suspicion against the applicants. On the question of lawfulness of the detention, adverse inferences were drawn from the Government's failure to provide material information and evidence as to having conducted the applicants' arrest and detention in accordance with "a procedure prescribed by law". Although it was clear and established that in order to be lawful the detention of a suspect required the authority of a prosecutor, none of the witnesses who appeared before the Commission delegates accepted direct personal responsibility for the decision to detain the applicants and no clear picture emerged as to the steps taken to obtain prior authorisation for (or subsequent comfirmation of) their detention. Moreover, there was a complete absence of any documentary evidence showing that a request had been made to the prosecutor, or that there were instructions from him, to proceed with the detention. As a result, it had not been sufficiently shown that the applicants' apprehension and detention were duly authorised by a prosecutor "in accordance with a procedure prescribed by law". The Government could not rely on its derogation under Article 15 with regard to the rights guaranteed by Article 5, since they had failed to show that the applicants' detention without adequate authorisation could have been strictly required by the "exigencies of the situation".
Conclusion: violation (unanimously).

Article 8 – The search of the applicants' offices and/or homes, and in certain cases, seizure of personal documents, constituted an interference with their right to respect for their "homes" and "correspondence". Search warrants were not issued by a prosecutor or judge, and although the Regional Government had powers to order searches and seizures under the State of Emergency Law, there was no record of any instructions by the Governor for these particular searches. In these circumstances, the interference with the applicants' rights was not shown to be "in accordance with the law".
Conclusion: violation (unanimously).

Article 34 (former Article 25) – On balance, there was not a significant hindrance in the applicants right of individual petition.
Conclusion: no violation (unanimously).
Article 41 – The Court made awards in respect of pecuniary and non-pecuniary damage to each of the applicants separately. It also made an award in respect of costs and expenses.

INHUMAN TREATMENT
Alleged ill-treatment by police and staff in a sobering-up centre: *inadmissible*.

OLSZEWSKI - Poland (Nº 55264/00)
Decision 13.11.2003 [Section IV]

The applicant had a domestic dispute with his wife and stepdaughter. Following a call from the stepdaughter to the police, some officers came to the house and informed the applicant he would be taken to a sobering-up centre. The applicant, who claims that he was not drunk at that moment, refused to follow the officers. He alleges that, in view of his resistance, he was kicked, insulted and dragged into the sobering-up centre. He claims that, once inside, he was put in a straightjacket, kicked in the testicles and that his scrotum was burnt. The Government

dispute this version of events, and maintain that as the applicant was drunk and behaving aggressively, the officers had to employ physical force to restrain him. He was released from the sobering-up centre the next morning. Two days later, a doctor examined him, certifying that he had suffered skin abrasion, had loose front teeth and had a burn on his scrotum. The applicant subsequently requested the prosecutor to initiate criminal proceedings against the police officers and employees of the centre for ill-treatment. The prosecutor took evidence from, *inter alios*, the applicant's family members, who maintained that the police were calm and had not assaulted the applicant. The investigation concluded that the behaviour of the police and staff of the centre had not constituted a criminal offence. The applicant's appeal to the District Court was dismissed.

Inadmissible under Article 3 – Where an individual is taken into police custody in good health but found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused. However, in the case at hand, given that the medical certificate describing the applicant's injuries was prepared two days after his release from the sobering-up centre, there was no evidence that such injuries, in particular the burn on his scrotum, existed at the time of his release. As regards the applicant's skin abrasion, no material had been adduced which could call into question the domestic authorities' finding that this had resulted from the justified use of force by the police officers: manifestly ill-founded.

INHUMAN TREATMENT
Conditions in which an elderly detainee was hospitalised : *violation*.

HENAF - France (No 65436/01)
Judgment 27.11.2003 [Section I]

Facts: While the applicant was serving a prison sentence, the prison medical service considered that he required an operation to his throat. The administration considered that there was no *prima facie* need for the applicant to be handcuffed and that he would be guarded by two police officers while in hospital. The applicant arrived at the hospital on the day before his operation and remained in handcuffs during the day. During the night, however, he was shackled: a chain was attached to one of his ankles and to the bedpost. The applicant maintains that owing to the tension of the chain every movement was painful and that sleep was impossible. In the morning, the applicant stated that in such circumstances he preferred to postpone the operation until after he had been released from prison. He lodged a complaint against the two police officers responsible for guarding him while he was in hospital: he complained that he had been shackled to the hospital bed during the night before his operation. The security fixed by the investigating judge as a precondition to the investigation of his complaint was set at an amount which the applicant was unable to pay, owing to his inadequate resources. He applied for legal aid to pay the security. Legal aid was refused and as the sum payable was not deposited, the complaint was declared inadmissible.
Law: Preliminary objection (non-exhaustion) – The Court notes, in particular, that according to the evidence before it, the applicant's complaint, together with an application to join in the proceedings as civil party, would probably be unsuccessful. Furthermore, in the matter of a complaint under Article 3, the applicant's arguable allegations of ill-treatment were sufficiently serious to be capable of justifying an effective investigation apt to lead to the identification and punishment of those responsible.
The Court considers that the domestic authorities did not take the positive measures which the circumstances required to bring the matter to a conclusion. The Court considers that in the particular circumstances of this case, the remedy open to the applicant was not normally available and sufficient to allow him to obtain reparation of the violation which he alleges. The objection is therefore rejected.

Article 3 – The applicant complains that he was shackled to the hospital bed. In this case, that amount to inhuman treatment. In the light of the applicant's age (75 years), his state of health, the absence of antecedents giving rise to a serious fear of a risk to security, the prison governor's written instructions that the applicant was to be given normal, and not special, supervision, the fact that he was admitted to hospital on the day before he was to have an operation, the shackling of the applicant was disproportionate in the light of the requirements of security (to prevent the applicant from absconding or from committing suicide), *a fortiori* since two police officers had been specially stationed outside his hospital ward.
Conclusion: violation (unanimous).

ARTICLE 5

Article 5(1)

DEPRIVATION OF LIBERTY
Holding in the transit zone of an airport of deportees who refused to leave the country.

SHAMSA – Poland (No 45355/99 and Nº 45357/99)
Judgment 27.11.2003 [Section III]
(see below).

LAWFUL DETENTION
Detention for several days without any order by a court, a judge or any other person authorised to exercise judicial functions : *violation*.

SHAMSA - Poland (Nº 45355/99 and Nº 45357/99)
Judgment 27.11.2003 [Section III]

Facts: In May 1997, the applicants, who are brothers and Libyan nationals then residing in Warsaw, were arrested during an identity check. On 28 May 1997, an expulsion order, to be executed within no more than 90 days, was made against them and they were detained pending expulsion. Beginning on 24 August 1997, the final day of the statutory period during which the applicants could be expelled, the authorities attempted on three occasions to expel them via Prague, and then Cairo and Tunis. These attempts were unsuccessful, owing, in particular, to the refusal of the persons concerned. Upon returning to Prague, on 25 August 1997, the applicants, at the request of the chief of police in Warsaw, were considered to be persons whose presence on Polish territory was undesirable. Between the attempts to expel them and 3 October, the applicants were held by the immigration authorities at Warsaw Airport. The applicants considered that they had been unlawfully detained by the authorities between 25 August and 3 October 1997 and lodged a complaint. The complaint was dismissed. The judicial authorities considered that by refusing to be expelled to Libya, the applicants had chosen of their own free will to remain at the premises of the immigration authorities.

Law: Article 5(1) – The Government could not validly maintain that, in the area reserved for persons not authorised to enter Polish territory, the applicants did not come under Polish law. The Court observed that the applicants were under the permanent supervision of the immigration authorities, could not exercise freedom of movement and had to remain at the disposal of the Polish authorities, and concluded that their being kept in the area reserved for persons not permitted to enter Polish territory must be analysed as a "deprivation of liberty".

The decision to expel the applicants had to be executed within a statutory period of 90 days, failing which the law required that they be released; however, that was not done. The rules applicable to the immigration authorities' post at the airport, where the applicants were being held, did not constitute sufficient legal bases to authorise their being deprived of their freedom following the expiry of the statutory period for their expulsion.
The Polish legislation lacks "foreseeability", since it does not lay down any precise provision stating whether the applicants could be detained with a view to their expulsion, after the expiry of the statutory period, in the area reserved for persons whose presence on Polish territory is considered undesirable, and if so on what conditions. The applicants' detention was therefore not "in accordance with the law" or "lawful".
The Court considers that detention in the transit area for an indeterminate and unforeseeable period without legal basis or a valid court decision is in itself contrary to the principle of legal certainty. It further considers that detention for a number of days which is not ordered by a court, a judge or "any other person authorised by law to exercise judicial power" is contrary to Article 5(1).
Conclusion: violation (unanimous).
Article 41 – The Court awards compensation for non-pecuniary harm and a sum for costs and expenses.

Article 5(1)(f)

EXTRADITION
Length and lawfulness of detention with a view to extradition (9 months) : *inadmissible*.

LEAF - Italy (No 72794/01)
Decision 27.11.2003 [Section I]

On 14 September 2000, the applicant, who is of British nationality, was arrested in Italy and detained pending extradition under an international arrest warrant issued by the United Kingdom authorities. The applicant appealed against his arrest and detention, but without success. The United Kingdom authorities lodged an application for extradition. The applicant challenged his extradition. On 3 May 2001, the applicant was placed under house arrest. On 28 June 2001, the Rome Court of Appeal ordered that he be extradited. In the meantime, the applicant had left the country. The applicant submits that his detention pending extradition was unlawful, owing in particular to its excessive duration, and also claims that he was brought before the judge only four days after being arrested.

Inadmissible under Article 5(1)(f): This article requires that arrest and detention for the purposes of extradition be effected in accordance with the law when action is being taken with a view to extradition. If the pending extradition proceedings are not conducted by the authorities with the necessary diligence, the detention for the purposes of extradition will cease to be justified under that article.
In the present case, the Court observes that extradition proceedings against the applicant were pending when he was placed under arrest pending extradition and that the Italian courts ascertained and established that the national proceedings were in accordance with domestic law. The Court goes on to state that there is no indication that the authorities did not conduct the extradition proceedings with the requisite diligence for the purposes of Article 5(1)(f) and points out that the applicant was released during the proceedings at the beginning of May 2001. The Court considers that the duration of the extradition proceedings, approximately nine months, cannot be deemed unreasonable: manifestly ill-founded.

EXTRADITION
Alleged unlawfulness of detention and extradition, the person concerned having been lured out of his own country by trickery: *communicated*.

AL-MOAYAD - Germany (Nº 35865/03)
[Section III]

The applicant is a high level governmental official and religious leader in Yemen. He was convinced by a fellow citizen, who was working on an undercover mission for the United States investigation authorities, to travel abroad to meet a person who was willing to make a major financial contribution. On arrival at Frankfurt airport in January 2003, the applicant was arrested on the basis of a US arrest warrant that charged him with providing financial and material support to terrorist groups. The Court of Appeal placed the applicant under provisional arrest and subsequently declared the extradition, which had been requested by the US authorities, admissible. The applicant's complaint that his right to a hearing in court had been violated was dismissed by both the Court of Appeal and the Federal Constitutional Court. He subsequently filed a further constitutional complaint, arguing that his abduction from Yemen to Germany had been contrary to international law, and that, as a result, his arrest was null and void. The Federal Constitutional Court rejected the complaint, concluding that it could not be ascertained that there existed a general rule of international law forbidding the extradition of a person who had been lured out of his country by trickery with a view to circumventing the ban on extradition in that country. The Federal Constitutional Court also found that trust had to be shown as regards compliance by the US authorities with the principles of due process. The applicant was extradited to the United States in November 2003.
Communicated under Articles 3, 5(1)(f), 6(1), 34 and 39.

Article 5(3)

LENGTH OF PRE-TRIAL DETENTION
Length of detention on remand (2 years, 8 months and 14 days) : *no violation*.

PANTANO – Italy (No 60851/00)
Judgment 6.11.2003 [Section I]

Facts: On 12 July 1996, the applicant was placed in provisional detention for association with mafia-type criminals. His trial, before an assize court, ended on 26 March 1999, when he was sentenced to nine years' imprisonment. The applicant therefore remained in provisional detention for two years, eight months and fourteen days. His applications for release were all dismissed. As he was being prosecuted for a particularly serious offence, the conditions necessary to authorise deprivation of freedom were presumed to exist, after a certain time, in the absence of proof to the contrary.

Law: Article 5(3) – The decisions to extend the provisional detention, based on a presumption of the existence of circumstances demanding detention, linked with the risk of flight and tampering with evidence, and also the danger of re-offending (Article 275 § 3 of the Code of Criminal Procedure), were neither unreasonable nor manifestly unfair, since the proceedings against the applicant concerned offences linked to mafia-type crime. In the specific context of the fight against the mafia, a statutory presumption of danger which is not irrebuttable but may be rebutted by proof to the contrary, may be justified. As regards the conduct of the proceedings, the delay associated with a lawyers' strike does not render the State liable and the overall period attributable to the judicial authorities, namely five months and twenty-eight

days, is not unreasonable. Furthermore, and above all, the total length of the provisional detention – two years, eight months and fourteen days – is not excessive (cf. *Contrada*, *Reports* 1998-V), in the light of the gravity of the offences alleged and of the complexity of the case, which involved proceedings concerning the mafia against forty-eight persons accused in all of more than sixty offences, and which required a large number of measures of investigation.
Conclusion: no violation (unanimous).

LENGTH OF PRE-TRIAL DETENTION
Length of detention on remand: *admissible*.

NEVMERZHITSKY - Ukraine (Nº 54825/00)
Decision 25.11.2003 [Section II]

The applicant, a former bank manager, was detained in April 1997 on suspicion of having committed unlawful currency transactions. He was subsequently charged on this ground as well as of abuse of power, fraud and forgery. The applicant unsuccessfully complained to the District Court for the quashing of his arrest order. His release on bail was refused, and the detention was extended on successive occasions to permit additional investigations by the prosecution. Several times during his detention, as a result of having gone on hunger-strike, the applicant was subjected to force-feeding, which he claims caused him substantial mental and physical suffering. He also maintains that he was deprived of adequate medical treatment whilst remanded in custody, and that the conditions of detention (hygiene, bedding and other conditions) were unsatisfactory. Although the maximum statutory period of detention in the applicant's case expired in September 1998, he was only released in February 2000. Prior to his release, he unsuccessfully lodged complaints on the unconstitutionality of his detention with the Constitutional Court. In February 2001, the City Court sentenced the applicant to five and a half years' imprisonment for repeated financial fraud, forgery and abuse of power. On the basis of the Amnesty Law, and since he had been detained for nearly three years, the court dispensed him from serving the sentence.

Admissible under Articles 3, 5(1)(c) and 5(3): The Court could not consider the applicant's time in custody outside its jurisdiction *ratione temporis,* that is, prior to 11 September 1997, when examining the complaint about the length of the detention. The Government's objection that the applicant had not exhausted domestic remedies was, however, rejected. Besides the first episode of force-feeding, which was inadmissible as having been raised out of time, the other incidents on this ground of complaint were admissible.

ARTICLE 6

Article 6(1) [civil]

APPLICABILITY
Procedure for obtaining compensation under the Pinto law : *Article 6 applicable*.

PELLI – Italy (No 19537/02)
Decision 13.11.2003 [Section I]

On 8 May 2001, the applicant initiated proceedings before a Court of Appeal on the basis of the "Pinto Act", complaining of the excessive length of criminal proceedings. The Court of Appeal delivered its decision on 27 June 2001. It held that there had been a violation of Article 6 of the Convention in this case and awarded the applicant compensation. He received payment on 14 November 2002.

Inadmissible under Article 6: The Court considers that compensation proceedings based on the Pinto Act concern a civil right within the meaning of Article 6, which is therefore applicable. In the present case, the period to be taken into consideration began when the applicant initiated the proceedings before the Court of Appeal and ended when the judgment of the Court of Appeal was executed by the State and the applicant received payment of the sum due. The overall period to be examined – approximately one year and six months – is not sufficiently long to justify a finding of a violation of Article 6(1): manifestly ill-founded.

APPLICABILITY
Procedure concerning disclosure of administrative documents relating to the personal situation of an individual with regard to his career: *Article 6 applicable*.

LOISEAU –France (No 46809/99)
Decision 18.11.2003 [Section II]

The applicant had replaced an established schoolteacher in a secondary school. In order to be able to rely on his rights, he requested his employer to provide him with the administrative documents relating to his engagement and to his social security contributions, and his payslips. By judgment of November 1992, which has become final, the administrative court annulled the decision of the director of the secondary school refusing to comply with his request. In July 1993, the applicant requested the Council of State to order enforcement of the judgment delivered in his favour, with a daily financial penalty in default. His request was rejected in February 1996.

Admissible under Article 6(1): The Court rejects the Government's argument that Article 6 is not applicable on the ground that the proceedings concerned the communication of administrative documents: domestic law recognises an individual right of access to such documents and in the event of refusal makes provision for the matter to be brought before the courts. In the present case, the dispute was real and serious and involved the determination of a private right, since the documents requested related directly and exclusively to the applicant's private situation and, in particular, would allow him to rely on his rights to the re-establishment of his career, which confers on the dispute an economic complexion in favour of the application of Article 6. By requesting the administrative court to order enforcement of

the judgment, and to impose a financial penalty in default, the applicant exhausted domestic remedies as regards the complaint alleging failure to enforce the final judgment. The Government's objection is therefore also dismissed on that point.

ACCESS TO COURT
Parliamentary immunity – impossibility of suing Minister for defamation: *inadmissible*.

ZOLLMAN - United Kingdom (Nº 62902/00)
Decision 27.11.2003 [Section III]
(see Article 6(2), below)

FAIR HEARING
Absence of personal notification of hearing in Constitutional Court proceedings: *inadmissible*.

ROSHKA - Russia (N° 63343/00)
Decision 6.11.2003 [Section III]

The applicant is a notary who, together with 2,057 other notaries, brought a claim in the Constitutional Court challenging the constitutionality of the State Funds Laws, which obliged notaries to pay contributions to the State Pension Fund at a rate considerably higher than that for other taxpayers. Following a public oral hearing, of which the applicant was not informed, the Constitutional Court declared the relevant provisions of the laws unconstitutional but maintained them in force until a new law was adopted. Payments made under the provisions which had been declared unconstitutional were to be offset against future contributions. The applicant complains that he was not heard in the proceedings in the Constitutional Court, and that paying contributions on the basis of provisions that had been declared unconstitutional was in breach of his right to property.

Inadmissible under Article 6(1) (fair hearing): Without taking a decision on the question of whether Article 6 was applicable to the proceedings at the Constitutional Court, the Court recalled that the right to be present in person in civil proceedings, unlike criminal ones, was not as such guaranteed by this provision, provided that the parties were represented by counsel. It did not transpire from the applicant's submissions that his personal presence at the hearing would have had an impact on the outcome of the proceedings. The applicant (and the other notaries) had been represented at the hearing, and, moreover, he could have heard about the hearing from the public notifications that had been published. It followed that the failure of the authorities to notify him in person did not violate his guarantees under Article 6(1): manifestly ill-founded.

Inadmissible under Article 1 of Protocol No. 1: The keeping in force for a transitional period of time of the provisions which had been declared unconstitutional seemed to be driven by the fear of creating a substantial legal lacuna in the tax sphere. This interest appeared legitimate from the standpoint of legal certainty and could not therefore be regarded as "arbitrary confiscation", nor as a breach of the applicant's right of property: manifestly ill-founded.

ORAL HEARING
Lack of oral hearing in proceedings concerning revocation of firearms licence : *inadmissible*.

PURSIHEIMO - Finland (Nº 57795/00)
Decision 25.11.2003 [Section IV]

As a result of the applicant's disturbing behaviour with his wife and daughter in a drunken state, he was apprehended in his home by the police on three occasions. Subsequently, the police authority revoked his licence to keep firearms and seized the ones he kept in his home. The applicant appealed, requesting an oral hearing to prove there was no link between having been drunk (which he admitted) and the purported risk of using the firearms. The County Administrative Court and the Supreme Administrative Court refused the request for an oral hearing and upheld the revocation and seizure order.

Inadmissible under Article 6(1) – Even assuming that the outcome of the proceedings for the revocation of the applicant's licence and the seizure of the arms was directly decisive for the ownership of those arms, the applicant's alcohol problem and disturbing behaviour were sufficient grounds in themselves under domestic law for the revocation of his firearms licence. Given that the facts in respect of which the applicant wished to present evidence would not have been relevant for the outcome of the proceedings, it was justified that no oral hearing had been held: manifestly ill-founded.

PUBLIC JUDGMENT
Oral delivery of judgment limited to operative part: *communicated*.

BIRYUKOV - Russia (N° 14810/02)
Decision 6.11.2003 [Section I]

The applicant was badly injured in a road accident. In the course of the medical treatment which he received, his arm was amputated. The applicant brought an action for damages against the hospital for malpractice, which he claimed had led to the loss of his arm. On the basis of an independent expert opinion, the District Court found there was no link between the treatment the applicant had received and the loss of an arm. At the close of a public hearing the court read out only the operative part of the judgment dismissing the action. The full text of the judgment was made available to the applicant some time later.
Communicated under Article 6.

REASONABLE TIME
Effect on length of proceedings of modification of claim to take account of inflation.

ŁOBARZEWSKI – Poland (Nº 77757/01)
Judgment 25.11.2003 [Section IV]

Extract : "The Court observes that, while an applicant is entitled to make use of his procedural right to extend his claim in a civil case, he must be aware that it may lead to delays the consequences of which he would have to bear. It is particularly true in a situation were modification of the claim results in the transfer of the case to a higher court and possibly in the repetition of some of the trial court's proceedings. The Court is of the opinion that when such extension of the claim takes place in the course of judicial proceedings which are diligently and promptly conducted, the Government cannot be held responsible for the resulting delays. On the other hand, if the proceedings have already been affected by clear delays, the extension of the claim may be regarded as the only way for the plaintiff to cope

with inflation and to adjust his claim to the changing economic context. In such a situation, the applicant cannot be reasonably expected to bear the consequences of further delays resulting from his action, unless the Government proves that there was no link between the extension of the claim and the delays which have already occurred in the course of the proceedings.
The Court notes that, in the case under consideration, the applicant extended his claim after his case had already been pending before the first instance court for over thirteen years and that the proceedings had already been affected by unreasonable delays. Therefore, the Court sees no reason to find that the applicant contributed to the prolongation of the proceedings."

Article 6(1) [criminal]

REASONABLE TIME
Length of investigation ending in time-bar – *dies a quem* with regard to the period to be examined.

SCHUMACHER - Luxembourg (No 63286/00)
Judgment 25.11.2003 [Section IV]

Facts: In 1991, the applicant was charged with laundering money being the proceeds of drug trafficking. Inquiries were initially made, in particular in the context of two international letters rogatory. On 17 November 2000, the *chambre du conseil* of the district court declared the prosecution time barred, since no measure of investigation or prosecution had been carried out during the previous three years.

Law: Article 6(1) – *The period to be taken into consideration*: The Government contend that it is the date on which the prosecution became time barred by the effect of the three-year limitation period (i.e. three years after the last measure of investigation) that must be taken for the purpose of fixing the date of the end of the period to be taken into consideration (*dies a quem*). The Court takes the later date of the order declaring the prosecution time barred, i.e. 17 November 2000, since the applicant had been awaiting the outcome of his case until that decision was delivered.
Appraisal of the period: The investigation lasted nine years. The Court refers to the decision of the *chambre du conseil* finding that no act had been taken during the last three years of the investigation.
Conclusion: violation (unanimous).
Article 41 – The Court awards €6,000 for non-pecuniary harm. It awards a sum for costs and expenses, even though the applicant did not apply for costs or submit any supporting documents.

INDEPENDENT TRIBUNAL
Independence and impartiality of military court: *communicated*.

YAKURIN - Russia (Nº 65735/01)
[Section I]

The applicant, who was a member of a Moscow-based army patrol, was arrested and detained on charges of having committed theft and murder whilst on service patrolling the city. The applicant's case was tried by a Military Court composed of a presiding military judge and two lay judges. It took place on the territory of the applicant's military unit, to which he objected on the ground that this would violate his right to a public hearing. His request for a trial by

jury was also rejected. The applicant was convicted, *inter alia*, of murder and theft. The Supreme Court, which heard his appeal without the presence of his lawyer, upheld the conviction. After the trial, the applicant was placed in a remand centre. The staff of the centre repeatedly refused to send his application to the Court, which eventually received it via the applicant's representative in St. Petersburg.
Communicated under Articles 6(1), 6(3)c and 34.

Article 6(2)

PRESUMPTION OF INNOCENCE
Insurance claim rejected in civil proceedings, despite acquittal in parallel criminal case: *inadmissible*.

LUNDKVIST - Sweden (Nº 48518/99)
Decision 13.11.2003 [Section IV]

The day after a row between the applicant and his wife in the couple's home, the house was ravaged by fire. The applicant was charged with arson. The District Court acquitted him despite finding there were reasons which suggested he had initiated the fire. The judgment was upheld by the Court of Appeal. The applicant then instituted civil proceedings against his insurance company, claiming compensation for the damage to his house. The District Court, sitting in a different composition than in the criminal case, and after having heard some new witnesses, found that insurance compensation was not to be paid, given that the circumstances pointing to an intentional setting of the fire by the applicant outweighed other possible causes. The Court of Appeal, also sitting with a different formation from that in the criminal case, upheld the judgment. The Supreme Court refused the applicant leave to appeal. The applicant complained that the courts had disregarded his right to the presumption of innocence by rejecting his claim for insurance compensation.

Inadmissible under Article 6(2): The civil proceedings in which the applicant's claim for insurance compensation was rejected did not "set aside" that acquittal, nor were they viewed as a new "criminal charge" against him. The compensation claim was the subject of a separate legal assessment based on criteria and evidentiary standards which were different from those which applied to the criminal case. The outcome of the criminal proceedings was not decisive for the compensation case. It followed that Article 6(2) was not applicable to the civil compensation proceedings: manifestly ill-founded.

PRESUMPTION OF INNOCENCE
Applicability of Article 6(2) to statements made in Parliament: *inadmissible*.

ZOLLMAN - United Kingdom (Nº 62902/00)
Decision 27.11.2003 [Section III]

The two applicants are brothers who run an international diamond business. In 1998, the United Nations Security Council, with a view to stopping the civil war in Angola, imposed sanctions against UNITA, forbidding the export of diamonds on behalf of this organisation. In 2000, a UK Minister speaking in the House of Commons, named the applicants as persons having broken the UN sanctions by exporting diamonds to Antwerp for UNITA. The Minister's declaration was made public and reported by the press. A criminal investigation against the applicants was opened in Belgium, but no charges were brought against them. One of the applicants requested the Minister to retract his allegations publicly or to waive the

parliamentary privilege attaching to his statements, which would permit him to take proceedings in the courts. The Minister did neither. The applicants claim that his statements harmed their reputation and business.

Inadmissible under Article 6(2): The statements made against the applicants were not related to any criminal proceedings which could render this Article applicable. As it was not apparent that a United Nations Security Council Resolution was sufficient in itself to create a prosecutable "international offence", it could not be maintained that the applicants had been charged with a "criminal offence" for the purposes of Article 6(2). Moreover, there was no close link between the statements of the Minister and the criminal investigations against the applicants in Belgium, which in any event did not result in charges being brought against them: incompatible *ratione materiae*.

Inadmissible under Article 6(1): The absolute privilege attaching to statements made in Parliament pursued the legitimate aim of protecting free speech in Parliament (the Court's reasoning in the *A. v. the United Kingdom* judgment was recalled). The parliamentary immunity was proportionate and not altered by the facts of the case, in particular considering that the Minister's allegations had at least been arguably relevant in the context of the House of Commons debate, and that the damaging repercussions to the applicants' business seemed to be more a result of UN Sanctions Committee documents, where the applicants were also named, rather than the Minister's statement.

Article 6(3)(d)

EXAMINATION OF WITNESSES
Full evidence of a witness not heard by jury on account of rules on hearsay: *communicated*.

THOMAS - United Kingdom (Nº 19354/02)
[Section IV]

The applicant, whose girlfriend was found dead some days after the couple had argued in relation to a bank loan which was overdue, was charged with the murder of his girlfriend. The prosecution evidence was entirely circumstantial: it relied, *inter alia*, on the statement of the debt collector who had visited the couple's house the day after their argument and testified that the applicant had been very agitated and had not let him into the house. Scratch marks were also found on the applicant's face, which might have been caused by finger nail scratching. A few days after the events, two young girls, S.J.S. and E.D., aged 8 and 10, gave statements to the police that they had seen the applicant's girlfriend leave her house the day after the couple had argued, and that she had been followed by a stranger. At the Crown Court trial, the elder girl gave evidence consistent with her statement, but the younger one said she could remember very little (the defence lawyers were unable to refresh her memory with the contents of her previous police statement). Given the law of evidence against hearsay, the jury could not be shown either girl's statements to the police. The applicant was convicted of murder. Following his appeal, a retrial was ordered, but he was convicted once again. The applicant complains that the full evidence of S.J.S. was never heard by a jury.
Communicated under Articles 6(1) and (3)(d).

ARTICLE 8

PRIVATE LIFE
Successive psychiatric examinations at short intervals in connection with similar criminal cases before the same court : *violation*.

WORWA – Poland (No 26624/95)
Judgment 27.11.2003 [Section III]

Facts: The applicant was the subject of a number of criminal proceedings in connection with a dispute with neighbours over an easement. The prosecuting authorities decided on several occasions to require the applicant to undergo a psychiatric examination. Under the Code of Criminal Procedure then applicable, any accused person could be required to undergo a medical examination. Consequently, the applicant was arrested on 12 October 1994 for failing to comply with the court order requiring him to attend for a medical examination. The examinations of the applicant's mental state took place on 12 October 1994, 8 February and 6 March 1996, and then on 28 August 1996. The applicant was also ordered to attend and then sent away without having been examined. In different proceedings, the prosecutor ordered a further examination of the same type, on 12 February 1998. The applicant was eventually convicted of insulting behaviour, throwing stones and carrying out renovation work without prior authorisation.

Law: Article 5(1)(b) – The applicant's arrest on 12 October 1994 followed two unsuccessful attempts to have him attend an initial medical examination in the course of proceedings brought against him. There is nothing to support his claim that this arrest was not "lawful".
Conclusion: no violation (unanimous).

Article 8 – *Right to respect for family life*: There is no evidence in the file on which the Court can find that, as the applicant claims, his ten-year-old daughter was present when he was arrested on 12 October 1994 and taken to the psychiatric consultation. Accordingly, there has been no interference by the public authority with the applicant's family life.
Conclusion: no violation (unanimous).

Right to respect for private life: The fact of ordering medical reports on the applicant's mental state, at very brief intervals and in similar cases before the same court, constitutes an "interference" with the applicant's private life. That interference was in accordance with the law. Although a psychiatric report is a necessary measure, the State authorities must ensure that that measure does not upset the fair balance that must be ensured between the right to respect for the individual's private life and the proper administration of justice. In this case, the judicial authorities of the same court ordered the applicant on several occasions to undergo psychiatric examinations at brief intervals and asked him to attend when no consultation had been arranged on the appointed day. In those circumstances, the interference was not justified.
Conclusion: violation (unanimous).
Article 41 – The Court awards the applicant €3,000 for non-pecuniary harm.

FAMILY LIFE
Impossibility for parents to obtain criminal conviction of the person responsible for the death of their unborn child : *communicated*.

ADELAIDE - France (No 78/02)
[Section II]
(see Article 2, above).

FAMILY LIFE
Difficulties of a father in exercising his parental rights: *admissible*.

ZAWADKA - Poland (Nº 48542/99)
Decision 6.11.2003 [Section III]

The applicant's son was born in 1994. Two years later, the mother of the child, with whom the applicant was living, moved out of the house, taking their son. In 1996, the District Court issued an interim order that the child should be placed with the mother. The parents reached a friendly settlement, which stipulated, *inter alia*, that the applicant would be able to visit his son on specified dates. As from 1997 the mother failed to comply with the settlement they had concluded, in view of which, on a certain visit, the applicant took his son away from the mother. The District Court ordered him to return the child to the mother, but the applicant went into hiding with his son. In 1998, after a bailiff had taken the child back to the mother, the District Court limited the applicant's parental rights, and later that year, completely deprived him of these rights given his conduct. In 2001 he lodged other unsuccessful petitions to the courts to gain access to his son. The proceedings are currently stayed. The mother has gone to London with the child.

Admissible under Article 8: The Government's objection that the applicant had not exhausted domestic remedies in the parental responsibility proceedings was accepted. The part of the claim relating to an alleged interference with the applicant's family life was therefore rejected. The complaint concerning the State's positive obligations was declared admissible.

ARTICLE 10

FREEDOM OF EXPRESSION
Injunction prohibiting exhibition of a painting showing public persons in sexual positions: *communicated*.

WIENER SECESSION VEREINIGUNG BILDENDER KÜNSTLER - Austria
(Nº 68354/01)
[Section I]

The applicant, an association of artists, organised an exhibition which among other works included a painting depicting a number of people from public life nude and in sexual positions (the faces were blown up photos from newspapers). One of the persons who appeared in the painting, M., was at the time an Austrian politician and member of the National Assembly. M. brought proceedings against the applicant, which were dismissed by the Commercial Court on the ground that the applicant's freedom of artistic expression outweighed M.'s personal interests. Moreover, as the painting had been subsequently damaged by a visitor who had

covered it in red paint, M. was no longer recognisable and there was therefore no danger of recurrence. However, in appeal proceedings, the Court of Appeal found that the painting constituted a "debasement of M.'s public standing" and issued an injunction prohibiting the applicant from showing the painting at exhibitions or publishing photos of it, and ordered the payment of compensation.
Communicated under Article 10.

FREEDOM OF EXPRESSION
Conviction for insulting a religion : *admissible*.

ARSLAN - Turkey (No 42571/98)
Decision 13.11.2003 [Section III]

In 1993 the applicant published a novel dealing with philosophical and theological issues. He was prosecuted for having injured, by means of publication, "Allah, the Religion, the Prophet and the Holy Book", an offence punishable under the Criminal Code. The prosecutor based the prosecution on an expert report by a professor of theology. In 1996, the regional court found the applicant guilty as charged and ordered him to pay a fine. In 1997, the Court of Cassation upheld the judgment.

Admissible under Article 10, following dismissal of the respondent Government's objections that the applicant had failed to exhaust domestic remedies and had exceeded the six-month limitation period; this period began to run on the date on which the applicant became aware of the terms of the final domestic decision and not on the date of adoption of the judgment by the Court of Cassation, notification of which is not provided for in domestic law.

FREEDOM OF EXPRESSION
Conviction of leader of an Islamic sect for public incitement to commit a crime: *inadmissible*.

GÜNDÜZ - Turkey (No 59745/00)
Decision 13.11.2003 [Section I]

In 1994, the applicant, the director of *Tarikat Aczmendi*, a community describing itself as an Islamic sect, made a number of statements in the course of a report which was reproduced in a weekly publication with radical Islamic tendencies. In 1998, the criminal court held that in the account of the applicant's opinions, a statement concerning a person designated by his initials, I.N. constituted the offence of public incitement to crime, the person concerned having turned out to be an Islamic intellectual known for his moderate ideas. The court sentenced the applicant to four years' imprisonment. The Court of Cassation upheld the judgment in 1998.

Inadmissible under Article 10: The applicant's conviction may be analysed as an interference, which was "in accordance with the law" and pursued the legitimate aim of the "prevention of crime".
As regards the need for such an interference in a democratic society, as I.N. was a writer enjoying a certain amount of fame, he was readily identifiable by the public at large and, following publication of the article, was beyond doubt exposed to a significant risk of physical violence. The Court considers that in emphasising the danger which I.N. thus risked, the grounds of the applicant's conviction appear to be relevant and sufficient to justify the impugned interference with freedom of expression. The Court makes clear that statements capable of being characterised as advocating hatred, praising violence or inciting violence, such as those in the present case, cannot be regarded as compatible with the Convention.

The penalty imposed on the applicant was severe: it was increased because the offence had been committed by means of mass communication. However, the Court considers that provision for deterrent penalties in domestic law may be necessary when conduct reaches the level found in the present case and becomes intolerable in that it constitutes the denial of the founding principles of a pluralist democracy. The Court further takes note of the fact that the applicant will be automatically entitled to provisional release when he has served half of his sentence and considers that the gravity of the penalty is not disproportionate to the legitimate aim pursued: manifestly ill-founded.

LICENSING OF TELEVISION, BROADCASTING OR CINEMA ENTERPRISES
Withdrawal of permission for cinema screenings of violent pornographic film : *communicated*.

V.D. and C.G. – France (No 68238/01)
[Section III]

The applicants act as the authors, scene writers and directors of a cinema film. On 22 June 2000, their film was approved for screening in cinemas. This approval was accompanied by a prohibition on its being shown to minors under the age of sixteen years and by a requirement for a warning to be placed at the entrance to cinemas and in publicity material stating that the film contained scenes of sex and particularly violent images. An association for the promotion of Judeo-Christian values and also of parents of children aged between sixteen and eighteen years sought to have the approval annulled. By judgment of 30 June 2000, the *Conseil d'Etat* granted their application. It considered that the film constituted a pornographic message and an incitement to violence. The *Conseil d'Etat* observed that as the law then stood a film could be prohibited from being shown to minors under the age of eighteen years only if it was placed on the list of pornographic films, and held that the film came within that category; it annulled the approval for screening in cinemas awarded to the film. It therefore ordered the immediate withdrawal of copies of the film from cinemas. Distribution of the film in the form of videocassettes was authorised. In August 2001, following an amendment of the applicable rules and the introduction of a provision for a film to be released to cinemas but not shown to minors under the age of eighteen years, the film was approved for screening in cinemas and banned from being shown to minors under the age of eighteen years.
Communicated under Articles 10 and 13 of the Convention.

ARTICLE 11

FORM AND JOIN TRADE UNIONS
Suspension of activities and dissolution of a civil service trade union : *admissible*.

ÇINAR - Turkey (No 28602/95)
Decision 13.11.2003 [Section III]

Between 1992 and 1995, the applicant was the president of the Tüm Haber-Sen union formed by public officials and then active in the public sector. In 1992, the State Prosecutor requested the court to order suspension of the union's activities and its dissolution, on the ground that State officials were not permitted to form unions. The former law which had authorised such unions had been repealed. The court allowed the State Prosecutor's application and affirmed its judgment following a new trial after the case had been remitted to it by the Court of Cassation. The applicants' application for review of the judgment of the Court of Cassation

was dismissed. Between 26 June 1995 and 2 August 1995, all the branches and sections of the union were dissolved.

Admissible under Article 11 in conjunction with Article 13, following dismissal of the objections that the applicants lacked the capacity of victims and that they had failed to exhaust all domestic remedies; the application for review of the judgment of the Court of Cassation, which concerns an error in the judgment and entails a second examination of the case without there being any fresh evidence, is not a remedy to be exhausted for the purposes of Article 35(1).

ARTICLE 34

VICTIM
Reduction of sentence on the basis of finding by national judge of violation of Article 6(1) : *inadmissible*.

MORBY – Luxemburg (No 27156/02)
Decision 13.11.2003 [Section IV]

The applicant was the subject of a judicial investigation for corruption which lasted more than nine years. Before the trial court, the applicant raised an objection of inadmissibility on the ground that the reasonable time provided for in Article 6(1) of the Convention had been exceeded. The Luxembourg criminal court applied the criteria established by the Convention organs and held that the time which had elapsed between the beginning of the investigation and the hearing before it had exceeded the reasonable time provided for in Article 6. The court found the applicant guilty of corruption. The applicant faced the most severe penalty, which could be one year's imprisonment and a fine of LUF 100,000. However, the court considered that, because the reasonable time had been exceeded, it was appropriate to impose a lighter penalty. It further referred to the fact that the applicant had no previous convictions and decided to impose a sentence of nine months' imprisonment, which was suspended in full, and, in the light of the applicant's financial circumstances, a fine of €2.500. The court also decided that, because the reasonable time had been exceeded, the applicant would not be deprived of his civil and political rights, as provided for in the Criminal Code. Before the Court, the applicant complained of the length of the criminal proceedings.

Inadmissible under Article 6(1): The national judges decided, with reference to the fact that the reasonable period within the meaning of Article 6(1) had been exceeded, that the applicant should be given a lighter penalty and sentenced him to nine months' imprisonment, suspended in full, and did not deprive him of his civil and political rights, as provided for in the Criminal Code. The Court considers that the national authorities expressly recognised, and then made reparation for, the alleged violation of Article 6(1) of the Convention. The applicant cannot therefore claim to be the victim of a violation of the right to have his case heard within a reasonable time.

LOCUS STANDI
Death of applicant : widow allowed to pursue complaints under Articles 5(3) and 8.

ÖRS and others - Turkey (No 46213/99)
Decision 13.11.2003 [Section III]

On 13 and 14 May 1996, the applicants were arrested and placed in custody in the course of an investigation into the illegal organisation *Ekim*. At the end of their period in custody, on 24 May 1996, the applicants were questioned by the State Prosecutor. They were denied access to their lawyer while in custody and while being questioned by the State Prosecutor. On 10 May 1997, the National Security Court convicted five applicants and acquitted two. The Court of Cassation set the judgment aside because two of the accused had not been able to exercise their defence following the reclassification of the nature of the offence. The case was remitted to the National Security Court, which imposed the same penalties as previously on all except one of the applicants. One of the applicants (N.Ç.) was killed on 26 September 1999. The Court of Cassation upheld the judgment of the National Security Court and further held that the prosecution was extinguished as regards (N.Ç.) on account of his death.

Article 34: In the present case, the Court decides that the spouse of the deceased applicant could continue the proceedings. The prosecution of her husband was extinguished by the Court of Cassation following his death: he therefore lost the capacity of "victim" for the purposes of the complaints based on Article 6 concerning the criminal proceedings. The same applies to the two applicants who were definitively acquitted.

Communicated under Articles 5(3) and 8, and also under Article 6(1) and (3) with the exception of the applicant who died during the criminal proceedings and the applicants who were acquitted.

Inadmissible under Article 6(3)(a) and Article 6(1) and (3)(c) for three applicants.

ARTICLE 35

Article 35(1)

EFFECTIVE DOMESTIC REMEDY (Spain)
Remedy for complaining of length of completed constitutional proceedings (Article 292 of the Law on the Organisation of the Courts) : *preliminary objection dismissed*.

SOTO SANCHEZ - Spain (Nº 66990/01)
Judgment 25.11.2003 [Section IV]

Facts: In June 1993 the *Audiencia Nacional* found the applicant guilty of concealment of drug trafficking, of a financial offence and of forging private documents, and imposed a prison sentence of four years and two months, as well as fines. The applicant appealed on a point of law. In October 1994, the Supreme Court held that the applicant was guilty of the offence of concealment of drug trafficking, with the aggravating circumstance of belonging to an organised group; it increased the penalty to nine years' imprisonment and ordered the applicant to pay a fine. In November 1994 the applicant lodged an application for the protection of fundamental human rights (an *amparo* appeal) before the Constitutional Court. In May 1995, the appeal was declared admissible, then various procedural acts were carried

out until June 1996. In July 1995 and December 1997, the Court dismissed the applicant's requests to suspend enforcement of the judgment of the Supreme Court. On three occasions the applicant requested early examination of his appeal. On 16 May 2000, the Constitutional Court dismissed the *amparo* appeal in part and set aside in part the judgment of the Supreme Court. The case having been referred back to the Supreme Court, the latter increased the custodial sentence to seven years. The applicant had complained of the length of proceedings before the Constitutional Court.

Law: Article 35(1) – The Government objected that the available domestic remedies were not exhausted, contending that the applicant had failed to use the legal procedure provided for in Article 292 of the Organic Law on the Judiciary. The Court held that it would be unreasonable to require the applicant to have recourse to this remedy. He had asked the Constitutional Court on three different occasions for early examination of his *amparo* appeal and had never received a reply, whereas if the court had replied the applicant could quite easily have acted on the basis of the said Article 292. Moreover, the Government had not demonstrated the effectiveness of the remedy to which it referred, and had produced no examples of cases in which a person in a similar situation had secured just satisfaction for excessive length of proceedings before the Constitutional Court. The objection was therefore dismissed (see, *a contrario*, the decision in the case of *Caldas Ramirez de Arellano*, 28.1.2003).

Article 6 (1) – The proceedings before the Constitutional Court lasted a total five years and over five months. The Government produced no specific evidence to justify this lapse of time, and the Court notes the importance of the issue at stake for the applicant.
Conclusion: violation (unanimously).
Article 41 – The Court awarded a specific sum in compensation for the non-material damage sustained, with an additional amount for costs and expenses, even though the applicant had failed to produce the requisite supporting documents.

EFFECTIVE DOMESTIC REMEDY (Turkey)
Ineffectiveness of request for revision of a judgment.

ÇINAR - Turkey (No 28602/95)
Decision 13.11.2003 [Section III]
(see article 11 above).

FINAL DOMESTIC DECISION
Date to take into account in calculating the six month period when there is no requirement to notify the decision.

ARSLAN -Turkey (No 42571/98)
Decision 13.11.2003 [Section III]
(see article 10 above).

ARTICLE 3 OF PROTOCOL No. 1

VOTE
Obligation to request removal from electoral list when requesting addition to a different list : *inadmissible*.

BENKADDOUR - France (No 51685/99)
Decision 18.11.2003 [Section II]

The applicant sought to be entered on the register of electors of a municipality in France when he was still registered on the register of electors at a French consulate abroad. According to the electoral code, an application to change an entry on the register of electors must be accompanied by an application to be removed from the register of the former place of residence for election purposes. When the applicant attended the polling station in order to participate in the European elections, he was refused the right to vote on the ground that he was registered in another constituency.

Inadmissible under Article 3 of Protocol No. 1: The Court reiterates that the subjective right to vote guaranteed by that article permits implied limitations. States may make that right subject to conditions and have a wide margin of appreciation, provided that they do not impair the very substance of the right and render it wholly ineffective. In the present case, the applicant did not take in good time the measures necessary to have his name removed from the register of electors of his former place of residence and to be entered on the register of his new place of residence, although he was aware of those formalities; nor did he take any steps before the date of the elections to ensure that he was actually registered on the list of the polling station where he proposed to vote. Accordingly, the obligation to observe, within the statutory period, the formalities for removal and registration on a new register of electors did not reduce the applicant's rights to the point of impairing their very substance and rendering them ineffective.
As to whether the conditions provided for in national law pursued a legitimate aim and were proportionate, the Court considers that the rules pursue legitimate aims, namely to ensure that the registers of electors are drawn up in satisfactory conditions as regards both time and control, to allow the voting operations to proceed smoothly and to prevent fraud. The limitations which the applicant encountered were imposed in the exercise of the wide margin of appreciation which the State enjoys in such matters. Those limitations, and the refusal to allow the applicant to vote on election day, are not disproportionate: manifestly ill-founded.

ARTICLE 2 OF PROTOCOL No. 4

Article 2(2) of Protocol No. 4

FREEDOM TO LEAVE A COUNTRY
Confiscation of passport by the authorities for more than two years: *violation*.

NAPIJALO - Croatia (Nº 66485/01)
Judgment 13.11.2003 [Section I]

Facts: The applicant was fined at a border control in February 1999 for not having declared some goods. As he did not pay the fine, his passport was taken by a customs officer and not returned to him. The applicant wrote to the Ministry of Finance asking that his passport be returned, but he received no indication as to when this would be done; the letter only mentioned that his passport had been seized in accordance with the law because of his refusal to pay the fine. In March 1999, the applicant instituted proceedings in the Municipal Court, requesting an interim measure for the return of his passport and damages resulting from his inability to leave Croatia. The Municipal Court rejected the applicant's request for an interim measure. In April 2001, in the course of the proceedings in the Municipal Court, the police returned the passport to the applicant (they claimed to have twice written to his registered address inviting him to collect the passport). Following the return of his passport, the applicant reformulated his claim, seeking a declaratory decision and costs. The court dismissed the claim and ordered him to pay the costs. His subsequent appeal to the County Court was also dismissed in December 2002.

Law: Article 6(1) (reasonable time) –The applicant's request for a declaratory decision was closely connected to his pecuniary claim for damages and costs, which rendered Article 6 applicable to the proceedings taken as a whole. The proceedings had lasted three years and six months, with two long periods of inactivity in the proceedings in the Municipal Court for which no explanation had been given. Since the applicant's freedom of movement was at stake, such a length of proceedings was not “reasonable”.
Conclusion: violation (unanimously)

Article 2(2) of Protocol No. 4 – There had been an interference with the applicant's rights under this Article since he had been dispossessed of his passport, which, had he wished so, would have enabled him to leave the country. Although the Government maintained that the seizure of the passport had been done in accordance with law, the Court did not examine this question in view of the conclusion it reached on this complaint. As proceedings were never instituted against the applicant for a customs offence, there was no justification for the withholding of his passport or for the Municipal Court to reject his request for an interim measure. It followed that the interference with the applicant's liberty of movement had not been “necessary in a democratic society”.
Conclusion: violation (unanimously).
Article 41 – The Court awarded the applicant 2,000 euros in respect of non-pecuniary damage.

ARTICLE 4 OF PROTOCOL No. 7

NE BIS IN IDEM
Supervisory review of a final acquittal: *admissible*.

NIKITIN - Russia (Nº 50178/99)
Decision 13.11.2003 [Section II]

The applicant, a former navy officer, undertook work for a Norwegian non-governmental organisation to work on a report on the Russian Northern Fleet and Sources of Radioactive Contamination. In October 1995, the Security Services instituted criminal proceedings against the applicant on charges of treason through espionage for having disclosed information on accidents of Russian nuclear submarines. The Security Services appointed two groups of experts, one to examine whether the report contained official secrets, another to evaluate the damage caused by the disclosure. The trial commenced in the City Court in October 1998, but was shortly after remitted for further investigation. The court ordered an additional expert examination, but as a result of the prosecution's appeal, the extension of the investigation was only declared in March 1999. Despite the experts' conclusion that the report contained official secrets, the applicant was acquitted by the City Court in December 1999, as it found that the applicant had reason to believe that the information was merely of ecological relevance. The Supreme Court upheld the acquittal, which thus acquired final force. Despite this, the Prosecutor General lodged a request for a supervisory review of the acquittal with the Presidium of the Supreme Court, which considered the case on the merits, but rejected the request. The applicant complains that the very possibility of challenging his acquittal, which had entered into force, violated his right to a fair hearing and his right not to be tried again in criminal proceedings.

Admissible under Articles 6(1) (fair trial) and Article 4 of Protocol No. 7.

Other judgments delivered in November

Article 2

KARA and others – Turkey (Nº 37446/97)
Judgment 25.11.2003 [Section IV]

effectiveness of investigation into killings carried out by unidentified perpetrators – friendly settlement.

Articles 2, 3, 5, 13 and 14

HANIM TOSUN - Turkey (Nº 31731/96)
Judgment 6.11.2003 [Section I]

disappearance of applicant's husband after being abducted, allegedly by security forces – friendly settlement (statement of regret, undertaking to take appropriate measures, *ex gratia* payment).

Articles 3, 5(3) and 8

P.K. - Poland (Nº 37774/97)
Judgment 6.11.2003 [Section I]

conditions of detention, length of detention on remand and control of detainee's correspondence with the European Commission of Human Rights – friendly settlement.

Article 6(1)

SLIMANE-KAÏD - France (no. 2) (Nº 48943/99)
Judgment 27.11.2003 [Section I]

non-disclosure in Court of Cassation proceedings of report of the *conseiller rapporteur*, available to the *avocat général*, and presence of the latter during the court's deliberations; length of criminal proceedings – violation.

ERCOLANI – San Marino (Nº 35430/97)
Judgment 25.11.2003 [Section II]

lack of oral hearing in criminal proceedings – friendly settlement.

SIKÓ - Hungary (Nº 53844/00)
Judgment 4.11.2003 [Section II]

CIBOREK - Poland (Nº 52037/99)
Judgment 4.11.2003 [Section IV]

MILITARU - Hungary (Nº 55539/00)
Judgment 12.11.2003 [Section II]

NICOLLE – France (Nº 51887/99)
HUART - France (Nº 55829/00)
VASS – Hungary (Nº 57966/00)
Judgments 25.11.2003 [Section II]

WIERCISZEWSKA - Poland (Nº 41431/98)
Judgment 25.11.2003 [Section IV]

length of civil proceedings – violation.

PAPAZOGLOU and others – Greece (Nº 73840/01)
Judgment 13.11.2003 [Section I]

length of proceedings in the Audit Court – violation.

BARTRE - France (Nº 70753/01)
Judgment 12.11.2003 [Section II]

length of administrative proceedings – violation.

İSMAIL GÜNEŞ - Turkey (Nº 53968/00)
AL and others – Turkey (Nº 59234/00)
Judgments 13.11.2003 [Section III]

CAN – Turkey (Nº 38389/97)
TUNCEL and others – Turkey (Nº 42738/98)
GÜNEL – Turkey (Nº 47296/99)
KIRMAN – Turkey (Nº 48263/99)
ÖZÜLKÜ – Turkey (Nº 51289/99)
UÇAR and others – Turkey (Nº 55951/00)
Judgments 27.11.2003 [Section III]

independence and impartiality of State Security Court – violation.

KENAN YAVUZ – Turkey (Nº 52661/99)
Judgment 13.11.2003 [Section III]

independence and impartiality of State Security Court and length of criminal proceedings – violation/no violation.

MEILUS - Lithuania (Nº 53161/99)
Judgment 6.11.2003 [Section III]

SCHUMACHER – Luxemburg (Nº 63286/00)
Judgment 25.11.2003 [Section IV]

length of criminal proceedings – violation.

ABRIBAT – France (Nº 60392/00)
Judgment 25.11.2003 [Section II]

length of administrative proceedings concerning tax penalties – violation.

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

POTOP – Romania (Nº 35882/97)
POPESCU – Romania (Nº 38360/97)
Judgments 25.11.2003 [Section II]

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

ANTONIO INDELICATO - Italy (Nº 34442/97)
Judgment 6.11.2003 [Section I]

SCALERA – Italy (Nº 56924/00)
D'ALOE – Italy (Nº 61667/00)
Judgments 13.11.2003 [Section I]

NICOLAI - Italy (Nº 62848/00)
PETRINI – Italy (Nº 63543/00)
Judgments 27.11.2003 [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 staggering granting of police assistance – violation.

ISTITUTO NAZIONALE CASE SRL – Italy (no. 2)
(Nº 41932/98, Nº 41935/98 and Nº 42732/98)
DELLA ROCCA – Italy (Nº 59452/00)
Judgments 27.11.2003 [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 staggering granting of police assistance – friendly settlement.

D.L. - Italy (Nº 34669/97)
GAMBERINI MONGENET - Italy (Nº 59635/00)
Judgments 6.11.2003 [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 staggering granting of police assistance – striking out (death of applicant).

ISTITUTO NAZIONALE CASE srl - Italy (Nº 41479/98)
Judgment 6.11.2003 [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 staggering granting of police assistance – striking out.

Articles 6(1) and 8, Article 1 of Protocol No. 1 and Article 2 of Protocol No. 4

PERONI - Italy (Nº 44521/98)
Judgment 6.11.2003 [Section III]

length of bankruptcy proceedings and effect thereof on bankrupt's property rights, receipt of correspondence and freedom of movement – violation (cf. *Luordo* judgment of 17 July 2003).

Article 8

LEWIS - United Kingdom (Nº 1303/02)
Judgment 25.11.2003 [Section IV]

absence of legal basis for installation by the police of a listening device on private property – violation (cf. *Khan* judgment, ECHR 2000-V).

Article 10

KRONE VERLAG GmbH & CoKG - Austria (no. 2) (Nº 40284/98)
Judgment 6.11.2003 [Section I]

order by appeal court, when quashing first instance decision, to pay coercive indemnity (relating to inadequate publication of notice of the proceedings) for the period of the appeal proceedings – violation.

SCHARSACH and NEWS VERLAGSGESELLSCHAFT – Austria (Nº 39394/98)
Judgment 13.6.2003 [Section I]

conviction of journalist and award of damages against magazine for defamation – violation.

Article 11

PARTI SOCIALISTE DE TURQUIE [STP] and others – Turkey (Nº 26482/95)
Judgment 12.11.2003 [Section II]

dissolution of political party – violation.

Article 1 of Protocol No. 1

TANDREU – Romania (Nº 39184/98)
SOFLETEA – Romania (Nº 48179/99)
Judgments 25.11.2003 [Section II]

deprivation of property as a result of annulment by Supreme Court of Justice of final and binding judgment ordering return of property previously nationalised – violation.

S.C. and V.P. - Italy (Nº 52985/99)
Judgment 6.11.2003 [Section I]

effect of excessive length of bankruptcy procedure – violation (cf. *Luordo* judgment of 17 July 2003).

Just satisfaction

KATSAROS – Greece (Nº 51473/99)
Judgment 13.11.2003 [Section I]

Revision

LUTZ – France (Nº 49531/99)
Judgment 25.11.2003 [Section II]

Judgment which have become final

Article 44(2)(b)

The following judgments have become final in accordance with Article 44(2)(b) of the Convention (expiry of the three month time limit for requesting referral to the Grand Chamber) (see Information Note No. 55):

BEUMER - Netherlands (Nº 48086/99)
SANTONI - France (Nº 49580/99)
Judgments 29.7.2003 [Section II]

MISCIOSCIA - Italy (Nº 58408/00)
GATTI and others - Italy (Nº 59454/00)
DE GENNARO - Italy (Nº 59634/00)
MARIGLIANO - Italy (Nº 60388/00)
FEZIA and others - Italy (Nº 60464/00)
TEMPESTI CHIESI and CHIESI - Italy (Nº 62000/00)
LA PAGLIA - Italy (Nº 62020/00)
FERRONI ROSSI - Italy (Nº 63408/00)
KRASZEWSKI - Italy (Nº 64151/00)
BATTISTONI - Italy (Nº 66920/01)
HRISTOV - Bulgaria (Nº 35436/97)
MIHOV - Bulgaria (Nº 35519/97)
AL AKIDI - Bulgaria (Nº 35825/97)
Judgments 31.7.2003 [Section I]

HERBOLZHEIMER - Germany (Nº 57249/00)
Judgment 31.7.2003 [Section III]

Statistical information[1]

Judgments delivered	November	2003
Grand Chamber	0	10(17)
Section I	21	193(197)
Section II	14	156(163)
Section III	14(15)	109(114)
Section IV	8(9)	145(149)
Sections in former compositions	0	13
Total	**57(59)**	**626(653)**

Judgments delivered in November 2003					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	0	0	0	0	0
former Section I	0	0	0	0	0
former Section II	0	0	0	0	0
former Section III	0	0	0	0	0
former Section IV	0	0	0	0	0
Section I	14	4	2	1	21
Section II	12	1	0	1	14
Section III	14(15)	0	0	0	14(15)
Section IV	7(8)	1	0	0	8(9)
Total	**47(49)**	**6**	**2**	**2**	**57(59)**

Judgments delivered in 2003					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	9(16)	0	0	1	10(17)
former Section I	4	0	0	0	4
former Section II	1	0	0	1	2
former Section III	4	0	0	0	4
former Section IV	1	0	0	2	3
Section I	146(150)	40	2	5	193(197)
Section II	125(132)	22	4	5	156(163)
Section III	95(100)	13	0	1	109(114)
Section IV	98(100)	44(46)	3	0	145(149)
Total	**483(508)**	**119(121)**	**9**	**15**	**626(653)**

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		November	2003
I. Applications declared admissible			
Grand Chamber		1	1
Section I		10	98(100)
Section II		26(27)	116(125)
Section III		23	105(111)
Section IV		17(25)	198(242)
former Sections		0	1
Total		**77(86)**	**519(580)**
II. Applications declared inadmissible			
Section I	- Chamber	11(15)	59(63)
	- Committee	917	4473
Section II	- Chamber	4	65(66)
	- Committee	381	3510
Section III	- Chamber	7	65(75)
	- Committee	650	2172
Section IV	- Chamber	17	93(95)
	- Committee	330	2459
Total		**2317(2321)**	**12896(12913)**
III. Applications struck off			
Section I	- Chamber	5	24
	- Committee	4	27
Section II	- Chamber	4	35
	- Committee	7	37
Section III	- Chamber	4	89
	- Committee	4	21
Section IV	- Chamber	11	82(100)
	- Committee	2	29
Total		**41**	**344(362)**
Total number of decisions[1]		**2435(2448)**	**13759(13855)**

1. Not including partial decisions.

Applications communicated	November	2003
Section I	65	368(373)
Section II	45	338(346)
Section III	38	380(396)
Section IV	23(31)	257(303)
Total number of applications communicated	**171(179)**	**1343(1420)**

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