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

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## ARTICLE 1

**JURISDICTION OF STATES**
Jurisdiction of Turkey in relation to the alleged ill-treatment and killing of shepherds by the Turkish army in northern Iraq.

**<u>ISSA and others - Turkey</u>** (Nº 31821/96)
Judgment 16.11.2003 [Section II]

*Facts*: The applicants are six women from northern Iraq, who brought the applications in their own name and on behalf of their deceased relatives. They allege that during an operation of the Turkish army in the hills surrounding their village in April 1995, whilst they were out shepherding, they came across Turkish soldiers who ill-treated them and took their husbands away. As their subsequent search for their relatives was unsuccessful, they allege to have approached, in the company of members of the Kurdistan Democratic Party ("KDP"), a Turkish military unit in the area, to request their relatives' release. A Turkish officer denied that the shepherds had been detained. The bodies of the applicants' relatives were found some days later with bullet wounds and mutilated. The applicants filed several petitions with the authorities of the region requesting an investigation, but to date have not been informed of any follow-up. The Government admitted that a military operation took place in northern Iraq in March-April 1995, but disputed that their forces were present in the area indicated by the applicants. The evidence submitted by the applicants contained, *inter alia*, a video recording of a press conference of the Governor of their region in northern Iraq denouncing the killings which had resulted from the Turkish military campaign and showing the bodies of the deceased persons. They also submitted a report by a forensic pathologist which stated that the bullet shells were of a Turkish manufacturer. The Government submitted a letter which supported their argument that the applicants had never complained to the Turkish army in northern Iraq concerning the events.

*Law*: *The Government's preliminary objection* (jurisdiction) – As the Government had only raised the jurisdiction objection in the post-admissibility observations, the applicants contended that they should be estopped from raising it at such a late stage of the proceedings. However, the Court found that notwithstanding Rule 55 of the Rules of the Court, the Government could not be precluded from raising the jurisdiction issue at this juncture, as it was inextricably linked to the facts underlying the applicants' allegations that the deceased shepherds were under the control and authority of Turkish armed forces in northern Iraq at the time of their killing, which the Government had at all times denied. Thus, the question must be taken to have been implicitly reserved for the merits stage, and seen as a live issue before the Court: objection dismissed.

*Article 1 of the Convention* – Whilst it was undisputed that Turkish armed forces had carried out military operations in northern Iraq in March and April 1995, it did not appear that Turkey had exercised effective overall control over the entire area of north Iraq. The essential question was whether at the relevant time Turkish troops had conducted operations in the area where the killings had taken place. In the light of the documentary evidence submitted by the parties, and bearing in mind that the area where the applicants' relatives were killed was the scene of fierce fighting between PKK militants and KDP peshmergas at the time, it could not be concluded with certainty that Turkish troops had gone as far as the valleys and hills surrounding the applicants' village. Moreover, the Court was unable to determine, on the basis of the post-mortem reports and video recording showing the bullet shells removed from the corpses, whether the gunfire had been discharged by Turkish troops. Thus, it could not be established to the required standard of proof that the Turkish armed forces had conducted

operations in the specific areas where the applicants maintained that the victims had been. In the light of the above, the applicants' relatives had not been within the "jurisdiction" of Turkey for the purposes of Article 1 of the Convention, and it was not therefore necessary to examine the applicants' complaints under Articles 2, 3, 5, 8, 13, 14 and 18.

## ARTICLE 2

**LIFE**
Killing of shepherds in northern Iraq, allegedly by Turkish troops.

**ISSA and others - Turkey** (Nº 31821/96)
Judgment 16.11.2003 [Section II]
(see Article 1, above).

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**LIFE**
Responsibility of authorities in connection with deaths resulting from an accidental explosion at a rubbish tip close to a shanty town: *violation*.

**ÖNERYILDIZ - Turkey** (N° 48939/99)
Judgment 30.11.2004 [Grand Chamber]

*Facts*: At the material time the applicant was living with twelve close relatives in a slum quarter in Ümraniye (Istanbul). The area was part of an expanse of rudimentary dwellings built without any authorisation on land surrounding a rubbish tip, which was used for the storage of waste from four districts, under the authority and responsibility of Istanbul City Council. An expert report drawn up at the request of Ümraniye District Council drew the authorities' attention to the fact that the tip, which did not conform to the relevant technical requirements and the Environment Act, posed a number of dangers for the slum inhabitants and that no measures had been taken to prevent an explosion of the gases generated by the decomposing refuse. The relevant government body recommended that the authorities remedy the problems thus identified and Ümraniye District Council applied for a court order prohibiting the use of the site by the other local councils. Before the proceedings had been concluded, a methane explosion occurred at the rubbish tip on 28 April 1993 and the refuse erupting from the pile of waste engulfed several houses situated below it, including the one belonging to the applicant, who lost nine close relatives. The police and administrative authorities promptly opened investigations and expert reports were ordered. The official investigations were all completed within less than three months, and criminal proceedings were instituted against the mayors of Ümraniye and Istanbul. They were subsequently found guilty of "negligence in the performance of their duties" and were given suspended fines, the minimum penalty under the relevant legislation. The applicant subsequently brought an action for damages in the Administrative Court on account of the death of his relatives and the loss of his property. The court found a direct causal link between the accident and the authorities' negligence. After proceedings lasting almost five years, the applicant and his surviving children were awarded compensation of TRL 100,000,000 for non-pecuniary damage (approximately 2,077 euros) and TRL 10,000,000 for pecuniary damage (approximately 208 euros), although those sums have not been paid. The court refused to take into account the destruction of the house on the ground that, following the accident, the applicant had been able to acquire subsidised housing on very favourable terms, and also refused to award compensation for the destruction of electrical appliances, which the applicant was not supposed to own as the house had had no water supply or electricity.

*Law*: Article 2 (positive obligations on the State in relation to dangerous activities): Both the operation of household-refuse tips and the rehabilitation of slum areas were governed by safety regulations in Turkey. In the present case, long before the explosion, there had been practical information available to the effect that the inhabitants were faced with a threat to their physical integrity on account of the tip's technical shortcomings. A court-ordered expert report had established that the tip had been opened and had continued to operate in breach of the regulations in force, that the site posed certain dangers and that the existing facilities were unable to prevent the risk of an explosion through the decomposition of the waste. In short, long before the fatal accident, both the reality and the immediacy of the risk in question had been highlighted and, given the site's continued operation in the same conditions, that risk could only have increased. Accordingly, since the authorities had been informed of the risks and the danger posed by the tip, they had known or ought to have known before the accident what the local inhabitants were facing. Under Article 2 they had therefore had an obligation to take such preventive operational measures as were necessary and sufficient to protect those individuals. However, the council responsible had failed to take the necessary urgent measures and had also opposed official steps to the same effect. Furthermore, no negligence or lack of foresight could be attributed to the victims of the accident since, although the relevant legislation had prohibited them from living in the area of the tip, the State had for many years consistently pursued a general policy of tolerance towards slum areas, and the applicant had benefited from that tolerance. The administrative authorities had treated him as the lawful owner of his house, even though they had been entitled by law to demolish it; they had therefore remained passive in the face of his unlawful conduct and had created uncertainty as to their application of the relevant regulations. Regard had to be had, admittedly, from the State's point of view, to the level of investment required to take steps to deal with such problems, but the timely installation of a gas-extraction system at the tip could have been an effective means of alleviating the danger of an explosion of the gas given off from the decomposing waste, without placing an excessive burden on the State. Lastly, in the absence of more practical measures to avoid the risks to the lives of the slum inhabitants, even compliance by the State with its obligation to respect the public's right to information would not have been sufficient. In short, as the domestic investigating authorities had concluded, the State's responsibility had been engaged. The authorities' failure to do everything within their power to protect the slum inhabitants from immediate and known risks gave rise to a violation of Article 2 in its substantive aspect.
*Conclusion*: violation (unanimously).

The State had been required to ensure an "adequate" judicial response through criminal law to the deaths caused by the dangerous activity in question. The criminal-law procedures in place in Turkey were part of a system which, in theory, appeared sufficient to protect the right to life in the context of dangerous activities. In practice, the authorities had carried out prompt administrative and criminal investigations, had rapidly established the causes of the accident and the deaths and had identified those responsible. The question was therefore whether the judicial authorities had been determined to sanction those responsible. However, the criminal proceedings in issue had had the sole purpose of establishing whether the authorities could be held liable for negligence in the performance of their duties and had thus left in abeyance any question of their possible responsibility for the deaths. The judgment referred to the deaths as a factual element but there had not been an acknowledgment of any responsibility for failing to protect the right to life. There was no indication that the trial court had had sufficient regard to the extremely serious consequences of the accident; the persons held liable had ultimately been sentenced to the minimum penalty applicable, which had, moreover, been suspended. In short, the judicial response to the tragedy had failed to secure the full accountability of State officials or authorities for their role in the fatal accident and the effective implementation of provisions of domestic law guaranteeing respect for the right to life, in particular the deterrent function of the criminal law. The lack, in connection with a fatal accident caused by a dangerous activity, of adequate protection "by law" safeguarding the right to life and

deterring similar life-endangering conduct in future amounted to a violation of Article 2 in its procedural aspect.
*Conclusion*: violation (sixteen votes to one).

Article 1 of Protocol No. 1: (a) *Applicability*: The applicant's dwelling had been erected illegally on land belonging to the Treasury and had not conformed to the relevant technical standards. It was impossible to establish whether the applicant had been entitled to benefit from the regulations by which the situation could be regularised and title to the land obtained, but in any event, he had never taken any steps to that end. Accordingly, the hope he expressed before the Court of having the land transferred to him one day did not constitute a kind of "claim sufficiently established" to be enforceable in the courts, and hence a "possession". With regard to the applicant's unauthorised dwelling, the authorities had deliberately not demolished it, although they had been entitled to; such tolerance indicated a *de facto* acknowledgment on their part that the applicant and his relatives had a proprietary interest in their dwelling and movable goods. Furthermore, the uncertainty created by the authorities' attitude as to the application of laws to curb illegal settlements would not have caused the applicant to imagine that his situation was liable to change overnight. In short, the applicant's proprietary interest in his dwelling was of a sufficient nature and sufficiently recognised to constitute a substantive interest and hence a "possession".
(b) Peaceful enjoyment of possessions: There was a causal link between the gross negligence attributable to the State and the engulfment of the applicant's house, amounting to a breach of the State's positive obligation under this provision to do everything within its power to protect the applicant's proprietary interests. This positive obligation had required the national authorities to take the same practical steps as indicated under Article 2 to avoid the destruction of the applicant's house. However, no such steps had been taken. The advantages conferred on the applicant in terms of subsidised housing could not be regarded as proper compensation for the pecuniary damage he had sustained and there had been no acknowledgment by the authorities of a violation of his right to the peaceful enjoyment of his possessions. The applicant had therefore not lost his status as a "victim". The compensation awarded for pecuniary damage in a final judgment had still not been paid, and this amounted to interference with the right to enforcement of a claim that had been upheld.
*Conclusion*: violation (fifteen votes to two).

Article 13 – Effectiveness of the remedy in respect of the violation of Article 2: The criminal proceedings instituted after the fatal accident in the present case had been found inadequate to protect the right to life (see Article 2 in its procedural aspect), although the official investigations had established the facts and identified those responsible. Accordingly, the applicant had been in a position to use the remedies available to him under Turkish law in order to obtain redress. The administrative-law remedy used by the applicant had, on its face, been sufficient for him to enforce the substance of his complaint regarding the death of his relatives and had been capable of affording him adequate redress for the violation of Article 2 found above. Nevertheless, that remedy had not been effective in practice. In particular, the damages awarded to the applicant for the loss of his close relatives had never been paid to him and the proceedings had not been conducted with due diligence. Although the possibility in Turkish law of applying to join criminal proceedings as an intervening party should in principle be taken into consideration for the purposes of Article 13, in the present case the applicant could not be criticised for omitting to pursue that option since, as noted above, the administrative-law remedy he had chosen to use appeared to have been effective and capable of directly redressing the situation of which he complained, and the criminal-law remedy could not be used simultaneously.
*Conclusion*: violation (fifteen votes to two).

The applicant had been denied an effective remedy for the alleged breach of his right under Article 1 of Protocol No. 1 in view of the lack of diligence in delivering the decision on compensation and the failure to pay the sum awarded for the loss of his possessions. Although the applicant had secured advantages in the form of alternative accommodation, the Court considered that to be a matter for examination under Article 41. Moreover, as such advantages had not removed his status as the victim of an alleged violation of Article 1 of Protocol No. 1 (see above), they could not have deprived him of his right to an effective remedy in respect of that Article.
*Conclusion*: violation (fifteen votes to two).
No separate issue was raised under Article 6(1) and Article 8.

Article 41 – Violations of the right to peaceful enjoyment of possessions: As to the destruction of his property, the applicant did not appear to have sustained a loss greater than the profit he seemed to have made from the transactions relating to the replacement accommodation acquired at a reduced price, so that the finding of a violation constituted in itself sufficient just satisfaction under that head. As to the loss of movable property in the accident, the compensation awarded at domestic level (208 euros) had not taken electrical appliances into account and had never been paid to the applicant. The outcome of the compensation proceedings should not therefore be taken into consideration for the purposes of Article 41, and the Court made an award of 1,500 euros.
Violation of the right to life: the compensation awarded at domestic level (2,077 euros) had not been paid and, in the very particular circumstances of the case, the applicant's decision not to initiate enforcement proceedings in order to obtain that sum could not be regarded as a waiver of his entitlement to it; the Court made an aggregate award of 135,000 euros.
The Court made an award in respect of the costs and expenses incurred before the Convention institutions, although the applicant had not substantiated his claim.

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**POSITIVE OBLIGATIONS**
Infringements of the right to life as a result of dangerous activities; effectiveness of preventive measures and criminal sanctions: *violation*.

**ÖNERYILDIZ - Turkey** (N° 48939/99)
Judgment 30.11.2004 [Grand Chamber]
(see above).

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**Article 2(2)**

**USE OF FORCE**
Death of drug addict following arrest in very agitated state by two police officers: *admissible*.

**SCAVUZZO-HAGER and others - Switzerland** (N° 41773/98)
Decision 30.11.2004 [Section IV]
(see Article 35(1), above).

## ARTICLE 3

**INHUMAN OR DEGRADING TREATMENT**
Alleged ill-treatment in police custody and effectiveness of the investigation: *no violation/violation*.

**MARTINEZ SALA and others - Spain** N° 58438/00)
Judgment 2.11.2004 Section IV]

*Facts*: The fifteen applicants were Spanish nationals who were arrested before the opening of the Olympic Games in Barcelona, in the context of a police operation targeted against presumed sympathisers of a Catalan independence movement. They alleged that they were ill-treated by the police at the time of their arrest and before being brought before a court, a period which lasted from two to six days depending on the individual case. The Spanish Government disputed the existence of ill-treatment. None of the numerous medical reports drawn up by forensic doctors during the critical period attested to signs of violence; the reports stated that, apart from marks made by handcuffs, certain detainees had marks of superficial injuries, haematoma, redness or inflammation. The applicants filed several complaints of ill-treatment against the police. The investigating judge asked a forensic doctor who had examined the prisoners to describe the circumstances in which the medical examinations had been conducted. Based on the medical reports drawn up during the periods in custody and on the report commissioned by the judge, the courts found that there was no evidence proving the reality of the alleged ill-treatment and also that it was difficult to identify the alleged perpetrators of the alleged offences. Those applicants who were committed before the criminal judge on charges of terrorism and crimes as an armed band were sentenced to periods of imprisonment ranging from one to ten years; the others were acquitted.

*Law*: Article 3 – *Allegations of ill-treatment during arrest and police custody*: The applicants' allegations were unsupported by the evidence submitted to the Court: the forensic doctors' reports did not mention significant signs or traces of ill-treatment, and the reports prepared by doctors chosen by six applicants subsequent to their release failed to clarify that point. In addition, the investigation by the domestic authorities had not been sufficiently complete to establish which versions of events was the more credible.
*Conclusion*: no violation (unanimously).

*Obligation to carry out an effective official investigation into the allegations*: In investigating the allegations of ill-treatment, the domestic authorities relied on the medical examinations drawn up by the forensic doctor while the applicants were in custody and on the report by that same doctor describing the circumstances in which the medical visits had been conducted. It was on this sole basis that the courts concluded that there was no evidence to prove the matters complained of. In the Court's opinion, the investigations had not been sufficiently thorough and effective. Although the applicants had referred in their complaints to the police officers who had questioned them, the courts had ruled that it was difficult to identify the presumed perpetrators of the ill-treatment; thus, statements were never taken from the police officers implicated by the applicants. Moreover, the judicial authorities had turned down the applicants' request for statements by police officers and expert reports to be included in the case file; they had also failed to take statements from the applicants. In short, the authorities had dismissed all the applicants' requests for evidence to be obtained, thereby denying them a reasonable opportunity to establish the matters of which they complained.
*Conclusion*: violation (unanimously).

Article 41: The Court awarded each of the applicants EUR 8,000 for non-pecuniary damage. It also awarded them the joint sum claimed for costs and expenses.

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**INHUMAN TREATMENT**
Alleged ill-treatment by police and effectiveness of the investigation: *admissible*.

**BEKOS and KOUTROPOULOS - Greece** (Nº 15250/02)
Decision 23.11.2004 [Section IV]
(see Article 14, below).

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**EXPULSION**
Expulsion of Togolese national with HIV: *inadmissible*.

**AMEGNIGAN – Netherlands** (Nº 25629/04)
Decision 25.11.2004 [Section III]

The applicant, who is a Togolese national, arrived in the Netherlands in September 2000 and unsuccessfully applied for asylum. He was subsequently diagnosed as being infected with HIV and provided with antiretroviral treatment. His second and third asylum applications, which relied on his health problems and were supported by a medical opinion that if the applicant were to cease taking anti-HIV medication his prospects would become very poor, were also rejected. In October 2003, the Minister for Immigration and Integration found that his illness had not reached a life-threatening stage which would render his expulsion contrary to Article 3. Moreover, the applicant's reasons for leaving Togo had not been linked to his health problems and he could have applied for a temporary residence permit on medical grounds. The Council of State confirmed this decision.

*Inadmissible* under Article 3: Despite the seriousness of the applicant's medical condition there were no indications that he was at an advanced stage of AIDS or had an HIV-related illness. As treatment was in principle available in Togo, albeit at a possibly considerable cost, and bearing in mind that the applicant had some family support in his home country, the circumstances of his situation were not of such an exceptional nature as to render his expulsion treatment proscribed by Article 3: manifestly ill-founded.

## ARTICLE 5

### Article 5(3)

**JUDGE OR OTHER OFFICER EXERCISING JUDICIAL POWER**
Lack of power of magistrates' court to hear a request for release on bail: *admissible*.

**McKAY - United Kingdom** (Nº 543/03)
Decision 30.11.2004 [Section IV]

The applicant was arrested on suspicion of robbery. He was brought before the magistrates' court two days after his arrest, when he applied for release on bail. A police officer gave evidence to the court that the robbery was not connected with terrorism, but the resident magistrate nevertheless refused the applicant's request, on the ground that robbery was a scheduled offence under the Terrorism Act 2000 and he lacked power to order release. The

applicant's bail request was heard and granted by the High Court four days after his arrest. The applicant complains of a breach of Article 5 as there was no automatic bail hearing before the magistrates' court following his arrest.
*Admissible* under Article 5.

## ARTICLE 6

### Article 6(1) [civil]

**APPLICABILITY**
Private company acting as guarantor for customs debts: *Article 6 applicable*.

**O.B. HELLER A.S. and ČESKOSLOVENSKÁ OBCHODNÍ BANKA A.S. - Czech Republic** (N° 55631/00 and N° 55728/00)
Decision 9.11.2004 [Section II]
(see Article 1 of Protocol No. 1, below).

In 1996 the two applicant companies had both drawn up a letter of guarantee with regard to customs duties. In so doing, they each undertook to settle any sums owned to the customs authorities by an import company, up to a certain maximum amount. The customs authorities subsequently claimed reimbursement of all the customs debts owed by the respective importing companies for the period concerned, as a result of which the applicant companies were required to settle a total sum which exceeded the maximum amount provided for in the letters of guarantee. Taking the view that those guarantees had committed them only up to the maximum amount provided for in the letters of guarantee, the applicant companies brought proceedings. The administrative court stated that, under the Customs Code, a letter of guarantee which secured debts up to a maximum amount guaranteed not merely a single debt but each of the debtor's customs debts arising during the guarantee's period of validity, since, according to the relevant texts, such a guarantee was in fact a so-called comprehensive customs guarantee. In a leading judgment, the Constitutional Court upheld the lawfulness of the authorities' interpretation of the Customs Code.

*Inadmissible* under Article 6: *applicability* – The Government contested the applicability of Article 6 to the proceedings. They considered that the dispute concerned customs issues, an area which, like tax proceedings, remained within the irreducible core of public-law prerogatives. For its part, the Court found that the decisions against the applicant companies with regard to the payment of customs debts had not had the consequence of transferring a liability to "tax" in the strict sense of the term, but rather an obligation to settle. The applicant companies did not have debtor status, since they had not submitted the customs declarations (this having been done by the import companies) and were involved in the proceedings solely by virtue of a secondary relationship as guarantors. The proceedings concerned the content of letters of guarantee contracted between the applicant companies, private-law companies, and the import companies. In that respect, the proceedings concerned a "civil" dispute within the meaning of Article 6(1).
*Public hearing* – The applicant companies complained that there had been no hearing before the Constitutional Court. However, the failure to hold a hearing before the Constitutional Court could be compensated by the public hearings held at the decisive stage of those proceedings in which a ruling was given on the merits of the applicant companies' complaint. In the present case, the lower courts had held at least one hearing at which the parties had been able to submit their arguments, which were valid for the dispute in its entirety: manifestly ill-founded (see *Houfova*, (dec.), 1 July 2003 and, *a contrario*, *Malhous*, 2001, Case-Law Report No. 32).

*Inadmissible* under Article 1 of Protocol No. 1: The obligation to pay numerous amounts owed by debtors, using previously-acquired financial resources, represented an interference in the right to the peaceful enjoyment of one's possessions. The courts dealing with the case had not applied the legal provisions in question manifestly erroneously or so as to reach arbitrary conclusions. The mere fact that the applicable legislation was open to more than one interpretation could not in itself lead to the conclusion that the interference in question was unforeseeable or arbitrary, and consequently incompatible with the requirement of lawfulness. Admittedly, the comprehensive-guarantee system imposed a significant burden on the applicant companies. However, the applicant companies had voluntarily entered into those commitments in the course of their professional activities and they had enjoyed sufficient opportunities during the proceedings to put their case to the relevant authorities. In addition, the applicant companies had not demonstrated in what way they would have suffered an excessive burden; indeed, it seemed that, unlike the debtor companies, which had gone bankrupt, the applicant companies had not been ruined and continued to operate. Consequently, and having regard to the margin of appreciation enjoyed by the States in this area, the requirement of the proportionality of the interference had been satisfied in this case.

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**CIVIL RIGHTS AND OBLIGATIONS**
Right to a clean environment: application by person living close to a gold mine for annulment of decision authorising use of toxic substance: *Article 6 applicable*.

**TAŞKIN and others - Turkey** (N° 46117/99)
Judgment 10.11.2004 [Section III (former composition)]
(see below).

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**ACCESS TO COURT**
Interpretation of a rule on lodging of appeals on points of law, resulting in rejection as inadmissible of an appeal declared admissible by the same court seven years earlier: *violation*.

**SAEZ MAESO - Spain** (N° 77837/01)
Jugement 9.11.2004 [Section IV]

Article 6(1) Extract: "…The applicant's appeal on points of law was dismissed [in June 2000] on the ground that he had not complied with the formal requirements as to admissibility, even although the appeal on points of law had been declared admissible [in June 1993]…. More specifically, the appeal on points of law before the Supreme Court had first been declared admissible and subsequently dismissed on account of a procedural shortcoming concerning the lodging of the appeal [section 96 of the Contentious Administrative Jurisdiction Act], without the applicant being given an opportunity to submit his observations within a specific time-limit. In the Court's opinion, the Supreme Court's interpretation in this case is too strict, bearing in mind, as the applicant points out, that a new law, no. 29/1998 of 13 July 1998, provides that the parties are to be informed of the existence of possible grounds for inadmissibility. Since the issue concerns the principle of legal certainty, this is not merely a problem of interpretation of a legal provision in the usual way, but concerns the interpretation of a procedural requirement which prevented an appeal being examined on the merits and thereby entailed a breach of the right to the effective protection of the courts. The Court notes that the applicant cannot be accused of negligence or of committing an error by lodging the application, which was declared admissible by the Supreme Court and then dismissed more than seven years later by the same court for failure to comply with the formal requirements. However, the Court considers that the conditions governing the submission of appeals on points of law to the Supreme Court cannot in themselves be called into question. Nonetheless, the specific combination of facts in this case, including the seven-year period between the

Supreme Court's two decisions, has destroyed the relationship of proportionality between the limitations as applied in the instant case and the consequences of their application. It follows that the particularly strict interpretation by the courts of a procedural rule has deprived the applicant of the right of access to a court with a view to obtaining a hearing for his appeal on points of law. There has therefore been a violation of Article 6 § 1 of the Convention."

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**RIGHT TO A COURT**
Non-enforcement of a final judgment: *violation*.

**QUFAJ CO. SH.P.K. - Albania** (Nº 54268/00)
Judgment 8.11.2003 [Section III]

*Facts*: The applicant, a construction company, bought land from the municipality of Tirana, which also granted it planning permission to build five hundred flats. However, the municipality subsequently refused to grant the company the requisite building permit. The applicant's action claiming compensation was dismissed by the District Court, but upheld by the Court of Appeal. The municipality did not appeal against the Court of Appeal's judgment, which became final. Despite notifications from the Enforcement Office to the municipality requesting that it comply with the Court of Appeal judgment, the municipality repeatedly refused to comply, arguing it had no budget. The applicant brought proceedings in the Constitutional Court but the complaint was rejected as it was not within the Constitutional Court's jurisdiction.

*Law*: Government's preliminary objection (victim status): The material facts complained of by the applicant company had occurred before it had failed to comply with registration formalities and ceased to exist as the "old" company: objection dismissed.
Article 6(1) (fair hearing) – The fair trial rules should have been interpreted in a way that guaranteed the applicant an effective remedy to have the judgment in his favour enforced. Thus, the Constitutional Court was competent and could have dealt with the applicant company's complaint. In any event, the applicant should not have been prevented from benefiting from the judgment in its favour on the ground of the State's alleged financial difficulties. For these reasons, there had been a violation of Article 6(1) of the Convention.
*Conclusion*: violation (unanimously)

Article 41 – The Court held that the respondent State was to pay the applicant company the entire sum awarded by the national courts (ALL 60,000,000). It also awarded the applicant 70,000 euros in respect of non-pecuniary damage, and made an award in respect of costs and expenses.

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**RIGHT TO A COURT**
Non-enforcement of final judgments awarding salary arrears to employees of a State-owned enterprise: *violation*.

**MYKHAYLENKY and others - Ukraine** (Nos 35091/02, 35196/02, 35201/02, 35204/02, 35945/02, 35949/02, 35953/02, 36800/02, 38296/02 and 42814/02)
Judgment 30.11.2004 [Section II]
(see Article 1 of Protocol No. 1, below)

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**RIGHT TO A COURT**
Supervisory review of a final and binding judgment: *violation*.

**<u>TREGUBENKO - Ukraine</u>** (N° 61333/00)
Judgment 2.11.2004 [Section II (former composition)]

*Facts*: In 1993 the Supreme Court quashed a judgment of the Regional Court and upheld earlier judgments in the applicant's favour. The judgment of the Supreme Court was final. However, it was not fully enforced for several years and in 1998 the Deputy Chairman of the Supreme Court lodged a request for supervisory review of the judgments in the applicant's favour. The Plenary of the Supreme Court allowed the request and upheld the original judgment of the City Court in 1991 rejecting the applicant's claim for lack of jurisdiction.

*Law*: Article 6(1) – At the material time, there was no time limit on submission of a request for supervisory review. By allowing the request in the present case, the Supreme Court had nullified an entire judicial process which had ended in a final and binding decision. The issue was one of legal certainty rather than interference by the executive and it was therefore irrelevant that the request had been made by a judge rather than by a prosecutor, as in *Brumarescu v. Romania* (judgment of 28 October 1999). The principle of legal certainty had been infringed. Moreover, the fact that the Supreme Court had held that the jurisdiction of the courts was excluded in relation to certain civil disputes was contrary to the right of access to a court.
*Conclusion*: violation (unanimously).

Article 1 of Protocol No. 1 – The quashing of the final judgment in the applicant's favour had constituted a deprivation of property and had upset the fair balance, imposing on him an individual and excessive burden.
*Conclusion*: violation (unanimously).

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

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**RIGHT TO A COURT**
Non-enforcement of a judgment of the Council of State and subsequent administrative decisions seeking to circumvent it: *violation*.

**<u>TAŞKIN and others - Turkey</u>** (N° 46117/99)
Judgment 10.11.2004 [Section III (former composition)]
(see Article 8, below).

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**PUBLIC HEARING**
Lack of public hearing before the Constitutional Court: *inadmissible*.

**<u>O.B. HELLER A.S. and ČESKOSLOVENSKÁ OBCHODNÍ BANKA A.S. - Czech Republic</u>** (N° 55631/00 and N° 55728/00)
Decision 9.11.2004 [Section II]
(see above).

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**IMPARTIAL TRIBUNAL**
Impartiality of appeal court judge who, in previous civil proceedings brought by the applicants, had acted as legal representative of the opposing party: *no violation*.

**PUOLITAIVAL and PIRTTIAHO - Finland** (Nº 54857/00)
Judgment 23.11.2004 [Section IV (former composition)]

*Facts*: The applicants owned a company which brought civil proceedings against an investment bank in February 1992. In December 1992 the District Court refused to examine the claims. In November 1993 the Court of Appeal found that the claims should have been examined and remitted the case to the District Court, which dismissed the claims in April 1997. In August 1998 the Court of Appeal upheld that decision. The Court of Appeal was composed of three judges, including P.L. The applicants' company requested leave to appeal, on the ground that P.L. was biased, since in previous civil proceedings brought by the company in 1991 the opposing party had been represented by the law firm in which P.L. had at that time been a partner. In particular, she had signed a notice of appeal in those proceedings, which had ended in February 1993. The Supreme Court obtained from P.L. a statement, which was communicated to the applicants for information, on the basis of which it refused leave to appeal.

*Law*: Article 6(1) (impartiality) – There was no indication that there was any system in the Court of Appeal to ensure that judges were reminded of their prior involvement in particular cases. However, while observing that there is a risk of problems arising in a system where such matters are left entirely to the judge's own assessment, the Court pointed out that its task was limited to assessing whether the particular circumstances of the case disclosed any appearance of bias. In that respect, it reiterated that a judge's dual roles in a given case may in certain circumstances compromise a tribunal's impartiality. In the present case, however, unlike in the case of *Wettstein v. Switzerland* (judgment of 21 December 2000), the dual functions had not overlapped in time. The two sets of proceedings had overlapped briefly between February 1992 and February 1993, but had been pending simultaneously before the Court of Appeal only between December 1992 and February 1993. P.L.'s role in the first set of proceedings had been limited to drafting and signing the notice of appeal and there was no indication that she had been active during the latter period. Moreover, she had not participated as a judge in the second set of proceedings during that period or when the Court of Appeal had remitted the case to the District Court in November 1993. In fact, her personal involvement had not begun until after April 1997. Her prior involvement was thus remote in time and in addition the subject matter of the two sets of proceedings was completely different. Consequently, P.L.'s prior involvement gave no reasonable grounds for fearing that she might have a preconceived attitude against the applicants' company, notwithstanding certain critical remarks in the notice of appeal which she had drafted at the time. Finally, as P.L.'s statement had been communicated to the applicants' legal representative, there was no indication of any procedural unfairness. In conclusion, the applicants could not have entertained any objectively justified doubts as to P.L.'s impartiality.
*Conclusion*: no violation (5 votes to 2).

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**IMPARTIAL TRIBUNAL**
Impartiality of judge participating in decision on an application for review lodged by him: *violation*.

**SVETLANA NAUMENKO - Ukraine** (Nº 41984/98)
Judgment 9.11.2004 [Section II]

*Facts*: In 1994 the District Court delivered a judgment favourable to the applicant in relation to her status as a relief worker during the disaster at the Chernobyl nuclear plant. This status,

which entitled the applicant to a number of benefits, was contested by the authorities. In 2000 the Deputy President of the Regional Court, acting on behalf of the regional authorities, lodged a *protest* against the decision of the District Court of 1994, which had become final and binding. The Presidium of the Regional Court allowed the *protest* and quashed the 1994 decision in the applicant's favour.

*Law*: Article 6 (1) (impartial tribunal) – As the Deputy President of the Regional Court who lodged the *protest* was also a member of the Presidium of the Regional Court which examined the *protest,* this was incompatible with the required "subjective impartiality" of a judge, who could not be both plaintiff and judge in his own case.
*Conclusion*: violation (unanimously).

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**Article 6(1) [criminal]**

**ACCESS TO COURT**
Withdrawal of appeals upon agreement with Advocate General that sentence would be remitted: *violation*.

**MARPA ZEELAND B.V. and METAL WELDING B.V. - Netherlands** (Nº 46300/99)
Judgment 9.11.2004 [Section II]

*Facts*: The applicant companies were investigated on suspicion of forgery and tax fraud. In February 1994, following a three-year preliminary judicial investigation and a trial, they were convicted by the Regional Court. A fine was imposed on the companies and their managing director was sentenced to imprisonment. The applicant companies lodged appeals. However, they subsequently withdrew them, allegedly because the Advocate General had persuaded them to do so on an undertaking that he would recommend that their sentences be remitted. A Court of Appeal judgment of December 1995 noted that the appeals had been withdrawn. Despite the agreement, the Advocate General did not advise favourably on the remission of the fines imposed on the applicant companies. The applicants' requests for remission of sentence were rejected in January 1997. As a result, the applicants lodged new appeals with the Court of Appeal against their initial conviction and sentence, which were allowed by that court. However, the Supreme Court considered the newly lodged appeals could not be admitted, as the judgment of December 1995, which had established the applicants' formal withdrawal of appeals against their first-instance conviction by the Regional Court, had not been appealed against within the statutory time-limit and had thus become final.

*Law*: Article 6(1) (access to court) – Referring to the findings of the domestic courts, the Court accepted that the Advocate General had persuaded the applicant companies managing director to withdraw the appeals on improper grounds. As domestic law foresaw that appeals were to be instituted within 14 days of a judgment being delivered, and this had not been done concerning the Court of Appeal judgment of December 1995, the withdrawal of the appeals had become irrevocable and left the applicant companies with neither remission of sentence or the possibility to argue the case on appeal. In these circumstances, the applicants had been denied effective access to court and were not able to employ their right of appeal in a meaningful manner.
*Conclusion*: violation (unanimously).

Article 6(1) (reasonable time) – The period to be taken into consideration had started in October 1990, when the companies' premises had been searched, and ended in September 1998, when the Supreme Court declared the appeals inadmissible. Excluding the periods when the courts had dealt with the requests for remission of sentence, which were not to be

considered given that during those periods there was no determination of a criminal charge, the total period had lasted six years, nine months and 14 days. The preliminary investigation phase had lasted over three years, whilst, on the contrary, the proceedings before the courts had been conducted with relative speed. Overall, the length of the proceedings had been excessive.
*Conclusion*: violation (unanimously).

Article 41 – The Court awarded the applicant companies 7,000 euros for non-pecuniary damage. It also made an award for costs and expenses.

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**FAIR HEARING**
Conviction *in absentia* without accused being informed of the proceedings or being able to have them reopened without showing that he was not a fugitive: *violation*.

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

*Facts*: The applicant could not be traced on the date on which the judge ordered that he be placed in pre-trial detention; the authorities were subsequently unable to inform him of the proceedings against him. He did not take part in the trial, and was represented by an officially-appointed lawyer. The applicant was sentenced to more than twenty-one years' imprisonment for manslaughter and illegally carrying a weapon. In the absence of an appeal, the decision became final. The applicant was arrested in Germany more than two years later. The Italian courts requested his extradition. The Italian public prosecutor considered that the applicant had "absconded" immediately after the murder and had thus deliberately sought to evade justice ('*latitente*'). For that reason, in application of the rules of the applicable Code of Criminal Procedure, his case could only be re-examined by the Italian courts in his presence if it were established that the judicial decision stating that he had deliberately sought to evade justice ('*latitente*') was erroneous. The German authorities refused to extradite the applicant since, in those circumstances, there were insufficient guarantees that the applicant would obtain reopening of his trial. Under the relevant domestic legislation, accused persons who had been convicted in absentia could only apply for re-opening of the period for lodging an appeal against judgments served upon their defence counsels if they had not deliberately refused to acquaint themselves with the procedural acts.

*Law*: Article 6 – The Court noted that the Italian authorities had, in substance, considered that the applicant had waived his right to appear at the trial in that he had become untraceable immediately after the killing, which had been committed in the presence of several eyewitnesses. In the respondent Government's opinion, it could be inferred from the applicant's conduct that he wished to abscond. The Court noted that there was nothing to prove that the applicant had been officially informed of the prosecution against him or of the date of his trial. Only his absence from his usual place of residence when the authorities tried to arrest him could have given the impression that he was aware or feared that the police were searching for him. Furthermore, even supposing that the applicant was indirectly aware of the opening of criminal proceedings against him, it could not however be concluded that he had unequivocally waived his right to appear at the hearing, given that the Convention required official notification of proceedings. Accordingly, the domestic law ought to offer him a sufficiently certain possibility of obtaining a new trial at which he would be present. Convicted persons who could not be considered to have unequivocally waived the right to appear should in all circumstances be able to obtain a new ruling by a court on the charges brought against them. The mere possibility that there might have been a waiver, depending on the evidence that might be supplied by the prosecuting authorities or by the convicted person regarding the circumstances surrounding the declaration of the latter's fugitive status, could not satisfy the requirements of Article 6 of the Convention. As the domestic legislation did

not guarantee with sufficient certainty that the applicant would have the opportunity of appearing at a new trial to present his defence, the means provided by the national authorities had not made it possible to achieve the results required by Article 6 of the Convention.
*Conclusion*: violation (unanimously).

Article 46 – The Court held that the violation observed resulted from a systemic problem related to a shortcoming in domestic legislation and practice, arising from the absence of an effective mechanism for guaranteeing the right of persons convicted by default, who had not been effectively informed of the proceedings against them and had not unequivocally waived their right to appear, to obtain a new ruling on the merits of the charges brought against them, from a court which had heard them in accordance with the requirements of Article 6. The Court noted that the respondent Government should take appropriate measures to make provision for and regulate proceedings capable of effectively securing the right to the reopening of proceedings for the applicant and for persons who were in a similar situation.

Article 41 – The Court ruled that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant, and reiterated that where it had held that an applicant had been convicted despite the existence of a potential infringement of his right to take part in his trial, the most appropriate form of redress, in principle, was to retry him or to reopen the proceedings in due course and in accordance with the requirements of Article 6 of the Convention (*Somogyi* judgment of 18 May 2004, Case-Law Report No. 64). The Court made an award in respect of costs and expenses, including those incurred in the extradition proceedings before the German courts, since the impossibility of reopening the trial had been raised during those proceedings.

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**FAIR HEARING**
Manner of disclosure of judge rapporteur's report in criminal proceedings in the Court of Cassation.

**FABRE - France** (N° 69225/01)
Judgment 2.11.2004 [Section II]

The application concerned proceedings before the Criminal Division of the Court of Cassation, and specifically the appellant's position compared to that of the advocate-general as concerned communication of the reporting judge's report. A new practice had been introduced as a follow-up to the judgments in *Reinhardt and Slimane-Kaïd v. France*, of 31 March 1998, and *Slimane-Kaïd v. France* of 25 January 2000 (see Case-Law Report No. 14), which had found a violation of Article 6(1) on account of the fact that the report and draft judgment drawn up by the reporting judge were communicated only to the advocate-general, and not to the applicant.
The reporting judge's report was now made up of two sections. The first, which contained an analysis of the case, namely the statement of facts, the procedure and the grounds of appeal, an objective analysis of the legal question, the texts and case-law relevant to the resolution of the appeal and the reference doctrine, was communicated both to the parties and to the public prosecutor's office. The second, which contained the reporting judge's personal opinion and the draft judgment, was communicated neither to the parties nor to the advocate-general.
The Court considered that "this new practice corrects the imbalance found in the judgment in *Reinhardt and Slimane-Kaïd*. Accordingly, it sees no reason in principle to conclude that there has been a violation of Article 6 § 1 of the Convention on account of this procedure. In addition, it points out that, in the same judgment, it held that the reporting judge's personal opinion and the draft judgment, which were 'legitimately privileged from disclosure as forming part of the deliberations, remained in any case confidential' from the parties. The new practice is therefore also compatible with the Court's case-law in this matter, in that it

maintains the desired confidentiality with regard to the reporting judge's personal view and the confidentiality of the deliberations…"
With regard to the particular circumstances of this case, the applicant alleged that, contrary to the new procedure, the analytical part of the reporting judge's report had not been communicated to him, although it had been sent to the advocate-general. The Government had not denied the applicant's allegations. The Court considered that this had created an imbalance, in violation of the right to a fair trial (six votes to one).

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**FAIR HEARING**
Self-incrimination: imposition of criminal sanctions for refusal to answer questions by financial investigators: *admissible*.

**SHANNON – United Kingdom** (Nº 6563/03)
Decision 23.11.2004 [Section IV]

The applicant, who was charged by the police with false accounting and conspiracy to defraud, was required to attend before a financial investigator to answer questions on whether any person had benefited from the false accounting. The applicant did not attend the interview because he feared his replies could be used as evidence against him in the trial, and as he had allegedly not obtained satisfactory guarantees from the investigators to the contrary. The applicant was as a result convicted and fined for the offence of failing without reasonable excuse to comply with the financial investigator's requirements to answer questions. His appeal against conviction was initially allowed by the County Court, which found that the applicant had a right not to answer questions that would have tended to incriminate him. However, the Court of Appeal confirmed the applicant's conviction on the ground of not having a reasonable excuse for refusing to comply with the investigators' requirements merely because the information sought could be potentially incriminating.
*Admissible* under Article 6.

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**FAIR HEARING**
Limitation of appeals from Assize Court to appeals against conviction: acquitted co-accused appearing as witness for the prosecution in appeal by convicted co-accused : *communicated*.

**GUILLEMOT - France** (N° 21922/03)
Decision 9.11.2004 [Section II]

A co-defendant in criminal proceedings, the applicant was found guilty and sentenced to a period of imprisonment; her co-accused was acquitted and released. The applicant and the public prosecutor's office lodged appeals, as a new law had made provision for appealing against the judgments of assize courts. As this appeal option was limited to convictions, the appeal did not concern the acquittal judgment. Consequently, the applicant found herself the sole accused in the appeal proceedings. Her former co-accused was summoned to appear as a witness for the prosecution before the appeal court of assize, and applied to join the accusatorial criminal proceedings against the applicant as a civil party. The appeal court of assize upheld the applicant's conviction but reduced the length of the prison sentence. The applicant appealed unsuccessfully on points of law. She complained before the Court that, on account of the legal impossibility of appealing against judgments which acquitted defendants, she had been the sole accused before the appeal court, although there had been two defendants at first instance; she also complained that her former co-defendant had become a witness for the prosecution in the appeal proceedings. A law adopted subsequent to the impugned proceedings provided for the possibility of appealing against acquittal judgments.
*Communicated* under Article 6(1).

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**IMPARTIAL TRIBUNAL**
Independence and impartiality of State Security Court dealing with drugs offence: *violation*.

**CANEVI and others - Turkey** (Nº 40395/98)
Judgment 10.11.2004 [Section I (former composition)]

*Facts*: In 1995 the public prosecutor at the Istanbul State Security Court instituted criminal proceedings against the applicants for organized drug trafficking. In 1997 the State Security Court, which was composed of two civilian judges and a military judge, convicted the applicants. The Court of Cassation upheld the judgment.

*Law* (extract): "The Court notes that it has already examined complaints similar to those raised in the present case, in the *Incal v. Turkey* judgment (9 June 1998, Reports of Judgments and Decisions 1998-IV) and the *Çıraklar v. Turkey* judgment (28 October 1998, Reports 1998-VII). In particular, it noted that certain aspects of the status of military judges sitting in the State Security Courts raised doubts as to the independence and impartiality of the courts concerned… That being so, the Court's task is to ascertain whether the manner in which the Istanbul State Security Court functioned infringed the applicants' right to a fair trial, and in particular whether, viewed objectively, the applicants, who were being prosecuted for organised drug trafficking rather than for an offence directed against Turkey's territorial or national integrity, the democratic system or State security, had a legitimate reason to fear that the court which tried them lacked independence and impartiality…
Having regard to its finding that certain aspects of the status of military judges sitting in the State Security Courts raise doubts as to their independence and impartiality, the Court considers that the defendants could legitimately have had misgivings as to the independence and impartiality of those courts. Such a situation seriously affects the confidence which the courts must inspire in a democratic society. In addition, the Court attaches great importance to the fact that a civilian had to appear before a court composed, if only in part, of members of the armed forces.
It follows that although the applicants appeared before the State Security Court for organised drug trafficking, they could have had legitimate reasons to fear that that court might allow itself to be unduly influenced by considerations which had nothing to do with the nature of the case. The applicants' fears as to the court's lack of independence and impartiality may be regarded as objectively justified."
*Conclusion*: violation (unanimously).

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## Article 6(2)

**PRESUMPTION OF INNOCENCE**
Statements of a court reflecting a finding of guilt despite acquittal in criminal proceedings: *violation*.

**DEL LATTE - Netherlands** (Nº 44760/98)
Judgment 9.11.2004 [Section II]

*Facts*: The applicants were taken into police custody and charged with attempted murder. The trial court acquitted them of the charges and ordered their immediate release from detention on remand. The applicants subsequently applied to the Court of Appeal seeking monetary compensation for the time they had spent in pre-trial detention. The Court of Appeal dismissed the claim, finding there were no reasons in equity to award compensation to

the applicants. In its reasoning the court also stated that had the indictment contained a charge of threats to life in addition to attempted murder, the applicants would have been convicted.

*Law*: Article 6(2) (presumption of innocence) – The Court of Appeal's decision refusing compensation had been based on the consideration that the applicants would have been inevitably convicted if the prosecution had also charged them with "threatening to commit [a] crime directed against life". In view of the applicants' previous acquittal in the criminal proceedings against them, the approach of the Court of Appeal had amounted to a determination of the applicants' guilt of an offence for which they had not been "proved guilty according to law". Accordingly, there had been a breach of Article 6(2).
*Conclusion*: violation (unanimously).
Article 41 – The Court made an award for costs and expenses.

## ARTICLE 7

**CRIMINAL OFFENCE**
Order to demolish a storage facility although the applicant had been acquitted of charges: *complaint inadmissible*.

**SALIBA - Malta** (Nº 4251/02)
Decision 23.11.2004 [Section IV]
(see Article 1 of Protocol No. 1, below).

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**RETROACTIVITY**
Determination of penalty: retroactive application of a more severe law concerning recidivism: *violation*.

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

*Facts*: The applicant was sentenced to eight years' imprisonment in 1997 for a drug offence committed in 1995. The Court of Appeal increased the sentence to twelve years, finding that, since the applicant had already been convicted in 1984, he was to be classified as a recidivist under Article 132-9 of the new Criminal Code, which came into force on 1 March 1994. The applicant appealed on points of law, arguing that his classification as a recidivist contravened the rule governing the application of successive criminal laws, the Court of Appeal having retrospectively applied the harsher provisions of the new legislation. After his 1984 conviction, the five-year period within which recidivism was possible under the law in force at the time had lasted until 1991 and had therefore expired by the time he had committed the second offence. The Court of Cassation held that the second offence, committed after the entry into force of the 1994 legislation, entailed the application of those new provisions, which extended to ten years the period during which an offender could be deemed to be a recidivist. As the second offence had been committed in 1995, one year before the expiry of this new, longer period, the applicant had been subject to the rules on recidivism. The Court of Appeal had therefore rightly taken that factor into account in relation to the applicant's initial 1984 offence.

*Law*: Article 7 – Recidivism was a ground for increasing a penalty (where conduct constituting an offence was repeated within a given period). The issue was therefore part of the more general one of sentencing. In the present case the first offence had been committed by the applicant in 1984 at a time when the law had provided for a five-year period in which

recidivism could be an aggravating factor; the second, committed in 1995, had fallen within the scope of the new Criminal Code, which laid down a ten-year period. In accordance with the legal rules in force at the time of the first offence, the five-year period (during which the applicant would be deemed to be a recidivist in the event of a further offence) had ended on 12 July 1991. The new ten-year period, however, had not become law until three years after that date, on 1 March 1994. Accordingly, the application of the new legislation in the applicant's case had necessarily restored a legal situation that had ceased to have effect in 1991. The applicant's previous conviction, which could no longer have formed a basis for recidivism from 12 July 1991 onwards, had therefore had legal consequences, not in relation to the statutory rules which had governed it at the time but under the new rules that had come into force years later. The applicant's complaint was therefore that the new legislation conflicted with the effects of the previous legislation, under which the period in which he could have been classified as a recidivist had already expired (compare *Coëme and Others v. Belgium*, ECHR 2000-VII). This prompted a disconcerting observation: if the applicant had committed a second offence the day after 12 July 1991 (the expiry of the period in which recidivism had been possible under the previous legislation) or on any date between 13 July 1991 and 28 February 1994 (the day before the new Criminal Code had come into force) – that is, during a period of almost three years – French law would have prohibited the courts from deeming him to be a recidivist. In short, the provisions of the new legislation on recidivism had been applied retrospectively. They were harsher than those of the former legislation and had effectively caused the trial and appeal courts to impose a heavier penalty; the applicant had been sentenced to twelve years' imprisonment because the circumstance of recidivism was taken into account, whereas the statutory maximum sentence in the absence of recidivism had been ten years. The Court considered that where a person was, as in the instant case, convicted as a recidivist pursuant to new legislation, the principle of legal certainty dictated that the relevant period for the purposes of recidivism should not already have expired under the previous legislation.
*Conclusion*: violation (four votes to three).

Article 41 – The Court held that the finding of a violation was sufficient to make good the non-pecuniary damage sustained by the applicant.

## ARTICLE 8

**POSITIVE OBLIGATIONS**
Failure of authorities to comply with court decisions and domestic law in environmental matters: *violation*.

**TAŞKIN and others - Turkey** (N° 46117/99)
Judgment 10.11.2004 [Section III (former composition)]
(see below).

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**PRIVATE LIFE**
Applicability of Article 8 to private activities producing dangerous effects to which applicants risk being exposed.

**TAŞKIN and others - Turkey** (N° 46117/99)
Judgment 10.11.2004 [Section III (former composition)]
(see below).

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**PRIVATE LIFE**
Noise nuisance from discotheques : *violation*.

**MORENO GÓMEZ - Spain** (N° 4143/02)
Judgment 16.11.2004 [Section IV]
(see below).

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**PRIVATE LIFE**
Use of toxic substance in mining: *violation*.

**TAŞKIN and others - Turkey** (N° 46117/99)
Judgment 10.11.2004 [Section III (former composition)]

*Facts*: In 1994 the Ministry of the Environment granted permission for the use of sodium cyanide leaching at a gold mine near Izmir, following a preliminary public consultation and on the basis of an impact study, as required by the Environment Act. Referring to the risk that their health and safety would be threatened and that the environment would be damaged, local residents, including the applicants, who were farmers or stockbreeders, applied for cancellation of the permit. In May 1997 the Supreme Administrative Council ruled, in the light of expert reports and the risks set out in the impact study, that the use of sodium cyanide presented dangers for the local ecosystem and for human health and safety; it concluded that the operating permit was not compatible with the public interest and that the safety measures which the mine's owners had undertaken to implement were insufficient to overcome the risk inherent in such operations. The Supreme Administrative Council's judgment gave rise *ipso facto* to a stay of execution of the disputed permit, which was cancelled five months later. However, the authorities were slow to enforce those decisions. Accordingly the courts ordered that the applicants be paid compensation. For its part, the company which owned the mine filed new applications for permits, claiming that it had taken measures to ensure the site's safety. A report drawn up at the Prime Minister's request by a scientific institute concluded that the threats to the ecosystem listed in the Supreme Administrative Court's 1997 judgment had been reduced to a level lower than the acceptable limits. Based on that report, the authorities granted permission for continued operations using cyanide leaching at the mine, on a provisional basis. Since that procedure did not comply with the legal provisions, the courts overturned the report and cancelled or imposed stays of execution on administrative decisions taken on its basis. When the mine had been operating for eleven months, the Council of Ministers decided "as a principle" that the gold mine could continue its activities; this decision was not made public. Without contesting cyanide's toxicity, the decision asserted that the leaching technique was not harmful to health provided certain precautionary measures were taken, and emphasised the mine's contribution to the national economy and to employment. As those proceedings again failed to comply with the legal provisions, the Supreme Administrative Court ordered a stay of execution of that decision. In August 2004 the Izmir provincial governor's office ordered the mine to cease gold extraction. Under the Environment Act, companies which envisaged carrying out activities which were potentially harmful to the environment were obliged to draw up a preliminary impact study under the strict supervision of a group of experts; a decision to grant or refuse authorisation could be delivered solely on the basis of that study, to which the public had access.

*Law*: Article 8 – *Applicability*: Where the dangerous effects of an activity to which the applicants were likely to be exposed had been determined through an environmental impact assessment procedure in such a way as to establish a sufficiently close link with private and family life within the meaning of Article 8, that Article was applicable. The Court based its position on the Supreme Administrative Court's finding in May 1997 and concluded that such a link did exist. Accordingly, Article 8 was applicable.

*Compliance with Article 8*: The administrative decision authorising the gold mine's operations had been cancelled by the Supreme Administrative Court in 1997 on the ground that it was contrary to the public interest. It remained to be determined whether the interests of the individual had been taken into account in the course of the ensuing decision-making process. The authorities had not ordered the mine's closure until ten months after the delivery of the Supreme Administrative Council's judgment cancelling the permit, and four months after it had been served on the authorities. As well as refusing to comply with the courts' decisions, the authorities had issued permits to the mine's operators in contravention of the domestic legislation, which required a preliminary impact study to be drawn up. This meant that there was no new legally-founded decision to take the place of the one which had been set aside by the courts on account of the environmental risks. Further, in spite of the procedural safeguards laid down by Turkish legislation and the practical effect given to those safeguards by the judicial decisions which cancelled subsequent permits, the Council of Ministers, in a decision which was not made public, authorised continued activity at the gold mine, which had already been operating for eleven months. The authorities had thus deprived the procedural safeguards available to the applicants of all useful effect.
*Conclusion*: violation (unanimously).

Article 6 (1) – *Applicability*: The right relied on in substance by the applicants before the administrative courts was that of obtaining adequate protection of their physical integrity against the risks created by the gold mine's use of a procedure involving a toxic substance. The right to live in a healthy and balanced environment was recognised in Turkish legislation. Furthermore, the dispute was genuine and serious. As to the "civil" nature of the disputed right, the Court concluded that the applicants' right to protection of their physical integrity was directly at stake once the risks caused by the mine's operations had been established by the Supreme Administrative Court, which based its conclusion on the preliminary studies. Equally, by bringing an application for judicial review, the applicants had used the only means at their disposal under domestic law to complain of an infringement of their right to live in a healthy and balanced environment and of a threat to their lifestyle; domestic law also provided that, once the Supreme Administrative Court had given its judgment cancelling the previous decision, any administrative act designed to thwart it would give rise to the possibility of compensation. For those reasons, the outcome of the proceedings in this case, taken in their entirety, could be considered to concern the applicants' civil rights and Article 6 was therefore applicable.

*Effective judicial protection*: The Supreme Administrative Court's judgment of 1997, which was favourable to the applicants, had not been enforced by the authorities within the time-limits prescribed by the domestic legislation. Moreover, the resumption of the mine's activities, on the basis of ministerial authorisations issued at the Prime Minister's direct prompting, had had no legal basis and amounted, as the domestic courts had pointed out, to circumvention of a judicial decision. Such a situation was incompatible with a law-based state, founded on the rule of law and the security of legal relations.
*Conclusion*: violation (unanimously).

The Court held that it was not necessary to examine separately the complaints under Articles 2 and 13.
Article 41 – Ruling on an equitable basis, the Court awarded each of the ten applicants EUR 3,000 for non-pecuniary damage.

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**PRIVATE LIFE**
Refusal to relocate gypsy site subject to high levels of noise and pollution: *inadmissible*.

**WARD - United Kingdom** (Nº 31888/03)
Decision 9.11.2004 [Section IV]

The applicant has been living on a caravan site with his family since 1972. Given the site's location close to a motorway bridge and a railway line, the applicant has for a long time been campaigning for its relocation. In 1992 he obtained a report from Health Officers which indicated that the conditions at the site were unsatisfactory and prejudicial to health. In 2002, another report confirmed that the site was not a suitable location for a gypsy site because of the levels of noise and pollution. Following the coming into force of the Human Rights Act 1998, the applicant renewed a request for relocation of the site, invoking arguments under the Convention. The authorities responded that they were under no duty to provide a new site and that no valid claims arose under the Convention. Moreover, refurbishment of the site was envisaged. Judicial review proceedings were refused.

*Inadmissible* under Article 3: Whilst it appeared from the evidence submitted by the applicant that levels of pollution were above desirable norms, it had not been shown that the conditions at the site placed the applicant or his family at a significant risk of harm: manifestly ill-founded.

*Inadmissible* under Article 8: The applicant had moved into the site voluntarily and had not shown any efforts to find another official gypsy site, where vacancies arose periodically. As there were no exceptional circumstances, the applicant could not derive a right under this provision to be provided with alternative housing by the State. Moreover, the authorities had taken measures to improve the situation at the site. In such circumstances, there had been no interference with the applicant's right to respect for home or private life: manifestly ill-founded.

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**DOMICILE / HOME**
Noise nuisance from discotheques : *violation*.

**MORENO GÓMEZ - Spain** (N° 4143/02)
Judgment 16.11.2004 [Section IV]
(see below).

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**HOME**
Eviction from a flat after death of late partner which held tenancy rights to the flat: *violation*.

**PROKOPOVICH – Russia** (Nº 58255/00)
Judgment 18.11.2003 [Section I]

*Facts*: The applicant lived with her male partner, to whom she was not married, in a flat which the State provided to her partner. After ten years of living together in the flat, during which they had jointly furnished it, purchased household items together and shared maintenance expenses, her partner died. A few days after his death, the housing authorities re-allocated the flat to another person and asked the applicant to vacate the premises immediately. The applicant applied to the courts requesting to be recognised as a member of her late partner's household. The District Court dismissed her civil action, finding that it had not been established that her partner had recognised her right to tenancy of the flat, and because she had retained formal residence registration in the flat where she had previously

lived with her daughter. Although the applicant submitted witness statements by neighbours confirming that she and her partner had maintained a joint household, these were rejected by the court. The applicant unsuccessfully appealed against the judgment.

*Law*: Government's preliminary objection (non-exhaustion) – The Government had not raised its objection before the Court's decision on admissibility. As there were no exceptional circumstances absolving the Government from having done so, they were estopped from raising it: objection dismissed.

Article 8 – There were convincing, concordant and unrebutted factual circumstances, including witness statements and correspondence received by the applicant, which led the Court to conclude that the applicant had sufficient and continuing links with her late partner's flat such as to consider it her "home" for the purposes of Article 8. Moreover, the Government had not indicated what other premises could have been the applicant's home, despite the finding of the domestic courts that the applicant had retained legal residence in her daughter's flat. Thus, the applicant's eviction from the flat by State officials had constituted an interference with her right to respect for home. The Court noted that Article 90 of the RSFSR Housing Code permitted eviction only on the grounds established by law and on the basis of a court order. Such a procedure was not followed in the applicant's case. As there were no circumstances which could have justified a departure from the normal eviction procedure, and bearing in mind the hasty re-allocation of the flat just seven days after the former tenant's death, the interference had not been "in accordance with the law". Accordingly, there had been a violation of Article 8, and it was not necessary to determine whether the interference had been "necessary in a democratic society".
*Conclusion*: violation (unanimously).

Article 41 – The Court awarded the applicant 6,120 euros in respect of non-pecuniary damage and costs and expenses.

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**POSITIVE OBLIGATIONS**
Repeated failure of authorities to respect anti-noise regulations: *violation*.

**MORENO GÓMEZ - Spain** (N° 4143/02)
Judgment 16.11.2004 [Section IV]

*Facts*: The city council allowed discotheques to open in the vicinity of the applicant's flat. Following complaints by local residents about noise levels, the council resolved not to allow any more establishments to open. However, that resolution was never implemented. A report by a council commissioned expert found that the noise exceeded permitted levels. The police informed the council that nightclubs and discotheques in the area did not close on time and that complaints by local residents were founded. The council adopted a bylaw on noise and vibrations in which it set maximum permitted noise levels and prohibited new noise generating activities in zones classified as "acoustically saturated". The area in which the applicant lived was placed in that category. Council staff indicated that noise levels in the vicinity exceeded those permitted by the bylaw. However, the council nonetheless granted a licence for a discotheque to open in the building in which the applicant lived. The licence was declared invalid by a court three years later. The applicant complained of chronic insomnia and serious health problems, the noise levels having continued unabated for several years. She issued proceedings against the city council complaining of their failure to take action and seeking reparation for her loss. However, her claim was dismissed on the grounds that she had failed to show the existence of a nuisance inside her home.

*Law*: Article 8 – The authorities had designated the area in which the applicant lived an acoustically saturated zone, as it was exposed to high noise levels which caused serious disturbance to local residents. The council staff had confirmed that the permitted noise levels were being exceeded. Consequently, it was being unduly formalistic to require the applicant to prove the actual noise levels inside her home. In view of the volume of noise, at night and beyond permitted levels, and the fact that it had continued over a number of years, the Court found that there had been a breach of the rights protected by Article 8.
Although the authorities had adopted measures which in principle should have been adequate to secure respect for the guaranteed rights, during the period concerned it had tolerated and thus contributed to the repeated flouting of the rules which it itself had established. Regulations to protect guaranteed rights served little purpose if they were not duly enforced. The applicant had suffered a serious infringement of her right to respect for her home as a result of the authorities' failure to take action to deal with the night-time disturbances. Consequently, the State had failed to discharge its positive obligation to guarantee the applicant's right to respect for her "home" and her "private life".
*Conclusion*: violation (unanimously).
Article 41 – The Court found that the applicant had sustained both non-pecuniary damage and pecuniary damage. It awarded her part of her costs and expenses.

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**HOME**
Refusal to relocate gypsy site subject to high levels of noise and pollution: *inadmissible*

**WARD - United Kingdom** (Nº 31888/03)
Decision 9.11.2004 [Section IV]
(see above)

## ARTICLE 10

**FREEDOM OF EXPRESSION**
Defamation of surgeon by journalist : *violation*.

**SELISTÖ - Finland** (Nº 56767/00)
Judgment 16.11.2004 [Section IV]

*Facts*: In 1996 the applicant, a journalist, published two articles describing the allegedly unprofessional conduct of an unnamed surgeon, which had supposedly resulted in the death of a patient during surgery in 1992. The widower had lodged a criminal complaint but the National Medico-Legal Board ("the Board") had not found it possible to establish a causal link and the public prosecutor had decided in 1994 not to press charges. The pre-trial investigation record contained a number of statements concerning the possible consumption of alcohol by the surgeon. The applicant's first article contained an interview with the widower, who questioned how it was possible for a surgeon to be allowed to operate with alcohol in his blood. A second article, which made no reference to the surgeon or the particular incident, discussed the need for surgeons and pilots to be sober, while a third, which referred to the first, cited statements taken during the pre-trial investigation, including references to the surgeon's alcohol-related problems. The applicant was convicted by the District Court of defamation committed "despite better knowledge" (i.e. imputing a criminal offence to the surgeon while knowing he had not committed one), on the basis of the third article, and a fine was imposed. The court considered that the applicant had given the impression that the surgeon had been drunk or suffering from a hangover while operating and

that the article had rendered him identifiable in the area where he worked. It also found that the applicant had failed to verify the facts appropriately. The Court of Appeal, which considered that the articles had to be taken together, also found the applicant guilty and increased the fine. The Supreme Court refused leave to appeal. The Deputy Parliamentary Ombudsman subsequently found that it would have been preferable for charges to have been brought so that the matter could have been examined by a court.

*Law*: Article 10 – The principal issue was whether the interference with the applicant's freedom of expression was "necessary in a democratic society". The impugned articles concerned an important aspect of health care and therefore raised serious issues affecting the public interest, and the fact that the first and third articles dealt with a particular case did not alter that conclusion, it being natural in journalism that an individual case is chosen to illustrate a wider issue. Article 10 does not guarantee unrestricted freedom of expression even in respect of press coverage of matters of legitimate public concern; the "duties and responsibilities" mentioned in Article 10(2) apply also to the press and the safeguard afforded to journalists in relation to their reporting on issues of general interest is subject to them acting in good faith in order to provide accurate and reliable information in accordance with the ethics of journalism. As the issues in the present case concerned factual statements rather than value judgments, it was of great importance that these duties and responsibilities were respected. In order to assess the "necessity" of the restriction, the Court had to examine the issue essentially from the standpoint of the reasoning adopted by the domestic courts. To a large degree, they had not found the facts presented in the articles erroneous as such; the applicant's conviction was based more on what was not mentioned (the decision not to press charges and the findings of the Board) and certain assertions, and the overall impression conveyed. The Court attached considerable weight to the fact that it had not been claimed that the actual facts presented were erroneous and it was also of importance that the events and quotations in the third article had been derived from a public document. It considered that there was no general duty for reporters to verify the veracity of statements contained in such documents. As to domestic courts' finding that the factual statements were selective, the applicant had referred to the Board's conclusions and thus acknowledged that no breaches of official duties had been substantiated. The failure to mention the decision not to press charges was problematic but the finding of the Deputy Parliamentary Ombudsman lent support to the approach taken by the applicant or, at the very least, suggested that the content had not been erroneous or that she had not failed to verify the facts. The Court concluded that the reporting was based on accurate and reliable facts and that a certain selectiveness could not be regarded as a sufficient and relevant reason justifying the applicant's conviction, bearing in mind that journalists must be allowed a degree of exaggeration or even provocation. The Court also attached considerable weight to the fact that there had never been any mention of the surgeon's name, age or sex and while it accepted the domestic courts' finding that he could have been identified, his identity was never expressly communicated to the public. The Court was furthermore satisfied that the surgeon had been provided with an opportunity to have a reply published and although it was understandable that he had been reluctant to risk identification by doing so, that could not prevent publication of a matter of general interest. Finally, the Court did not accept that the limited nature of the fine was decisive; it was of greater importance that the applicant had been convicted. In conclusion, the reasons given by the domestic courts, although relevant, were not sufficient to show that the interference was necessary in a democratic society.
*Conclusion*: violation (6 votes to 1).
Article 41 – The Court awarded the applicant 3,500 euros in respect of pecuniary damage and 5,000 euros in respect of non-pecuniary damage. It also made an award in respect of costs and expenses.

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**FREEDOM OF EXPRESSION**
Conviction for publication of articles infringing the privacy of a Member of Parliament: *violation*.

**KARHUVAARA and ILTALEHTI - Finland** (Nº 53678/00)
Judgment 16.11.2004 [Section IV]

*Facts*: The first applicant is the editor-in-chief of a newspaper. The second applicant is the company that publishes the newspaper. In 1996, the newspaper published three articles concerning the trial and conviction of the husband of Mrs. A., who was a Member of Parliament, for disorderly behaviour, drunkenness and assault on a police officer. The fact that the person convicted was married to this parliamentarian was mentioned in the headings of all three articles. In 1997, Mrs. A. instituted proceedings against the applicants claiming an invasion of her privacy and arguing that the articles had caused her particular suffering as she had been publicly associated with a criminal act that was in no way connected to her person or function as a Member of Parliament. In 1998, the District Court convicted the applicants on the basis of Section 15 of the Parliament Act for infringement of privacy under particularly aggravating circumstances. Heavy fines and the payment of damages were imposed on them. The court found that the articles had been published with the purpose of drawing the readers' attention principally to the offender's relationship with the Member of Parliament, and not to depict the events as such. The Court of Appeal upheld the judgment. Leave to appeal to the Supreme Court was refused.

*Law*: Article 10 – It was not disputed that the applicants' conviction and order to pay damages had amounted to an interference with their freedom of expression. The interference had been "prescribed by law" and had pursued the legitimate aim of protecting the reputation and rights of others. However, concerning the necessity of the interference the Court firstly observed that there was no evidence showing a factual misrepresentation or bad faith on the part of the applicants or that they had exceeded in any manner the bounds of journalistic freedom. Although the contested articles did not have an express bearing on political issues nor were they of great public interest, the Court could accept the finding of the domestic courts that to some degree the matter was of public interest and could affect people's voting intentions. Likewise, the finding by the domestic courts that the impugned articles had focused on the offender's marital connection to Mrs. A. and had infringed the latter's privacy could also to a certain extent be accepted by the Court. However, these were not sufficient reasons to justify the applicants' severe conviction under Section 15 of the Parliament Act, which was based on Mrs. A.'s status as a Member of Parliament. As the offences in question did not have any connection with the discharge of Mrs. A.'s official duties, the automatic application of this Act had nullified the protection of the competing interests guaranteed by Article 10. The severity of the fines and damages imposed on the applicants viewed against the limited interference with the MP's private life, had disclosed a striking disproportion between the protection of private life and freedom of expression. In conclusion, the reasons relied on by the domestic courts, although relevant, had not been sufficient to show that the interference with the applicant's freedom of expression had been "necessary in a democratic society".
*Conclusion*: violation (unanimously)
Article 41 – The Court awarded the applicants a total of 36,345 euros in respect of pecuniary damage (22,155 euros for the first applicant and 14,190 euros for the second). It also made an award in respect of costs and expenses.

## ARTICLE 11

**TRADE UNIONS - INTERESTS OF MEMBERS /**
Invalidation of a clause in a collective agreement on the ground that it hindered competition: *partly inadmissible*.

**<u>SYNDICAT SUÉDOIS DES TRAVAILLEURS DES TRANSPORTS - Sweden</u>**
(Nº 53507/99)
Decision 30.11.2004 [Section II]

The applicant is a transport workers' trade union which entered into a collective labour agreement with the association of newspaper publishers. A clause obliged companies bound by the agreement to hire contractors that were members of the union. In 1995, a company belonging to the association hired a contractor for the distribution of newspapers in a district where a union member had previously performed the task. The union sued the company and the association for breach of the aforementioned clause in the collective agreement, and obtained a favourable judgment from the Labour Court in September 1998. The contractor which had been hired subsequently complained to the Competition Authority, claiming that the clause in question restricted competition in a manner contrary to the law. The union was allowed to submit observations, but was not formally a party to the proceedings before the Competition Authority. In February 1999, the Competition Authority, whilst taking note of the Labour Court's judgment, found that the inclusion of the clause in the collective agreement had restrictive effects on the market, and the clause became invalid. Only companies affected by the decision were entitled to bring an appeal.

*Admissible* under Article 6 (access to court).
*Inadmissible* under Article 11: The contentious clause in the collective agreement, which had remained in force for over twenty years, aimed at preventing the circumvention of salary arrangements by avoiding that companies hired contractors not covered by the agreement. Whilst collective agreements were important means of enabling trade unions to protect their members' interests, Article 11 did not guarantee a right for a trade union to maintain a collective agreement of a particular content for an indefinite period. The matters complained of were not such as to give rise to an issue under this provision: manifestly ill-founded.

## ARTICLE 13

**EFFECTIVE REMEDY**
Right to a remedy in respect of non-implementation of court judgment by the authorities: *violation*.

**<u>ZAZANIS - Greece</u>** (Nº 68138/01)
Judgment 18.11.2004 [Section I (former composition)]

Article 13 (extract): "In this case, the Court considers that, as in the *Kudla v. Poland* judgment with regard to observance of the reasonable time requirement for proceedings, it may be necessary to examine under Article 13 the complaints concerning the lack of an effective remedy to challenge the authorities' refusal to comply with a final judgment, notwithstanding the finding of a violation of Article 6 § 1. It is therefore necessary to determine whether the Greek legal system afforded an effective remedy to the applicants

within the meaning of Article 13 of the Convention, enabling them to put forward their arguable complaint and obtain redress.”

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**EFFECTIVE REMEDY**
Effective remedy in respect of dangerous industrial activities resulting in death and destruction of property: *violation*.

**ÖNERYILDIZ - Turkey** (N° 48939/99)
Judgment 30.11.2004 [Grand Chamber]
(see Article 2, above).

## ARTICLE 14

**DISCRIMINATION (Article 3)**
Alleged physical and verbal abuse of two Roma gypsies during police custody: *admissible*.

**BEKOS and KOUTROPOULOS - Greece** (Nº 15250/02)
Decision 23.11.2004 [Section IV]

The applicants, who are ethnic Romas, were arrested by the police when attempting to break into a kiosk. The first applicant complains that he was repeatedly hit on the back with a truncheon, slapped and punched, both at the moment of detention and when being interviewed at the police station. The second applicant maintains that he was also abused physically and verbally throughout his interrogation. The Government dispute these facts. The day after their release, a forensic doctor issued a medical certificate stating that the applicants had “moderate bodily injuries caused in the past twenty-four hours by a heavy blunt instrument”. The applicants have produced to the Court pictures taken on the day of their release showing their injuries. As a result of publicity which the incident received in the media, the Ministry of Public Order launched an administrative inquiry. The inquiry found that the officers who had arrested the applicants had acted “lawfully and appropriately”, whilst two others had treated them with “particular cruelty during their detention”. The report recommended the temporary suspension from service of these two officers, but this never took place. The applicants subsequently instituted criminal proceedings against the police officers. An official inquiry into the incident was ordered, and one of the police officers was committed for trial on account of physical abuse during the interrogation. The Court of Appeal concluded there was no evidence implicating the accused officer in any abuse and found him not guilty. The applicants, who had joined the proceedings as civil parties, were precluded under domestic law from appealing against this decision.
*Admissible* under Articles 3, 13 and 14.

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**DISCRIMINATION (Article 8)**
Impossibility for married woman to use only her maiden name in official documents: *violation*.

**ÜNAL TEKELİ - Turkey** (N° 29865/96)
Judgment 16.11.2004 [Section IV]

*Facts*: After her marriage the applicant took her husband’s surname in accordance with the Civil Code. She had been a trainee lawyer at the time of her marriage. As she had been known by her maiden name in her professional life, she decided to put it in front of her legal

surname. However, she could not use both names together on official documents. She brought proceedings for permission to use only her maiden name, "Ünal". The applicant's request was dismissed on the ground that domestic law provided that married women had to bear their husband's surname throughout their married life. The Civil Code was then amended to allow married women to keep their maiden name in front of their family name (right confirmed by the recently enacted new Civil Code of 2001). The applicant preferred to keep her maiden name as her family name, however. She considered that she had been discriminated against because married men could keep their own surname.

*The law*: (a) *Preliminary objections*: The Government submitted that the obligation to change her name had not had an impact on the applicant's professional life since it was only during her traineeship that she had practised under her maiden name alone. The Court pointed out that the family name also played a role in a person's private and family life. The refusal to allow the applicant to use just her maiden name, by which she claimed to have been known in private circles and in her cultural or political activities, could have considerably affected her non-professional activities. The applicant was therefore a "victim" for the purposes of Article 8. Although, as the Government pointed out, the position complained of derived from the domestic legislation, the applicant's request had not been a futile one because the courts could have applied the Convention directly or applied the principle of non-discrimination enshrined in the Turkish Constitution.

(b) *Article 14 taken together with Article 8*: The impugned situation amounted to a difference of treatment on grounds of sex. In the Government's submission, it pursued a legitimate aim which was the need for couples to have a joint surname – reflected through the husband's surname – and thus to preserve public order. The Convention required that any measure designed to reflect family unity be applied even-handedly to both men and women unless compelling reasons were adduced. Texts adopted by the member States of the Council of Europe, and internationally, advocated the eradication of all discrimination on grounds of sex in the choice of surname. Furthermore, a consensus had emerged among the Contracting States of the Council of Europe in favour of choosing the spouses' family name on an equal footing. Turkey was the only country which legally imposed the husband's name as the couple's surname. However, Turkey did not currently position itself outside the general trend towards placing men and women on an equal footing in the family. Prior to the recent legislative amendments, particularly those of 2001, the reflection of family unity through the husband's surname had corresponded to the traditional conception of the family. The aim of the recent reforms of the Civil Code had been to place married women on an equal footing with their husband in representing the couple. However, the provisions concerning the family name after marriage had remained unchanged. Admittedly, the tradition of reflecting family unity through the husband's surname derived from the man's primordial role and the woman's secondary role in the family as established until the new Civil Code was passed in 2001. Nowadays, the advancement of the equality of the sexes in the member States of the Council of Europe, including Turkey, and in particular the importance attached to the principle of non-discrimination, prevented States from imposing that tradition on married women.
According to the practice of the Contracting States and the systems applicable in Europe, it was perfectly conceivable that family unity would be preserved and consolidated where a married couple chose not to bear a joint family name. The Government had not shown in the present case that concrete or substantial hardship for married partners and/or third parties or detriment to the public interest would be likely to flow from the lack of reflection of family unity through a joint family name. In those circumstances the Court considered that the obligation on married women, in the name of family unity, to bear their husband's surname – even if they could put their maiden name in front of it – had no objective and reasonable justification. A transition from the above-mentioned traditional system to other systems allowing married partners either to keep their own surname or freely choose a joint family name, would have a considerable effect on keeping registers of births, marriages and deaths.

However, society could reasonably be expected to tolerate a certain inconvenience to enable individuals to live in dignity and worth in accordance with the name they had chosen. In sum, the objective of reflecting family unity through a joint family name could not provide a justification for the difference in treatment on grounds of sex.
*Conclusion*: violation (unanimous).

Article 41 – The Court considered that it was for the Turkish State to implement in due course such measures as it considered appropriate to fulfil its obligations, in accordance with the present judgment, to secure to each married partner, including the applicant, the right to keep their own surname or to have an equal say in the choice of their family name.
The applicant was awarded the amount she had claimed for costs and expenses.

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**DISCRIMINATION (Article 8)**
Refusal to grant approval for the purposes of adoption, on the ground of the life-style of the applicant, a lesbian living with another woman: *communicated*.

**E.B. - France** (N° 43546/02)
[Section II]

The applicant is a teacher and has been living with another woman, as a couple, for almost fifteen years. At the age of 38, the applicant began the administrative procedures to obtain the required authorisation for adopting a child. S
he was informed of a first refusal following completion of the preliminary social report, then of a second refusal after an additional investigation. Those refusals were based on the absence of a father figure and on the lack of involvement by the applicant's girlfriend in the adoption project. The applicant lodged an administrative appeal. The court overturned the unfavourable decisions, considering that the grounds given by the authorities were not such as to provide legal grounds for refusing authorisation to adopt. However, the appeal court quashed that judgment, considering that the refusals to grant authorisation were legally justified, since, "having regard to her living conditions, and despite undoubted personal qualities and an aptitude for bringing up children", … the applicant did not provide the requisite safeguards – "from a child-rearing, psychological and family perspective – for adopting a child". That decision was upheld by the *Conseil d'Etat*.
*Communicated* under Article 8, taken on its own and in conjunction with Article 14.

## ARTICLE 17

**DESTRUCTION OF RIGHTS AND FREEDOMS**
Conviction for publicly displaying signs of hostility towards a racial or religious group: *inadmissible*.

**NORWOOD - United Kingdom** (Nº 23131/03)
Decision 16.11.2004 [Section II]

The applicant, who was a regional organiser for the British National Party (a neo-nazi organisation), displayed a poster in the window of his flat with a photograph of the Twin Towers in flame and the words "Islam out of Britain – Protect the British People". The poster was removed by the police following a complaint from a member of the public. The applicant was subsequently charged and convicted with displaying hostility towards a racial or religious group. His appeal to the High Court was dismissed. The applicant complains that his freedom of expression was violated and of discrimination.

*Inadmissible* under Articles 10 and 14: The Court agreed with the assessment made by the domestic courts that the words and images on the poster had amounted to a public expression of attack on all Muslims in the United Kingdom. Such a general and vehement attack on a religious group, linking the group as a whole with a grave act of terrorism, was incompatible with the values proclaimed and guaranteed by the Convention. The display of the poster had constituted an act within the meaning of Article 17, which therefore did not enjoy the protection of Articles 10 or 14: incompatible *ratione materiae.*

## ARTICLE 34

**VICTIM**
Loss of victim status on account of abandonment of criminal charges.

**PÜTÜN - Turkey** (N° 31734/96)
Decision 18.11.2004 [Section III]
(see Article 35(1), below).

## ARTICLE 35

### Article 35(1)

**EXHAUSTION OF DOMESTIC REMEDY**
Ill-treatment: identification, prosecution and conviction of perpetrators in criminal proceeding, opening the possibility of civil claim: *non-exhaustion*.

**PÜTÜN - Turkey** (N° 31734/96)
Decision 18.11.2004 [Section III]

In 1995 the applicant suffered ill-treatment during police custody, which lasted nine days. The police officers responsible for the custody were prosecuted. The prosecution service noted that the accusations of ill-treatment were corroborated by the medical examination carried out at the close of police custody. The police officers were questioned and pleaded not guilty. Three years after proceedings had been opened, an assize court found two police officers guilty of ill-treatment with a view to obtaining confessions. They were both given suspended prison sentences of less than one year and temporarily suspended from their duties for less than three months. The Court of Cassation quashed the conviction of one of the police officers. The domestic proceedings came to a close after the parties had communicated their written observations to the Strasbourg Court on the admissibility and merits of the case. The applicant had not joined the proceedings before the assize court as a party and had not made use of the opportunities for bringing actions to establish civil and/or administrative liability available under domestic legislation with a view to obtaining compensation. He complained before the Court about the light sentences imposed on his torturers. The criminal proceedings against the applicant finally ended with a judgment by the State Security Court announcing the end of the limitation period for prosecution.

*Inadmissible* under Article 3: In the event of an arguable claim of violation of Article 3, the concept of an effective remedy (which implied an obligation on the State to conduct an investigation capable of leading to the identification and punishment of those responsible) did

not imply either the right to have a third party convicted in the criminal courts or an obligation as to result which supposed that any proceedings had necessarily to be settled by a conviction, or even by the imposition of a specific sentence. With regard to Article 35 of the Convention (as for Article 13), what was decisive was whether, and to what extent, a breach by the respondent State of its obligation to carry out an effective investigation could be regarded as having hindered the victim's access to other domestic remedies which were available and sufficient in order to establish the liability of public servants for actions that entailed a violation of Article 3 and, if appropriate, to obtain redress. In this case, taking into account the measures taken by the criminal authorities against the police officers in question, there had not been such a failure or hindrance. Under domestic law, the applicant had on hand a series of remedies in criminal, civil and administrative law, which were available and sufficient, which he had failed to exhaust, and he had not substantiated the existence of special circumstances which would allow him to be dispensed from that necessity. He could have applied to join the criminal proceedings as an intervening civil party and claimed compensation for both his pecuniary and non-pecuniary damage, and, even without such an approach, he had more than reasonable prospects of winning a civil or administrative action against the police officer who was finally convicted or even against the latter's superiors. In those circumstances, the Court allowed the objection of non-exhaustion of domestic remedies raised by the respondent Government.

*Inadmissible* under Article 6: The applicant complained of the composition of the State Security Court before which he had been committed for trial and of the violation of his defence rights during the trial. The Court held that, having regard to the result required by Article 6 – a fair trial – the decision to discontinue criminal proceedings had to be regarded as a measure constituting redress for the alleged violations of Article 6.

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**EFFECTIVE DOMESTIC REMEDY**
Possibility of requesting a court to reconsider its decision.

**ROSEIRO BENTO - Portugal** (N° 29288/02)
Decision 30.11.2004 [Section II]
(see below).

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**EFFECTIVE DOMESTIC REMEDY**
Involuntarily causing death.

**SCAVUZZO-HAGER and others - Switzerland** (N° 41773/98)
Decision 30.11.2004 [Section IV]

The applicants' son/brother died three days after being arrested by two police officers. At the time of arrest, he was in a disturbed physical state. Once seated in the police vehicle, he had a hysterical fit, escaped from the vehicle, offered violent resistance when the police officers caught and attempted to immobilise him, then lost consciousness. First-aid services, which were quickly called, successfully applied emergency treatment. During transportation to hospital, he again lost consciousness and subsequently died. According to the investigation which was immediately opened into the cause of death and was conducted by the two police officers who had arrested the individual concerned, the death was most probably due to natural causes. The autopsy report stated that the cause of death was excessive drug consumption. The prosecutor's office decided to close the investigation. The applicants brought an action for damages. The Federal Court, the only court with jurisdiction to rule on the compensation claim, ordered a forensic medical report. That report concluded that the death had not been solely linked to excessive drug consumption, as the loss of consciousness and subsequent complications were a result of the physical efforts made during the events in

question, taken in conjunction with a pre-existing state of considerable organic and functional weakness. Medical experts had frequently reported the deaths of individuals who were arrested while in a state of over-excitement, particularly when the police had arrested them by immobilising the person on the ground, face down on his or her stomach, with handcuffs on the hands and feet. In this case, however, the way in which the victim had been immobilised had never been clarified. The Federal Court refused to question the police officers who had carried out the arrest and the investigation or other witnesses to the disputed events. The applicants' request was dismissed. The Federal Court concluded that there was an insufficient causal link between the police officers' actions and the death, which, given the victim's extremely weak state, would have occurred in any case. In the court's view, it had been a coincidence that death had occurred at the time of arrest; however, the police officers' conduct had not been the cause of death, although it could not be ruled out that their actions had accelerated it. In any event, even if the police officers' actions constituted one of the causes of death, this did not necessarily engage the authorities' responsibility since the victim's pre-existing poor health had not been apparent to the two police officers.

*Admissible* under Article 2. The Government argued that the action before the Federal Court was not a sufficient remedy. The Court dismissed the objection that the domestic remedies had not been exhausted. It was not alleged that the police officers had deliberately caused death. The action before the Federal Court made it possible to establish the police officers' responsibility and to obtain, if appropriate, appropriate civil redress. Consequently, the civil action for compensation brought by the applicants ought to be considered as an effective remedy within the meaning of the Court's case-law. In addition, the Government had not succeeded in putting forward a sufficiently specific legal basis which would have enabled the applicants to request that the criminal investigation be reopened.
*Admissible* also under Articles 3 and 6(1).

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**FINAL DOMESTIC DECISION**
Doubts over the effectiveness of a remedy; remedy which could be considered effective.

**ROSEIRO BENTO - Portugal** (N° 29288/02)
Decision 30.11.2004 [Section II]

The applicant was prosecuted on a charge of proffering insults in the exercise of his duties as mayor. The criminal limb of the proceedings was covered by an amnesty. The claimant applied for the proceedings to be continued, in order to allow for examination of his request for compensation in respect of the damage he claimed to have sustained. The first-instance court awarded him a sum in compensation. The applicant appealed against that judgment. Under a new law, the appeal was admissible only if the amount of the disputed compensation exceeded a certain sum. As that sum had not been reached in the case in issue, the applicant lodged an appeal, arguing that the legal provision concerned was unconstitutional. The day before he lodged his appeal, the Constitutional Court ruled for the first time that the new legal provision was not unconstitutional. The judgment was published in the Official Gazette one month later. Referring to that judgment, the appeal court concluded that the applicant's appeal was inadmissible. The applicant then filed a constitutional complaint alleging the unconstitutionality of the disputed text, but the Constitutional Court upheld its previous conclusions on the question, given in its judgment in the similar case mentioned above.

*Admissible* under Article 10, after examination on the Court's own motion of compliance with the six-month time-limit: the Court reiterated that if there is a doubt as to the effectiveness of a domestic remedy, the point must be submitted to the courts. In the present case, when the applicant lodged an appeal which raised the question of the constitutionality of the new admissibility rule on his appeal, the Constitutional Court had not yet publicly given judgment on the matter. Accordingly, the applicant could not be criticised for having lodged an appeal which raised an

issue that had not yet been ruled on. His subsequent constitutional appeal was also understandable, since at that point the Constitutional Court had given only one judgment on the relevant question. Finally, if the Constitutional Court had at that stage accepted the applicant's argument as to unconstitutionality, the appeal court would then have been obliged to examine the other grounds of appeal, in particular the alleged infringement of freedom of expression, which was the complaint contained in his application. In short, despite the legal inadmissibility of the applicant's appeal, the "final decision" in this case was indeed the Constitutional Court's judgment. Furthermore, the Government submitted that the applicant could have presented his arguments concerning Article 10 of the Convention before the court of first instance and that that court would then have been able to amend its decision taking those arguments into account. However, the option of asking the authorities to reconsider a decision they had taken could be considered an effective remedy, and the Government's objection that domestic remedies had not been exhausted was therefore dismissed.

## ARTICLE 41

**JUST SATISFACTION**
Criteria for assessing non-pecuniary damage sustained as a result of the length of proceedings.

**Ernestina ZULLO - Italy** (N° 64897/01)
Judgment 10.11.2004 [Section I]

*Facts and law*: The application concerned the length of civil proceedings. The applicant relied on the Pinto Act under domestic law to complain about the length of the proceedings. An Italian Court of Appeal found that the reasonable time had been exceeded (the proceedings in question had lasted more than seven years) and awarded her 1,200 euros in compensation for non-pecuniary damage and 500 euros for costs and expenses. The applicant had also lodged a complaint with the Strasbourg Court about the length of the proceedings. The Court declared the application admissible, considering that the amount awarded in compensation for non-pecuniary damage at the end of the "Pinto" proceedings had not properly or adequately redressed the violation alleged. On the merits the Court concluded in its judgment that there had been a breach of Article 6(1) as the domestic proceedings had already lasted nine years and three months.

Article 41 – The Court reiterated the special criteria for assessing on an equitable basis the non-pecuniary damage sustained as a result of the length of proceedings. In that connection it "consider[ed] that a sum varying between EUR 1,000 and 1,500 per year's duration of the proceedings (and not per year's delay) [was] a base figure for the relevant calculation. The outcome of the domestic proceedings (whether the applicant los[t], w[on] or ultimately reach[ed] a friendly settlement) [was] immaterial to the non-pecuniary damage sustained on account of the length of the proceedings. The aggregate amount [would] be increased by EUR 2,000 if what [was] at stake in the dispute [was] of a certain importance, such as in cases concerning labour law, civil status and capacity, pensions, or particularly serious proceedings relating to a person's health or life. The basic award [would] be reduced in accordance with the number of courts dealing with the case throughout the duration of the proceedings, the conduct of the applicant – particularly the number of months or years due to unjustified adjournments for which the applicant [was] responsible – what [was] at stake in the dispute – for example where the financial consequences [were] of little importance for the applicant – and on the basis of the standard of living in the country concerned. A reduction [could] also be envisaged where the applicant ha[d] been only briefly involved in the proceedings in their capacity as heir. The amount [could] also be reduced where the applicant ha[d] already

obtained a finding of a violation in domestic proceedings and a sum of money by using a domestic remedy. ...".

The application of the above criteria to the instant case led to the following result: Non-pecuniary damage – In respect of proceedings which had lasted more than nine years for two levels of jurisdiction 8,000 euros could be regarded as an equitable sum. The stakes in the dispute (pension) were such as to justify increasing the amount by 2,000 euros and the conduct of the applicant had not contributed to delaying the proceedings. The Court accordingly awarded 10,000 euros. It deducted 30% on account of the finding of a violation by the domestic court and deducted the amount of compensation (1,200 euros) awarded at domestic level. Since the applicant had claimed less than the amount that the Court had thus calculated, the Court decided to award the amount claimed. In respect of costs and expenses the Court fixed an amount from which it deducted the amount (500 euros) awarded at domestic level.

N.B. These principles were reiterated in the **Cocchiarella v. Italy** judgment of 10.11.2004 (no. 64886/01) [Section I] concerning proceedings of the same type that had lasted more than eight years for two levels of jurisdiction and in the **Riccardi Pizzati v. Italy** judgment of 10.10.2004 (no. 62361/00) [Section I] concerning civil proceedings that had lasted more than twenty-six and a half years. In the latter case the Court dismissed the claim for reimbursement of the costs of the Court of Cassation proceedings because the appeal to that Court had been declared inadmissible on account of a failure by the applicant's lawyer to comply with a formality, which was an error of which the Government could not bear the consequences.

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**JUST SATISFACTION**
Reopening of criminal proceedings.

**SEJDOVIC - Italy** (N° 56581/00)
Judgment 10.11.2004 [Section I]
(see Article 6 [criminal], above).

## ARTICLE 46

**EXECUTION**
Identification by the Court of a structural problem linked to a malfunctioning of the legislation and internal practice.

**SEJDOVIC - Italy** (N° 56581/00)
Judgment 10.11.2004 [Section I]
(see Article 6 [criminal], above)

## ARTICLE 1 OF PROTOCOL No. 1

**POSESSIONS**
Failure to meet legal requirements for restitution of gold coins under the law on extrajudicial rehabilitation : *inadmissible*.

**NĚMCOVÁ and others - Czech Republic** (N° 72058/01)
Decision 9.11.2004 [Section II]

The applicant was convicted during the communist period for keeping gold coins, in contravention of the regulations then in force, and the coins were confiscated. As the regime changed, the judicial decision was cancelled for violation of the law. The applicants then applied to the National Bank for restitution of the coins in question, which had been listed and evaluated by an expert prior to confiscation. Basing their arguments on an extra-judiciary rehabilitation law which, subject to certain conditions, was intended to redress wrongs committed under the former regime, the applicants brought an action for restitution in 1992, seeking restoration of the confiscated gold coins. Their applications were dismissed by all the courts. While the applicants were entitled to obtain restitution, the law imposed the precondition that the coins in question were to be described by the claimants in such a way as to be individually identifiable. In the present case, the courts ruled that it was not possible to state with certainty that the coins held by the bank to which the applicants had applied were indeed those which had been confiscated from their family in 1961.

*Inadmissible* under Article 1 of Protocol No. 1: Basing their arguments on the rehabilitation act, the applicants had sought to show that they had a property right with regard to the confiscated gold coins without having title to those assets which they wished to recover, so that the disputed proceedings did not concern an "existing asset" but a debt. It was for the national courts to apply and interpret the domestic law in order to determine whether the conditions for restoration, laid out in the law relied upon, were met in the present case, which they had done without any appearance of arbitrariness. In short, when the action was brought before the national court, the debt was only conditional and could not be regarded as sufficiently established to constitute a "possession" requiring protection under Article 1 of Protocol No. 1.

[N.B. application in a Czech case of the earlier finding in *Kopecký v. Slovakia*, [GC], no. 72058/01, 28 September 2004, particularly §§ 52-54, 56-58 and 60 (and Case-Law Report No. 67)]

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**POSSESSIONS**
Question whether a house built without permission and occupied without title constitutes a substantial patrimonial interest.

**ÖNERYILDIZ - Turkey** (N° 48939/99)
Judgment 30.11.2004 [Grand Chamber]
(see Article 2, above).

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**POSSESSIONS**
Obligation to pay third party's debts.

**<u>O.B. HELLER A.S. and ČESKOSLOVENSKÁ OBCHODNÍ BANKA A.S. - Czech Republic</u>** (N° 55631/00 and N° 55728/00)
Decision 9.11.2004 [Section II]
(see Article 6(1) [civil], above).

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**PEACEFUL ENJOYMENT OF POSSESSIONS**
Obligation of company to pay third party's debts, of unforeseeable amount, having voluntarily undertaken to act as global guarantor: *inadmissible*.

**<u>O.B. HELLER A.S. and ČESKOSLOVENSKÁ OBCHODNÍ BANKA A.S. - Czech Republic</u>** (N° 55631/00 and N° 55728/00)
Decision 9.11.2004 [Section II]
(see Article 6(1) [civil], above).

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**PEACEFUL ENJOYMENT OF POSSESSIONS**
Explosion at public rubbish tip resulting in loss of property: *violation*.

**<u>ÖNERYILDIZ - Turkey</u>** (N° 48939/99)
Judgment 30.11.2004 [Grand Chamber]
(see Article 2, above).

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**PEACEFUL ENJOYMENT OF POSSESSIONS**
Non-execution of judgments awarding salary arrears to employees of a State-owned enterprise: *violation*.

**<u>MYKHAYLENKY and others - Ukraine</u>** (N°s 35091/02, 35196/02, 35201/02, 35204/02, 35945/02, 35949/02, 35953/02, 36800/02, 38296/02 and 42814/02)
Judgment 30.11.2004 [Section II]

The ten applicants, who had worked for a State-owned company which had performed construction work at Chernobyl, instituted proceedings seeking recovery of salary arrears and other payments from their former employer. Judgments in their favour were awarded by the District Court between 1997 and 2000. However, all the judgments remain to a large extent unenforced. The Ministry of Energy informed one of the applicants that the delay in the payment of the salary arrears was caused by the difficult economic situation of the debtor company, which required a solution at State level. The debtor company was liquidated in 2002. The applicants' execution writs were forwarded to the liquidation commission but proceedings are still pending. Enforcement of the judgments prior to the debtor company's liquidation would have required a special authorisation from the Ministry for Emergencies for attachment of the company's property, which was not granted.

*Law*: Government's preliminary objection (*ratione personae* – State liability): The Government maintained that the debtor company was a separate legal entity and that the State could not be held responsible for its debts. However, they had not demonstrated that the company enjoyed sufficient institutional and operational independence from the State such as to absolve the State from responsibility under the Convention. Several elements confirmed the public nature of the enterprise: firstly, the State was the biggest debtor of the company, secondly, government control had applied not only to the company's construction activities

but even to the terms of employment by the company, and thirdly, the State had prohibited the attachment of the company's property due to its location in an area which had been contaminated by radiation: objection dismissed.

Article 6 (right to a court) – Given the non-execution of the judgments for periods which lasted between three and seven years, including both the enforcement stage and the ongoing debt recovery in the liquidation proceedings, the authorities had deprived the provisions of Article 6(1) of all useful effect.
*Conclusion*: violation (unanimously).

Article 1 of Protocol No. 1 – The failure by the authorities to comply with the judgments had prevented the applicants from receiving in full the money to which they were entitled.
*Conclusion*: violation (unanimously).

Article 41 – The Court awarded the applicants pecuniary damage in the amount of the outstanding debts, as well as an amount for non-pecuniary damage. It also made an award for costs and expenses.

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**PEACEFUL ENJOYMENT OF POSSESSIONS**
Order to demolish a storage facility on the basis of a law which was allegedly not applicable at the time of the commission of the corresponding offence: *admissible*.

**SALIBA - Malta** (Nº 4251/02)
Decision 23.11.2004 [Section IV]

The applicant, who acquired ownership of a plot of land on which a storage facility had been built, was charged by the police with having built the facility without permission. The applicant was acquitted of the offence by the Criminal Court in July 1988. However, a second set of proceedings was instituted by the police, which resulted in the applicant's conviction in June 1989 and an order to demolish the facility. The applicant's appeal against conviction on grounds of having been judged twice for the same facts was allowed by the Court of Criminal Appeal, which revoked the June 1989 judgment. The court nevertheless ordered that the building be demolished. It based its decision on an amendment which had in the meantime been made to the applicable law which provided that demolition could be imposed "even where the person charged had been acquitted of the charge if the court was satisfied that the building had been erected in contravention of the law". The applicant's constitutional appeal was rejected. The applicant complains under Article 7 that a "penalty", which was not provided by the law in force at the time of the alleged offence, was imposed on him, as well as of an infringement of his right to peaceful enjoyment of his possessions.

*Inadmissible* under Article 7: The order to demolish the facility had not involved a finding of guilt pursuant to a criminal charge, and therefore did not constitute a "penalty" within the meaning of Article 7. The measure had aimed at the re-establishment of the rule of law by the demolition of any unlawfully constructed buildings, and could thus be considered a remedy rather than a "penalty": incompatible *ratione materiae*.

*Admissible* under Article 1 of Protocol No. 1.

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**PEACEFUL ENJOYMENT OF POSSESSIONS**
Irregular termination of a proprietary interest which had been enjoyed over 300 years: *violation*.

**BRUNCRONA - Finland** (Nº 41673/98)
Judgment 16.11.2004 [Section IV]

*Facts*: The applicants, who are registered owners of property in a village, claimed that they also had a permanent right of usufruct in respect of some surrounding islands and water. Since the 18th century their family had been afforded use of the islands in return for an annual levy, later replaced by payment of a wealth tax to the State. They had made undisturbed use of the islands and water until 1984, when the Forestry authorities granted fishing rights to a third party. The District Court, in a first set of proceedings, found that their right of usufruct had developed into ownership. However, this decision was subsequently quashed. The applicants undertook a second set of proceedings which ended with a final judgment by the Court of Appeal concluding that the State had never given up its ownership of the islands, but had simply leased them to the applicants subject to the payment of a tax. Leave to appeal to the Supreme Court was refused. In 1998, the applicants received a letter from the forestry authorities requesting them to vacate the disputed property, which the Government argues amounted to the termination of the applicants' lease. At the time of lodging their application with the Court the applicants were allegedly still paying wealth tax on the disputed property.

*Law*: Government's preliminary objections: (i) 6 months: The applicants had a legitimate interest in instituting the second set of proceedings with a view to obtaining a confirmation of their alleged rights over the property. The six-month period had therefore started to run from the Supreme Court's refusal for leave to appeal in the second set of proceedings: objection dismissed; (ii) non-exhaustion: the applicants had adequately relied on their property rights under Finnish law and the Convention in their last application to the Supreme Court : objection dismissed.

Article 1 of Protocol No. 1 – There were no reasons to depart from the final finding of the Court of Appeal that the applicants' property interest at issue was one of a lease, and not one of ownership or of a permanent usufruct. Hence, the applicants had not been "deprived of their possessions" within the meaning of the second sentence of this provision. Notwithstanding, as the applicant's lease – which was a proprietary interest – had been disturbed as from 1984 when fishing rights were granted to a third party, the Court's task was to ascertain whether such an interference had been compatible with the "peaceful enjoyment of possessions" rule within the meaning of the first sentence of this Article. The Court accepted the Government's arguments that the interference had been justified by the aim of upholding the principles of real-property law. However, there had not been a fair balance as regards the manner in which the applicant's lease had been terminated. The letter received by the applicants in 1998 requesting them to vacate the property, which had amounted to a termination of their lease, had not been an acceptable means of terminating a right which they had enjoyed for over 300 years. The applicants could have reasonably expected at the least to have been informed of the date of the expiry of the lease in the notice of termination. Moreover, the State had not compensated them for the irregular manner in which their lease was terminated. In these circumstances, the procedure in which the applicants' proprietary interest had been terminated was incompatible with their right to the peaceful enjoyment of their possessions.
*Conclusion*: violation (unanimously)
Article 41 – The question of just satisfaction was reserved.

## Other judgments delivered in November

### Articles 2 and 13

**Seyhan - Turkey** (Nº 33384/96)
Judgment 2.11.2004 [Section II (former composition)]

abduction and murder of applicant's father, allegedly by security forces – no violation; lack of effective investigation – violation.

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### Articles 2, 3 and 13

**A.K. and V.K. - Turkey** (Nº 38418/97)
Judgment 30.11.2004 [Section IV]

suicide of detainee, allegedly following ill-treatment – no violation; effectiveness of investigation – violation.

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### Articles 3 and 5(1)

**Tuncer and Durmuş - Turkey** (Nº 30494/96)
Judgment 2.11.2004 [Section IV (former composition)]

ill-treatment in custody; absence of reasonable suspicion justifying detention – violation.

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### Articles 3, 5, 8 and 13 and Article 1 of Protocol No. 1

**Karakoç - Turkey** (Nº 28294/95)
Judgment 2.11.2004 [Section II (former composition)]

alleged destruction of possessions and home by security forces – friendly settlement (statement of regret, undertaking to take appropriate measures, including supply of necessary provisions for restoration of applicant's house, *ex gratia* payment of 48,000 euros).

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**Articles 3, 5 and 13**

**Abdülsamet Yaman - Turkey** (Nº 32446/96)
Judgment 2.11.2004 [Section II (former composition)]

torture in police custody and lack of effective investigation; failure to bring detainee promptly before a judge, absence of possibility to challenge lawfulness of detention and absence of right to compensation for unlawful detention – violation.

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

**Hasan İlhan - Turkey** (Nº 22494/93)
Judgment 9.11.2004 [Section II (former composition)]

destruction of possessions and home by security forces in 1992 and lack of effective remedy – violation.

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

**Edwards and others - United Kingdom** (Nº 38260/97, Nº 46416/99, Nº 47143/99, Nº 46410/99, Nº 58896/00 and Nº 3859/02)
Judgment 16.11.2004 [Section IV (former composition/)]

detention for non-payment of local taxes or fines and absence of right to compensation and unavailability of legal aid for the proceedings – friendly settlement.

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**Article 5(3)**

**Maglódi - Hungary** (Nº 30103/02)
Judgment 9.11.2004 [Section II (former composition)]

length of detention on remand – violation.

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**Articles 5(3) and (4), 6(1), 8, 13 and 34**

**Klyakhin - Russia** (Nº 46082/99)
Judgment 30.11.2004 [Section II]

length of detention on remand and of criminal proceedings, absence of proper review of lawfulness of detention on remand, interference with prisoner's correspondence with the Court and lack of effective remedy in respect of complaint about length of proceedings – violation.

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**Article 6(1)**

**Bakay and others - Ukraine** (Nº 67647/01)
Judgment 9.11.2004 [Section II (former composition)]

prolonged non-enforcement of court decisions – violation.

**Fenech - France** (Nº 71445/01)
Judgment 30.11.2004 [Section II]

non-disclosure in Court of Cassation proceedings concerning an appeal by the civil party against acquittal of the report of the *conseiller rapporteur*, available to the *avocat général*, and presence of *avocat général* during court's deliberations – violation.

**Havelka - Czech Republic** (Nº 76343/01)
**Vitásek - Czech Republic** (Nº 77762/01)
Judgments 2.11.2004 [Section II (former composition)]

**Dojs - Poland** (Nº 47402/99)
Judgment 2.11.2004 [Section IV (former composition)]

**Levshiny - Russia** (Nº 63527/00)
Judgment 9.11.2004 [Section II (former composition)]

**Sikorski - Poland** (Nº 46004/99)
Judgment 9.11.2004 [Section IV (former composition)]

**Finazzi - Italy** (Nº 62152/00)
**Carletti and Bonetti - Italy** (Nº 62457/00)
**Musci - Italy** (Nº 64699/01)
**Giuseppe Mostacciuolo - Italy** (Nº 64705/01)
**Giuseppe Mostacciuolo - Italy (no. 2)** (Nº 65102/01)
**Giuseppina and Orestina Procaccini - Italy** (Nº 65075/01)
**Apicella - Italy** (Nº 64890/01)
Judgments 10.11.2004 [Section I (former composition)]

**Kvartuč - Croatia** (Nº 4899/02)
Judgment 18.11.2004 [Section I (former composition)]

**Kos - Czech Republic** (Nº 75546/01)
Judgment 30.11.2004 [Section II]

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

length of civil proceedings – violation.

**Karasová - Czech Republic** (Nº 71545/01)
Judgment 30.11.2004 [Section II]

length of proceedings relating to restitution of property – violation.

**Nuri Özkan - Turkey** (Nº 50733/99)
Judgment 9.11.2004 [Section II (former composition)]

**Alberto Sanchez - Spain** (Nº 72773/01)
Judgment 16.11.2004 [Section IV (former composition)]

length of administrative proceedings – violation.

**Beloeil - France** (Nº 4094/02)
Judgment 2.11.2004 [Section II (former composition)]

length of proceedings relating to an invalidity pension – violation.

**Bruxelles - France** (Nº 46922/99)
Judgment 30.11.2004 [Section II]

length of proceedings concerning a retired police officer's pension rights – violation.

**King - United Kingdom** (Nº 13881/02)
Judgment 16.11.2004 [Section IV (former composition)]

length of proceedings relating to the imposition of tax penalties – violation.

**Vaney - France** (Nº 53946/00)
Judgment 30.11.2004 [Section II]

length of criminal proceedings and length of proceedings concerning compensation for malfunctioning of the system of justice – violation.

**Henworth - United Kingdom** (Nº 515/02)
Judgment 2.11.2004 [Section IV (former composition)]

**Massey - United Kingdom** (Nº 14399/02)
Judgment 16.11.2004 [Section IV (former composition)]

**Vrána - République tchèque/Czech Republic** (Nº 70846/01)
Arrêt/Judgment 30.11.2004 [Section II]

**Gümüşten - Turkey** (Nº 47116/99)
Judgment 30.11.2004 [Section IV]

length of criminal proceedings – violation.

**Čanády - Slovakia** (Nº 53371/99)
Judgment 16.11.2004 [Section IV (former composition)]

exclusion of court review of conviction by administrative authorities of certain minor offences – violation (cf. *Lauko* and *Kadubec v. Slovakia* judgments of 2 September 1998).

**Coulaud - France** (Nº 69680/01)
Judgment 2.11.2004 [Section II (former composition)]

non-disclosure in Court of Cassation proceedings of report of the *conseiller rapporteur*, available to the *avocat général* – violation.

**Ayşe Öztürk - Turkey** (Nº 59244/00)
**Taydaş and Özer - Turkey** (Nº 48805/99)
Judgments 4.11.2004 [Section III (former composition)]

**Ünal - Turkey** (Nº 48616/99)
**Volkan Aydin - Turkey** (Nº 54501/00)
Judgments 10.11.2004 [Section III (former composition)]

**Şahindoğan - Turkey** (Nº 54545/00)
Judgment 30.11.2004 [Section II]

independence and impartiality of State Security Courts – violation.

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**Articles 6(1) and 10**

**Maraşli - Turkey** (Nº 40077/98)
Judgment 9.11.2004 [Section II (former composition)]

conviction for making separatist propaganda; independence and impartiality of State Security Court – violation.

**Dicle - Turkey** (Nº 34685/97)
**Odabasi - Turkey** (Nº 41618/98)
**Baran - Turkey** (Nº 48988/99)
Judgments 10.11.2004 [Section III (former composition)]

**Özkaya - Turkey** (Nº 42119/98)
Judgment 30.11.2004 [Section IV]

conviction for incitement to hatred and hostility; independence and impartiality of State Security Court – violation.

**Ayhan - Turkey (no. 1)** (Nº 45585/99)
Judgment 10.11.2004 [Section III (former composition)]

convictions for incitement to hatred and making separatist propaganda; independence and impartiality of State Security Court – violation.

**Ayhan - Turkey (no. 2)** (Nº 49059/99)
Judgment 10.11.2004 [Section III (former composition)]

convictions for making separatist propaganda; independence and impartiality of State Security Court – violation.

**Kalin - Turkey** (Nº 31236/96)
Judgment 10.11.2004 [Section III (former composition)]

convictions for incitement to hatred based on race or region and for making a declaration on behalf of an illegal armed organisation; independence and impartiality of State Security Court – violation.

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

**Croitoru - Romania** (Nº 54400/00)
Judgment 9.11.2004 [Section II (former composition)]

failure of authorities to comply with court judgment ordering restitution of property – violation (cf. *Sabin Popescu v. Romania*, judgment of 2 March 1994).

**Wasserman - Russia** (Nº 15021/02)
Judgment 18.11.2004 [Section I (former composition)]

failure of authorities to comply with court judgment awarding sum of money – violation.

**Bakalov - Ukraine** (Nº 14201/02)
Judgment 30.11.2004 [Section II]

prolonged non-enforcement of court decisions awarding sums of money – violation.

**Pravednaya - Russia** (Nº 69529/01)
Judgment 18.11.2004 [Section I (former composition)]

reconsideration of final judgment on basis of newly discovered circumstances, although these were already known, and consequent reduction of pension entitlement – violation.

**Geraldes Barba - Portugal** (Nº 61009/00)
Judgment 4.11.2004 [Section III (former composition)]

length of administrative proceedings; lengthy delay in fixing and payment of final compensation for expropriation – violation (cf. *Almeida Garret and Mascarenhas Falcão v. Portugal*, ECHR 2000-I).

**Ionescu - Romania** (Nº 38608/97)
**Chivorcian - Romania** (Nº 42513/98)
Judgments 2.11.2004 [Section II (former composition)]

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 – violation.

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

**Hooper - United Kingdom** (Nº 42317/98)
Judgment 16.11.2004 [Section IV (former composition)]

making of order binding over to keep the peace and to be of good behaviour, without opportunity to make submissions about terms of order – violation.

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## Article 6(2)

**Reinmüller - Austria** (Nº 69169/01)
Judgment 18.11.2004 [Section III (former composition)]

refusal of compensation for detention on remand, on the ground that, despite acquittal, suspicion had not been entirely dissipated – striking out (matter resolved: new examination by domestic courts).

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## Article 8

**Wood - United Kingdom** (Nº 23414/02)
Judgment 16.11.2004 [Section IV (former composition)]

absence of legal basis for covert recording of conversations in police custody – violation (cf. *Khan* v. *the United Kingdom* judgment of 12 May 2000).

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## Article 1 of Protocol No. 1

**Kostić - Croatia** (Nº 69265/01)
Judgment 18.11.2004 [Section I (former composition)]

delay in enforcing eviction order due to requirement that State provide alternative accommodation – friendly settlement.

**Fotopoulou - Greece** (Nº 66725/01)
Judgment 18.11.2004 [Section I (former composition)]

failure of authorities to comply with order to demolish wall, confirmed to be binding by the Council of State – violation.

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## Just satisfaction

**Papastavrou - Greece** (Nº 46372/99)
Judgment 18.11.2004 [Section I (former composition)]

## Relinquishment in favour of the Grand Chamber

### Article 30

**SØRENSEN and RASMUSSEN - Denmark** (Nº 52562/99 and Nº 52620/99)
Decision 25.11.2004 [Former Section I]

The first applicant was dismissed from his job for not having become a member of a trade union, which was a mandatory condition under his employment contract. The second applicant, who was unemployed, accepted to join a trade union to obtain and retain a job. Both cases raise the issue whether the Danish "Act on the Protection against Dismissal due to Association Membership" is in compliance with the right to freedom of association protected under Article 11 of the Convention, in so far as this law permits an employee to be dismissed if the employee prior to recruitment knew that membership of a certain union was a condition for being employed with the enterprise (closed shop agreements).

## Referral to the Grand Chamber

### Article 43(1)

On 10 November 2004, the Panel of the Grand Chamber rejected as inadmissible a request for referral made by the intervening third party in the following case:

**E.O. and V.P. - Slovakia** (Nº 56193/00 and Nº 57581/00)
Judgment 27.4.2004 [Section IV]

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### Article 43(2)

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

**HIRST - United Kingdom (no. 2)** (N° 74025/01)
Judgment 30.3.2004 [Section IV]
(see Information Note Nº 62)

The case concerns the exclusion of convicted prisoners from voting in parliamentary and local elections (*violation*).

**ZDANOKA – Latvia** (N° 58278/00)
Judgment 17.6.2004 [Section I]
(see Information Note Nº 65)

The case concerns the ineligibility of the applicant to stand for Parliament and termination of her mandate as a local councillor (*violation*).

**LEYLA SAHIN – Turkey** (N° 44774/98)
Judgment 29.6.2004 [Section IV]
(see Information Note Nº 65)

The case concerns the prohibition on wearing the Muslim headscarf in a university (*no violation*).

## Judgments which have become final

### Article 44(2)(b)

The following judgments have become final in accordance with Article 44(2)(b) of the Convention (expiry of the three month time limit for requesting referral to the Grand Chamber) (see Information Notes Nos. 64-66):

**LÖFFLER – Austria (no. 2)** (Nº 72159/01)
Judgment 4.3.2004 [Section III]

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

**BENEFICIO CAPPELLA PAOLINI - San Marino** (N° 40786/98)
Judgment 13.7.2004 [Section II]

**SCORDINO – Italy (no. 2)** (Nº 36815/97)
Judgment 15.7.2004 [Section I]

**HAYDAR YILDIRIM and others – Turkey** (Nº 42920/98)
Judgment 15.7.2004 [Section III]

**CARRIES – France** (Nº 74628/01)
Judgment 20.7.2004 [Section II]

**ABSANDZE – Georgia** (Nº 57861/00)
Judgment (striking out) 20.7.2004 [Section II]

**BÄCK - Finland** (N° 37598/97)
Judgment 20.7.2004 [Section IV]

**HADJIKOSTOVA – Bulgaria (no. 2)** (Nº 44987/98)
**ZHBANOV – Bulgaria** (Nº 45563/99)
Judgments 22.7.2004 [Section I]

**ELIA s.r.l. – Italy** (Nº 37710/97)
Judgment (just satisfaction) 22.7.2004 [Section II (former composition)]

**A.A. and others – Turkey** (Nº 30015/96)
**KÜRKÇÜ – Turkey** (Nº 43996/98)
Judgments 27.7.2004 [Section II]

**SEGAL – Romania** (Nº 32927/96)
Judgment (just satisfaction) 27.7.2004 [Section II]

**M.Ł. and A.Ł. – Poland** (Nº 44189/98)
**AGDAS – Turkey** (Nº 34592/97)
**İREY – Turkey** (Nº 58057/00)
Judgments 27.7.2004 [Section IV]

**ROUARD – Belgium** (Nº 52230/99)
**ROOBAERT – Belgium** (Nº 52231/99)
**GB-UNIC – Belgium (no. 1)** (Nº 52303/99)
**GB-UNIC – Belgium (no. 2)** (Nº 52304/99)
**MEHMET ŞIRIN YILMAZ – Turkey** (Nº 35875/97)
**SAN LEONARD BAND CLUB - Malta** (Nº 77562/01)
Judgments 29.7.2004 [Section I]

**ÇALOGLU – Turkey** (Nº 55812/00)
Judgment 29.7.2004 [Section III]

**Article 44(2)(c)**

On 10 November 2004 the Panel of the Grand Chamber rejected requests for referrral of the following judgments, which have consequently become final:

**FONTAINE and BERTIN - France** (Nº 28298/95)
Judgment 8.7.2003 [Section II]

**SLIMANE-KAÏD - France (no. 3)** (Nº 45130/98)
Judgment 6.4.2004 [Section II]

**AHMET ÖZKAN and others – Turkey** (N° 21689/93)
Judgment 6.4.2004 [Section II] (see Nº 63)

**BULDAN – Turkey/Turquie** (Nº 28298/95)
Judgment/Arrêt 20.4.2004 [Section II]

**SURUGIU – Romania** (Nº 48995/99)
Judgment 20.4.2004 [Section II]

**CIANETTI – Italy** (Nº 55634/00)
Judgment 22.4.2004 [Section I] (see Nº 63)

**NERONI – Italy** (Nº 7503/02)
Judgment 22.4.2004 [Section I]

**HAYDAR GUNEŞ – Turkey** (Nº 46272/99)
Judgment 22.4.2004 [Section III]

**DAGOT - France** (Nº 55084/00)
Judgment 27.4.2004 [Section II]

**KANSAL - United Kingdom** (Nº 21413/02)
Judgment 27.4.2004 [Section IV]

**GORRAIZ LIZARRAGA and others - Spain** (N° 62543/00)
Judgment 27.4.2004 [Section IV] (see Nº 63)

**GÓRA – Poland** (Nº 38811/97)
Judgment 27.4.2004 [Section IV]

**SURMAN-JANUSZEWKSA – Poland** (Nº 52478/99)
Judgment 27.4.2004 [Section IV]

**PLAKSIN - Russia** (Nº 14949/02)
Judgment 29.4.2004 [Section I]

**MORSINK – Netherlands** (N° 48865/99)
Judgment 11.5.2004 [Section II] (see Nº 64)

**BRAND v. Netherlands** (N° 49902/99)
Judgment 11.5.2004 [Section II]

**SOMOGYI - Italy** (N° 67972/01)
Judgment 18.5.2004 [Section II] (see Nº 64)

**GESIARZ – Poland** (Nº 9446/02)
Judgment 18.5.2004 [Section IV]

**PRODAN - Moldova** (N° 49806/99)
Judgment 18.5.2004 [Section IV] (see Nº 64)

**GUSINSKIY - Russia** (N° 70276/01)
Judgment 19.5.2004 [Section I] (see Nº 64)

**PALASKA – Greece** (Nº 8694/02)
Judgment 19.5.2004 [Section I]

**R.L. and M.-J. D. - France** (N° 44568/98)
Judgment 19.5.2004 [Section III] (see Nº 64)

**KOÇAK and others - Turkey** (Nº 42432/98)
Judgment 19.5.2004 [Section III]

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

**HAJNRICH - Poland** (Nº 44181/98)
Judgment 25.5.2004 [Section IV]

**BELAOUSOF and others - Greece** (N° 66296/01)
Judgment 27.5.2004 [Section I]

**LIADIS - Greece** (N° 16412/02)
Judgment 27.5.2004 [Section I] (see Nº 64)

**BARANSEL and others - Turkey** (Nº 41578/98)
Judgment 27.5.2004 [Section III]

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

**DE JORIO – Italy** (Nº 73936/01)
Judgment 3.6.2004 [Section I]

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

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

**S.C. – United Kingdom** (Nº 60958/00)
Judgment 15.6.2004 [Section IV] (see Nº 65)

**SÎRBU and others – Moldova** (Nº 73562/01, Nº 73565/01, Nº 73712/01, Nº 73744/01, Nº 73972/01 and Nº 73973/01)
Judgment 15.6.2004 [Section IV]

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

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

**ÖNER and ÇAVUŞOĞLU – Turkey** (Nº 42559/98)
Judgment 24.6.2004 [Section III]

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

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

**DOĞAN and others – Turkey** (Nº 8803/02, Nº 8804/02, Nº 8805/02, Nº 8806/02, Nº 8807/02, Nº 8808/02, Nº 8809/02, Nº 8810/02, Nº 8811/02, Nº 8813/02, Nº 8815/02, Nº 8816/02, Nº 8817/02, Nº 8818/02 and Nº 8819/02)
Judgment 29.6.2004 [Section III]

**COUILLARD MAUGERY - France** (N° 64796/01)
Judgment 1.7.2004 [Section I] (seer Nº 66)

**NASTOS – Greece** (Nº 6711/02)
Judgment 15.7.2004 [Section I]

**ASUMAN AYDIN – Turkey** (Nº 40261/98)
Judgment 15.7.2004 [Section III]

**ADAMSCY – Poland** (Nº 49975/99)
Judgment 27.7.2004 [Section IV]

**Statistical information**[1]

| **Judgments delivered**[2] | **November** | **2004** |
|---|---|---|
| Grand Chamber | 1 | 12(13) |
| Section I | 21 | 175(184) |
| Section II | 32(41) | 181(206) |
| Section III | 14 | 129(153) |
| Section IV | 23(29) | 162(200) |
| former Sections | 0 | 3 |
| **Total** | **91(106)** | **662(759)** |

| **Judgments delivered in November 2004** | | | | | |
|---|---|---|---|---|---|
| | Merits | Friendly settlements | Struck out | Other | Total |
| Grand Chamber | 1 | 0 | 0 | 0 | 1 |
| Section I | 19 | 1 | 0 | 1 | 21 |
| Section II | 31(40) | 1 | 0 | 0 | 32(41) |
| Section III | 13 | 0 | 1 | 0 | 14 |
| Section IV | 22(23) | 1(6) | 0 | 0 | 23(29) |
| **Total** | **86(96)** | **3(8)** | **1** | **1** | **91(106)** |

| **Judgments delivered in 2004**[2] | | | | | |
|---|---|---|---|---|---|
| | Merits | Friendly settlements | Struck out | Other | Total |
| Grand Chamber | 11(12) | 0 | 0 | 1 | 12(13) |
| former Section I | 0 | 0 | 0 | 0 | 0 |
| former Section II | 1 | 0 | 0 | 2 | 3 |
| former Section III | 0 | 0 | 0 | 0 | 0 |
| former Section IV | 0 | 0 | 0 | 0 | 0 |
| Section I | 144(149) | 24(28) | 2 | 5 | 175(184) |
| Section II | 164(189) | 10 | 2 | 5 | 181(206) |
| Section III | 122(146) | 5 | 1 | 1 | 129(153) |
| Section IV | 143(176) | 16(21) | 2 | 1 | 162(200) |
| **Total** | **585(673)** | **55(64)** | **7** | **15** | **662(759)** |

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

2. The statistics concerning Section judgments do not take into account the recomposition of the Sections on 1 November 2004. The heading “former Sections” refers to Sections in their composition prior to 1 November 2001.

| Decisions adopted | | November | 2004 |
|---|---|---|---|
| **I. Applications declared admissible** | | | |
| Grand Chamber | | 0 | 1 |
| Section I | | 11 | 228(237) |
| Section II | | 26(36) | 175(191) |
| Section III | | 4(7) | 151(177) |
| Section IV | | 15 | 150(182) |
| **Total** | | **56(69)** | **705(788)** |
| | | | |
| **II. Applications declared inadmissible** | | | |
| Grand Chamber | | 0 | 1 |
| Section I | - Chamber | 4 | 110(112) |
| | - Committee | 667 | 5622 |
| Section II | - Chamber | 17(18) | 89(91) |
| | - Committee | 647 | 5055 |
| Section III | - Chamber | 11(14) | 66(69) |
| | - Committee | 371 | 3431 |
| Section IV | - Chamber | 9 | 92(104) |
| | - Committee | 471 | 4006 |
| **Total** | | **2197(2201)** | **18472(18491)** |
| | | | |
| **III. Applications struck off** | | | |
| Section I | - Chamber | 7 | 79 |
| | - Committee | 2 | 65 |
| Section II | - Chamber | 6 | 52 |
| | - Committee | 4 | 61 |
| Section III | - Chamber | 1 | 137 |
| | - Committee | 5 | 42 |
| Section IV | - Chamber | 1 | 35 |
| | - Committee | 8 | 56 |
| **Total** | | **34** | **527** |
| **Total number of decisions[1]** | | **2287(2304)** | **19704(19806)** |

1. Not including partial decisions.

| Applications communicated | November | 2004 |
|---|---|---|
| Section I | 41 | 591(615) |
| Section II | 78 | 465(493) |
| Section III | 30 | 850(852) |
| Section IV | 34 | 274 |
| **Total number of applications communicated** | **183** | **2180(2234)** |

**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 |