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

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

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Statistical information[1]

Judgments delivered	October	2003
Grand Chamber	2(3)	10(17)
Section I	34	172(176)
Section II	10(12)	142(149)
Section III	34(35)	95(99)
Section IV	24(26)	137(140)
Sections in former compositions	2	13
Total	**106(112)**	**569(594)**

Judgments delivered in October 2003					
	Merits	Friendly settlements	Struck out	Others	Total
Grand Chamber	2(3)	0	0	0	2(3)
former Section I	0	0	0	0	0
former Section II	0	0	0	1	1
former Section III	0	0	0	0	0
former Section IV	0	0	0	1	1
Section I	27	6	0	1	34
Section II	10(12)	0	0	0	10(12)
Section III	26(27)	8	0	0	34(35)
Section IV	16	8(10)	0	0	24(26)
Total	**81(85)**	**22(24)**	**0**	**3**	**106(112)**

Judgments delivered in 2003					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	9(16)	0	0	1	10(17)
former Section I	4	0	0	0	4
former Section II	1	0	0	1	2
former Section III	4	0	0	0	4
former Section IV	1	0	0	2	3
Section I	132(136)	36	0	4	172(176)
Section II	113(120)	21	4	4	142(149)
Section III	81(85)	13	0	1	95(99)
Section IV	91(92)	43(45)	3	0	137(140)
Total	**436(459)**	**113(115)**	**7**	**13**	**569(594)**

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

Decisions adopted		**October**	**2003**
I. Applications declared admissible			
Grand Chamber		0	0
Section I		14	88(90)
Section II		13	90(98)
Section III		24(27)	82(88)
Section IV		62	181(217)
former Sections		0	1
Total		**113(116)**	**442(494)**
II. Applications declared inadmissible			
Section I	- Chamber	8	48
	- Committee	568	3556
Section II	- Chamber	6	61(62)
	- Committee	273	3129
Section III	- Chamber	9	58(68)
	- Committee	272	1522
Section IV	- Chamber	15	76(78)
	- Committee	228	2219
Total		**1379**	**10669(10682)**
III. Applications struck off			
Section I	- Chamber	3	19
	- Committee	4	23
Section II	- Chamber	3	31
	- Committee	3	30
Section III	- Chamber	47	85
	- Committee	6	17
Section IV	- Chamber	2	71(89)
	- Committee	6	27
Total		**74**	**303(321)**
Total number of decisions[1]		**1566(1569)**	**11414(11497)**

1. Not including partial decisions.

Applications communicated	**October**	**2003**
Section I	81	303(308)
Section II	72(78)	293(301)
Section III	16	342(358)
Section IV	38	234(272)
Total number of applications communicated	**207(213)**	**1172(1239)**

ARTICLE 3

INHUMAN TREATMENT
Alleged ill-treatment of detainees of Chechen origin held incommunicado : *admissible*.

SHAMAYEV and others - Georgia and Russia (N° 36378/02)
Decision 16.9.2003 [Section II]

The case concerns an application lodged by 13 men of Chechen origin, aged from 22 to 31, who were arrested in August 2002 by the Georgian authorities. In Georgia the applicants had been charged, inter alia, with crossing a border illegally and unlawfully possessing and trading in arms. Numerous charges had also been brought against them in Russia, certain of which were subject to the death penalty. Five applicants were extradited to Russia in October 2002 after the Russian authorities had provided assurances that they would not be sentenced to death or subjected to treatment in violation of Articles 2 and 3 of the Convention. Duress was allegedly used during the applicants' deportation with a view to their extradition; according to the applicants, this resulted in the death of one of their number. The extradited applicants are being held in an unidentified pre-trial detention centre ("SIZO"). Seven applicants remain in detention in Georgia.

Admissible under Articles 2, 3, 5(1), (2) and (4), and 6(1) and (3)(c). The Russian Government's preliminary objections that the extradited applicants had not intended to bring a case before the Court and tht their representation before the Court was not technically valid were joined to the merits. The Russian Government's objection that the application was anonymous was dismissed. Although the applicants had brought a case to the Court under pseudonyms, the Court noted that the information subsequently provided by the parties made it possible to establish a sufficiently close link between the applicants and the events under dispute. The Court dismissed the Russian Government's objection that the application was an abuse of the right of petition, on the ground that the complaints were based on actual events, some of which, moreover, were not disputed.

EXTRADITION
Extradition to Russia, with risk of capital punishment : *admissible*.

SHAMAYEV and others - Georgia and Russia (N° 36378/02)
Decision 16.9.2003 [Section II]
(see above).

EXPULSION
Expulsion to Cameroon, where applicant would allegedly face ill-treatment because he appeared as a witness in proceedings against the President of Cameroon: *communicated*.

YOUATOU - United Kingdom (N° 12010/03)
[Section IV]

In 1996 the applicant, a national of Cameroon, was refused asylum in the United Kingdom. He returned to the United Kingdom in January 2002 and again applied for asylum, claiming fear of detention and ill-treatment because of his involvement in proceedings against the President of Cameroon in the Belgian courts (he was to provide evidence of torture by the

security forces in Cameroon). He maintains that in 2000 he was arrested and beaten by the security forces when he was taking photographs of a mass grave of persons allegedly killed by the Operational Command ("OC"). Subsequently, two human rights NGOs, which were in the process of filing a complaint against the President of Cameroon in Belgium, approached him to provide evidence of human rights abuses in his country. He affirms that the authorities became aware of the persons who were collaborating with these NGOs, and that his girlfriend was arrested as a result of this in December 2001. The asylum application was first rejected by the Secretary of State, and on appeal by the Adjudicator, as they found it lacking in credibility and unconvincing. Despite new evidence submitted by the applicant, their decision was upheld by the Immigration Appeal Tribunal. Leave to apply for judicial review was refused by the High Court. The applicant made a further asylum application and made fresh representations to the Secretary of State in July 2003. The application was rejected.
Communicated under Articles 2, 3 and 5. The Court has applied Rule 39.

EXPULSION
Expulsion to Croatia of an ethnic Serb who belonged to a Serb paramilitary group during the war: *inadmissible*.

TOMIC - United Kingdom (N° 17837/03)
Decision 14.10.2003 [Section IV]

The applicant, who is an ethnic Serb from Croatia, was a member of the "Scorpions" paramilitary organisation set up by Serbs after Croatia's declaration of independence in 1991 and the outbreak of the war. He claims to have been beaten by the Croatian police prior to the war on account of his ethnic origin and that his wife was killed for these same reasons in 1992. He moved to Serbia in 1997 for fear of imprisonment and stayed there until 2001. In 2002 he entered the United Kingdom illegally and applied for asylum. The Secretary of State rejected his application on the ground that there was no real risk for the applicant in returning to Croatia. The Adjudicator granted the applicant's appeal, finding that if returned he was likely to be charged with war crimes (which it was accepted he had not committed) and face an unfair trial; the level of discrimination he would face as a Serb would cumulatively amount to persecution. The Secretary of State appealed against this decision and the Immigration Appeal Tribunal, in line with its case-law that ethnic Serbs would not have a valid claim unless special circumstances could be shown, found that the applicant's circumstances and his rank as a special unit officer in a paramilitary group were not of a special nature, thus quashing the decision of the Adjudicator.

Inadmissible under Article 3: Although some reports indicated incidents of occasional violence against ethnic Serbs in Croatia, they did not identify any particular ill-treatment of ex-combatants. A general amnesty for all those who had participated in the war had been issued, and the applicant had not substantiated how his return to Croatia would expose him to a risk of ill-treatment as an ex-combatant. Likewise, the applicant had not specified particular problems of discrimination which he would be faced with on return, and the general hardship of a war-affected region to which he might be exposed would not reach the level of severity required to engage Article 3. Moreover, the case concerned an expulsion to a High Contracting Party to the Convention, which has undertaken to secure the rights guaranteed under its provisions: manifestly ill-founded.

EXPULSION
Expulsion of homosexual to Iran, where he allegedly risks death or ill-treatment: *communicated*.

FASHKAMI - United Kingdom (N° 17341/03)
[Section IV]

The applicant, a citizen of Iran, requested asylum in the United Kingdom, claiming fear of persecution in his country because of his homosexuality. He claims that following a visit of the security forces to the house where he was living with his partner, he was arrested and held in custody for more than three months. He submits that if returned to Iran, he would run the risk of facing the death penalty as punishment for his homosexual behaviour. The claim was first examined by the Secretary of State, who found it lacking in credibility and rejected it on the ground of not being satisfied that the applicant was in fact Iranian. On appeal, the Adjudicator also rejected the claim after having evaluated the risk for homosexuals in Iran: despite harsh legislation against homosexual acts, the burden of proof was high and convictions were hard to secure; moreover, as the applicant had not expressed any prospect of continuing a relationship with his partner, no issue arose under Article 8. Leave to appeal against the Adjudicator's decision was rejected. Directions for the applicants expulsion have not been issued.
Communicated under Article 3.

ARTICLE 5

Article 5(1)(e)

PERSONS OF UNSOUND MIND
Lawfulness of emergency psychiatric detention: *violation*.

RAKEVICH - Russia (Nº 58973/00)
Judgment 28.10.2003 [Section II]

Facts: On 26 September 1999 an acquaintance of the applicant called for an ambulance to take her to a psychiatric hospital. A doctor at the hospital considered that the applicant was suffering from a grave mental disorder, with symptoms of fear, anxiety and disorientation, which rendered her a danger to herself. The hospital applied for court approval of her confinement. Two days later a medical commission diagnosed the applicant as suffering from paranoid schizophrenia and confirmed that she should be kept in hospital. On 5 November 1999 the District Court, after a hearing at the hospital, confirmed that the detention had been necessary. The applicant's appeal was dismissed on 24 December 1999.

Law: Article 5(1)(e) – For compulsory psychiatric confinement to be "lawful", three requirements must be fulfilled: firstly, the person must be reliably shown by objective medical expertise to be suffering from a true mental disorder, except in an emergency; secondly, the disorder must be of a kind or degree warranting compulsory confinement; thirdly, the disorder must persist throughout the period of detention. In the present case, there was no reason to doubt the accuracy of the medical findings of 26 September 1999, so that the applicant's condition represented an emergency. Moreover, since the authorities' decision was based on psychiatric evidence of mental illness, the applicant's detention was not arbitrary. The provisions of domestic law on compulsory confinement, which refer to mental disorder severe enough to give rise to a direct danger to the person or to others, are not too

vague and imprecise to comply with the principle of legal certainty, and it is not necessary for the lawmaker to define the term "danger" exhaustively. However, the law also requires that a judge must grant or refuse a detention order within five days of the hospital's application, whereas in the present case the application of 26 September was not dealt with until 5 November 1999, 39 days later. The applicant's detention therefore did not comply with the procedure prescribed by law.
Conclusion: violation (unanimously).
Article 5(4) – Although the hospital applied for a court review of the lawfulness of the detention, the law did not permit the applicant herself to make such an application. This is, however, required by Article 5(4).
Conclusion: violation (unanimously).
Article 41 – The Court awarded the applicant 3,000 euros in respect of non-pecuniary damage.

Article 5(1)(f)

DEPORTATION
Lawfulness of detention with a view to deportation: *no violation*.

SLIVENKO - Latvia (Nº 48321/99)
Judgment 9.10.2003 [Grand Chamber]
(see Article 8, below).

Article 5(4)

TAKE PROCEEDINGS
Adequacy of automatic right of review of lawfulness of psychiatric detention: *violation*.

RAKEVICH - Russia (Nº 58973/00)
Judgment 28.10.2003 [Section II]
(see Article 5(1)(e), above).

ARTICLE 6

Article 6(1) [civil]

CIVIL RIGHTS AND OBLIGATIONS
Proceedings concerning a mayor's management of the accounts of municipal associations : *Article 6 applicable*.

RICHARD-DUBARRY - France (N° 53929/00)
Decision 7.5.2003 [Section II]

By virtue of her position as mayor, the applicant was *ex officio* chairperson of municipal associations which received subsidies from the municipal council. The regional audit office found the applicant *de facto* accountable for public monies which seemed to have been

unlawfully used by various associations. The applicant was found jointly and severally liable with other persons for certain sums, and was ordered to return these to the municipal treasury. The applicant lodged appeals with the Audit Court and, in respect of certain cases, appealed to the *Conseil d'Etat* on points of law.

Admissible under Article 6(1): The Court dismissed the Government's objection contesting the applicability of this Article. It noted that there was a genuine and serious dispute, the outcome of which was decisive as regards the applicant's obligation to return the sums for which she had been found liable towards the State. The Court then held that this dispute concerned civil rights and obligations. As *ex officio* chairperson of municipal associations in receipt of public subsidies, the applicant had not taken part in exercising public authority, nor had she discharged tasks serving the public interest; as an elected representative, she had no hierarchical relationship with the State. The Court emphasised that the applicant was in fact in a financial dispute with the State and could be regarded as having committed a tort causing the State Treasury to sustain a loss which she was obliged to make good. Accordingly, Article 6 was applicable (civil aspect).

CIVIL RIGHTS AND OBLIGATIONS
Proceedings concerning special restrictions on the rights of a prisoner : *Article 6 applicable*.

GANCI - Italy (N° 41576/98)
Judgment 30.10.2003 [Section I]
(see below).

RIGHT TO A COURT
Dismissal of appeal on the ground that the contested measure had expired: *violation*.

GANCI - Italy (N° 41576/98)
Judgment 30.10.2003 [Section I]

Facts: The applicant was placed under a special detention regime during his pre-trial detention, then during imprisonment after his conviction. By derogation from the usual prison regime, additional prohibitions and restrictions were imposed on him. These limitations were imposed by means of orders issued by the Minister of Justice, each of which was valid for a limited duration of six months. The applicant challenged the orders before the court responsible for the execution of sentences. He was partially successful in respect of two measures. No decision on the merits was made in respect of four appeals. Although the applicant had brought those appeals at the beginning of the contested orders' period of validity, the court did not rule until after the expiry of the measures in question. Noting that the orders' period of validity had expired, the court found that the applicant no longer had an interest in having the appeals heard and declared them inadmissible.

Law: Article 6 – *Applicability*: In certain cases, the proceedings had been concluded in the applicant's favour and had concerned serious limitations on human rights (particularly those covering the applicant's contacts with his family). Article 6 applied (civil aspect).
Right to effective judicial protection: No judicial decision had been given in respect of four appeals during the orders' periodof validity, and as a result the court had declared the appeals inadmissible. In contrast to the Messina no. 2 case (ECHR 2000-X), the court had never ruled on the merits of the four appeals. The failure of the court responsible for the execution of sentences to deliver a decision on the merits of the appeals against the orders issued by the Minister of Justice had infringed the applicant's right to have his case heard by a court.
Conclusion: violation (unanimously).

The Court held unanimously that it was not necessary to consider whether there had also been a violation of Article 13.
Article 41 – The Court considered that the finding of a violation constituted sufficient just satisfaction in respect of any non-pecuniary damage.

ACCESS TO A COURT
Impossibility for company management to contest decision to place the company under compulsory administration: *violation*.

CREDIT AND INDUSTRIAL BANK - Czech Republic (Nº 29010/95)
Judgment 21.10.2003 [Section IV]

Facts: The applicant is a bank which was placed under compulsory administration by the Czech National Bank (CNB) on the ground of its unsatisfactory financial situation and liquidity. The compulsory administration, and its subsequent extension, were entered in the Companies Register following rulings of the District Court, which were not served on the applicant. The applicant bank, through its former chairman (and majority shareholder) appealed to the Municipal Court, claiming that it should have been treated as a party to the proceedings in which the District Court had approved the entries in the Companies Register, and that these decisions should have been served on it. The Municipal Court rejected the appeals without a hearing or a review of the merits. The applicant's further appeals to the Supreme Court and the Constitutional Court were unsuccessful, partly because the courts considered that they had been lodged by an unauthorised person, as they had not been authorised by the appointed administrator, who alone could represent the bank or authorise a legal representative as from the date on which the relevant entries had been made in the Companies Register.

Law: Article 34 – The Government raised a preliminary objection that only the administrator and not the former chairman or his lawyer was entitled to represent the bank and lodge an application with the Court. The Court considered that although the bank was under compulsory administration, it had not ceased to exist as a legal person. In view of the essence of the applicant's complaint, which concerned the lack of access to a court to oppose the appointment of a compulsory administrator, to hold that the administrator alone was authorised to represent the bank would render the right of individual petition theoretical and illusory. This represented an exception to the ruling in the case *Agrotexim and Others v. Greece* (Series A, no. 330-A), where the Court had observed that only in exceptional circumstances could a company's legal personality be disregarded. There were exceptional circumstances in the present case which entitled the bank's former chairman and majority shareholder to lodge a valid application on the bank's behalf: preliminary objection rejected.
Article 6 – This provision was applicable to the decision placing the bank in compulsory administration and to the subsequent proceedings extending this decision, as a disagreement clearly existed, the applicant bank having sought to contest the decisions. Even assuming that the CNB decision was liable to be judicially reviewed and courts would have had the jurisdiction to review the grounds on which the compulsory jurisdiction had been imposed, the bank had no practical possibility of pursuing such proceedings, since from the date the CNB decision was entered in the Companies Register, its statutory management body was no longer empowered to act on the bank's behalf. Moreover, the appeal which it lodged against the entries was dismissed without an examination of the merits. In these circumstances, the applicant had no effective access to a court to obtain a review of the CNB decision.
Conclusion: violation (unanimously).
Article 1 of Protocol 1 – It was not necessary to examine this complaint separately, as it was based essentially on the same lack of procedural protection which was found to give rise to a violation of Article 6.

Conclusion: not necessary to examine (unanimously).
Article 41 – The Court found that the finding of a violation constituted sufficient just satisfaction in respect of any non-pecuniary damage. It made an award in respect of costs and expenses.

ACCESS TO COURT
Legislation staying civil proceedings concerning damage of property during the war: *violation*.

<u>AĆIMOVIĆ – Croatia</u> (N°61237/00)
Judgment 9.10.2003 [Section I]

Facts : The applicant's cottage was used for military purposes by the Croatian army between 1992 and 1995. When the army left his house, he that it had been devastated and his possessions had been removed. In March 1996, he instituted civil proceedings in the Municipal Court, claiming compensation from the State. In November 1999, amendments were introduced to the Civil Obligations Act, with the effect that all proceedings concerning claims for damages resulting from acts of the army or police during the war were stayed and in consequence the Municipal Court formally stayed the proceedings which the applicant had instituted. Despite the fact that the amended Civil Obligations Act imposed an obligation on the Government to adopt within six months new legislation on State liability for damages caused by members of the army or police during the war, such a law was not enacted until July 2003.

Law : Article 6(1) – Although the right of access to a court is not absolute and it may be subject to limitations, there are dangers inherent in applying legislation retroactively with the effect of influencing the judicial determination of a dispute to which the State is a party. In the present case, the adoption of two new legislative measures with retrospective effect interfered with the applicant's right to compensation, which up to then was clearly recognised in domestic law. It was not for the Court to speculate as to the outcome of the domestic proceedings under the new legislation; it could not be said that the new legislation enacted in 2003 deprived him of his right of access to a court. However, by virtue of the 1999 amendments civil proceedings were stayed for over three years and the Municipal Court was unable to continue examining the applicant's claim for damages until the new legislation came into force. The authorities failed to adopt legislation on State liability within six months as they had committed themselves to do, and during this period the applicant was left in a prolonged state of uncertainty as to the outcome of the proceedings. In these circumstances, the degree of access afforded under national legislation was not sufficient to secure the applicant the "right to a court". The long period of time during which the applicant was prevented from having his claim determined constituted a violation of Article 6(1).
Conclusion: violation (unanimously).
Article 41 – The Court awarded the applicant 4,000 euros in respect of non-pecuniary damage.

ACCESS TO COURT
Limitation on the right of appeal with regard to the value of the claim : *inadmissible*.

<u>ROSEIRO BENTO - Portugal</u> (N° 29288/02)
Decision 23.10.2003 [Section III]

The applicant was prosecuted for remarks made, in the exercise of his functions as mayor, towards a municipal councillor at a municipal council meeting. The applicant granted amnesty with regard to the criminal charge against him. The proceedings were pursued so that the plaintiff's claim for

damages could be examined. The court found that the remarks complained of could be construed as insults which had caused injury, justifying payment to the plaintiff of 200,000 Portuguese escudos (about 1,000 euros). The applicant lodged an appeal. The Court of Appeal declared the appeal inadmissible, holding that under the relevant provisions of the Criminal Code, appeals against the section of a judgment dealing with damages could be declared admissible only if the sum due in this regard was above a certain threshold. Subsequent appeals lodged by the applicant were unsuccessful.

Inadmissible under Article 6(1): The applicant complained under Article 13 about the inadmissibility of his appeals, but the complaint fell to be examined under Article 6. That Article did not preclude a national system for regulating access to the appeal courts. Accordingly, in the interests of the proper administration of justice, the State could limit access to the appeal courts, so as to avoid the latter becoming overloaded with cases of lesser importance: manifestly ill-founded.
Communicated under Article 10.

FAIR HEARING
Delay in the execution of a final judgment: *violation*.

TIMOFEYEV - Russia (Nº 58263/00)
Judgment 23.10.2003 [Section III]

Facts: In 1981 criminal charges were brought against the applicant for dissemination of anti-Soviet propaganda. Some of his possessions, which he had allegedly used in his unlawful political activity, were confiscated. The Regional Court found that he was not guilty on grounds of insanity and ordered his placement in a mental asylum. In 1992, after the applicant had been released, the public prosecutor issued a statement acknowledging that the applicant had been unlawfully persecuted. The applicant brought a claim for the repossession of the property which had been confiscated, and in July 1998 the District Court ordered the Federal Treasury to pay him compensation. Since no progress had been made in the enforcement proceedings he issued proceedings for professional negligence against the bailiff. A District Court found the bailiff had lawfully stayed the enforcement proceedings pending supervisory review proceedings. New delays in the execution of the judgment arose because the public body responsible for paying compensation had not been unequivocally identified. Following an application by the public prosecutor for supervisory review of the original judgment, a new judgment was delivered in June 2001. Compensation was again awarded to the applicant. In December 2001, three years after the applicant's original claim was made, the enforcement proceedings were closed and the award credited to the applicant's account. The applicant claims he has not received the money.

Law: Article 34 – The applicant had the status of "victim": a decision of domestic courts favourable to an applicant is not sufficient to deprive him of such a status unless the national authorities have acknowledged and afforded redress for the breach of the Convention. Even if payment was made to the applicant, it was not an acknowledgement of, or redress for a breach of the applicant's right to have the judgment executed in time.
Article 6 – The right of access to a court guaranteed by Article 6(1) would be illusory if binding judicial decisions by domestic courts remained inoperative. The execution of a judgment must be regarded as an integral part of the "trial" for the purposes of Article 6. The delays in the execution were caused by the bailiff's unlawful actions, adjournments due to interference of supervisory review authorities and the obscurity of the original judgment. The applicant should not pay the price of these omissions of the State. It was unacceptable that a judgment debt against the State was not honoured for such a long period of time.
Conclusion: violation (unanimously).
Article 1 of Protocol 1 – A "claim" can constitute a "possession" if it is sufficiently established to be enforceable. The applicant did not receive the compensation as soon as it

became enforceable, because of the failure of the national authorities to comply with the judgment.
Conclusion: violation (unanimously).
Article 41 –The applicant did not submit any claims for just satisfaction within the time-limit.

FAIR TRIAL
Non-enforcement of a final judicial decision: *admissible*.

QUFAJ CO. SH.P.K. - Albania (Nº 54268/00)
Decision 2.10.2003 [Section III]

The applicant, a construction company, bought land from the municipality of Tirana, which granted planning permission to build five hundred flats but later refused to grant the requisite building permit. The applicant's claim for 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 that 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.

Admissible under Article 6(1) (fair hearing) – An application to the Ombudsperson would not have been an effective remedy as it cannot result in a decision enforceable against governmental authorities. Likewise, an appeal to the Enforcement Office would not have enabled the applicant company to have the judgment in its favour executed. The Government's preliminary objection that the applicant had no standing as a "victim" before the Albanian authorities or the Court, on the ground that it had failed to re-register was rejected, as the material facts complained of by the applicant had occurred before the obligation to re-register came into force.

Article 6(1) [criminal]

APPLICABILITY
Applicability of Article 6 to prison disciplinary proceedings: *Article 6 applicable*.

EZEH and CONNORS - United Kingdom (Nº 39665/98 and Nº 40086/98)
Judgment 9.10.2003 [Grand Chamber]

Facts: While serving lengthy prison sentences, the applicants were charged with offences under the Prison Rules. The first applicant was charged with threatening to kill a probation officer; the second applicant was charged with assaulting a prison officer. The applicants' requests to be allowed legal representation for their respective adjudication hearings were refused by the Governor. They were both found guilty and were awarded forty additional days' custody and seven additional days' custody respectively. They were subsequently refused leave to apply for judicial review.

Law: Article 6(3)(c) – (a) applicability of Article 6: It was appropriate to apply the criteria set out in the *Engel* judgment, while making due allowance for the prison context. The Government's argument that removing the power of prison governors to award additional days would undermine prison discipline was not compelling: it had not been explained why the range of other available sanctions – which had since been extended – would not have had a

comparable impact in maintaining the efficiency of the prison disciplinary system. It had not been convincingly shown that the disciplinary needs in Scotland, where awards of additional days had been suspended, were significantly different from those in England and Wales, and the practical obstacles (administrative and financial burdens and delays in adjudication) created by the new system introduced as a result of the Chamber's judgment were not on their own such as to render Article 6 inapplicable.
The offences at issue were classified as disciplinary in domestic law. However, the nature of the offences was of greater importance in determining whether Article 6 was applicable. In that respect, the offences were directed towards a group with a special status – prisoners – and not at all citizens. However, this did not render the nature of the offences *prima facie* disciplinary; it was only one of the relevant indicators. The disciplinary charges also corresponded to offences under the criminal law and while the charge against the second applicant involved a relatively minor incident which might not have led to prosecution outwith the prison context, the minor nature of the offence could not of itself remove it from the ambit of Article 6. The theoretical possibility of concurrent criminal and disciplinary liability was at the very least a relevant point which tended to the classification of the nature of both offences as "mixed" offences. Furthermore, the awards of additional days were imposed after a finding of culpability, to punish the applicants for offences and to prevent further offending by them and others, and the the distinction made by the Government between punitive and deterrent aims was unconvincing, since these are not mutually exclusive and indeed are characteristic features of criminal penalties. These factors gave the offences a certain colouring which did not entirely coincide with that of a purely disciplinary matter and it was therefore necessary to turn to the third criterion, namely the nature and severity of the potential penalty.
In domestic law, a right to release arose only on expiry of any additional days awarded, so that the legal basis for detention continued to be the original conviction and sentence. Nevertheless, the reality was that prisoners were detained beyond the date on which they would otherwise have been released, as a consequence of proceedings legally unconnected to the original conviction and sentence. Awards of additional days' detention thus constituted fresh deprivations of liberty imposed for punitive reasons and the question of procedural protection was properly considered under Article 6 rather than under Article 5. In view of the deprivations of liberty which were liable to be and actually were imposed in the present case, there was a presumption that the charges at issue were criminal and that presumption could be rebutted only exceptionally and if the deprivation of liberty was not "appreciably detrimental". The maximum possible was 42 days' additional detention and in the present case the awards of forty and seven days respectively could not be regarded as sufficiently unimportant or inconsequential to displace the presumed criminal nature of the charges. The charges were therefore "criminal" and Article 6 applied (11 votes to 6).
(b) The Grand Chamber agreed with the Chamber's reasoning that the refusal of the Governor to allow the applicants to be legally represented constituted a violation of Article 6(3)(c). It was unnecessary to consider the alternative complaint that the interests of justice required the granting of free legal aid for the proceedings.
Conclusion: violation (11 votes to 6).
Article 41 – The Court considered that the finding of a violation constituted sufficient just satisfaction in respect of non-pecuniary damage. It made an award in respect of costs and expenses.

Article 6(2)

PRESUMPTION OF INNOCENCE
Refusal of costs and compensation for detention on remand, following discontinuation of criminal proceedings, on the ground that the person would probably have been convicted: *violation*.

BAARS - Netherlands (Nº 44320/98)
Judgment 28.10.2003 [Section II]

Facts: Criminal proceedings were brought against the applicant on charges of forgery and being an accessory to bribery of a public official. The prosecution was, however, declared inadmissible on the ground that the applicant had not been tried within a reasonable time. In separate proceedings, in which the applicant appeared as a witness, the public official was convicted. The applicant sought his costs and expenses, as well as compensation for the period which he had spent in detention on remand. The claims were rejected and the Court of Appeal dismissed the applicant's appeal. It was of the view that the applicant had forged the document in question and that, if the prosecution had proceeded, he would "in all likelihood" have been convicted.

Law: Article 6(2) – A decision refusing reimbursement of an accused's costs following termination of criminal proceedings may raise an issue under this provision if there is reasoning which amounts in substance to a determination of guilt. In the similar case of *Lutz v. Germany* (Series A no. 123), the court decisions described a "state of suspicion" and did not contain any finding of guilt. In the present case, however, it could not be said that the Court of Appeal had merely indicated that there were still strong suspicions concerning the applicant; its reasoning amounted in substance to a determination of the applicant's guilt without him having been "found guilty according to law". The reasoning was based on findings in proceedings against another person, in which the applicant had participated only as a witness, without the protection of Article 6.
Conclusion: violation (unanimously).
Article 41 – The Court considered that the finding of a violation constituted sufficient just satisfaction in respect of any non-pecuniary damage.

ARTICLE 8

PRIVATE LIFE
Expulsion of family of former Soviet military officer following agreed withdrawal of Soviet troops: *violation*.

SLIVENKO - Latvia (Nº 48321/99)
Judgment 9.10.2003 [Grand Chamber]

Facts: The applicants are a mother and daughter of Russian origin. The first applicant, whose father was an officer in the army of the Soviet Union, moved to Latvia with her parents when she was one month old. She married another Soviet officer in 1980 and the second applicant was born in 1981. After Latvia gained its independence, the applicants were entered on the register of Latvian residents as "ex-USSR citizens". In 1994 the first applicant's husband, who had been discharged from the army during that year (the Russian Federation having assumed jurisdiction over the former Soviet armed forces in January 1992), applied for a

temporary residence permit on the basis of his marriage to a permanent resident. His application was refused on the ground that he was required to leave Latvia in accordance with the treaty of April 1994 on the withdrawal of Russian troops. As a result, the registration of the applicants was annulled. The deportation of all three family members was ordered in August 1996 and the first applicant's husband subsequently moved to Russia. The applicants, however, brought a court action challenging their removal from Latvia. They were successful at first and second instance but the Supreme Court quashed these decisions and remitted the case to the Regional Court, which then found that the first applicant's husband was required to leave and that the decision to annul the applicants' registration was lawful. This decision was upheld by the Supreme Court. In October 1998 the applicants were arrested and detained in a centre for illegal immigrants. They were released the following day on the order of the Director of the Citizenship and Migration Authority, on the ground that their arrest was "premature", since an appeal had been lodged with the authority. However, they were later ordered to leave the country and in March 1999 the second applicant was again detained for 30 hours. Both applicants subsequently moved to Russia and adopted Russian citizenship. The first applicant's parents, who she maintains are seriously ill, remained in Latvia.

Law: Article 8 – The applicants were removed from the country where they had developed, uninterruptedly since birth, the network of personal, social and economic relations that make up the private life of a human being. Furthermore, they lost the flat in which they had lived. In these circumstances, their removal constituted an interference with respect for their private life and home. In contrast, the impugned measures did not have the effect of breaking up the family, since the deportation concerned all three members and there is no right under the Convention to choose in which country to continue or re-establish family life. Moreover, there was no "family life" with the first applicant's parents, who were adults not belonging to the core family and who had not been shown to be dependent on the applicants' family. Nonetheless, the impact of the impugned measures on family life was a relevant factor in the assessment under Article 8 and the link with the first applicant's parents was to be taken into account in the context of private life.
As to the legal basis for the applicants' deportation, the Government's contention that the first applicant had submitted false information when requesting registration had to be disregarded, since it had not been shown that the Latvian courts had relied on that ground as justifying deportation. The principal ground relied on by the Government was that the applicants' removal was required by the treaty on the withdrawal of Russian troops. While that treaty was not yet in force when the applicants were registered as "ex-USSR citizens", the relevant provisions of domestic law could later be legitimately intepreted and applied in the light of the treaty, a legal instrument accessible to the applicants. In addition, the applicants must have been able to foresee to a reasonable degree, at least with legal advice, that they would be regarded as covered by the treaty. In any event, the decisions of the courts did not appear arbitrary. The applicants' removal could accordingly be considered to have been "in accordance with the law".
Taking into account the wider context of the constitutional and international law arrangements made after Latvia regained independence, from which the measures taken in respect of the applicants could not be dissociated, the Court accepted that the treaty and implementing measures had sought to protect the interests of national security and thus pursued a legitimate aim.
As to the necessity of the interference, the fact that the treaty provided for the withdrawal of all Russian military officers, including those who had been discharged prior to its entry into force, and obliged their families to leave the country, was not in itself objectionable under the Convention. Indeed, it could be said that the arrangement respected family life in that it did not interfere with the family unit. In so far as the withdrawal interfered with private life and home, the interference would not normally appear disproportionate, having regard to the conditions of service of military officers; in particular, the withdrawal of active servicemen and their families could be treated as akin to a transfer in the course of normal service. Moreover, the continued presence of active servicemen of a foreign army might be seen as

incompatible with the sovereignty of an independent State and a threat to national security. The public interest in the removal of them and their families would therefore normally outweigh the individual's interest in staying. However, it could not be excluded that specific circumstances might render removal measures unjustified under the Convention. In particular, the justification did not apply to the same extent to retired officers and their families and, while their inclusion in the treaty did not as such appear objectionable, the interests of national security carried less weight in respect of them. In the present case, the fact that the first applicant's husband had already retired by the time of the proceedings concerning the legality of the applicants' stay in Latvia had made no difference to the determination of their status, yet it appeared from information provided by the Government about treatment of certain hardship cases that the authorities considered that they had some latitude which allowed them to ensure respect for private and family life and home. Such derogation, which was not limited to Latvian citizens, was decided on a case-by-case basis and it did not seem that the authorities had examined whether each person presented a specific danger to national security or public order, the public interest having been perceived rather in abstract terms. A scheme for withdrawal of foreign troops and their families based on a general finding that their removal is necessary for national security cannot as such be deemed contrary to Article 8, but implementation of such a scheme without any possibility of taking into account individual circumstances is not compatible with that provision. In the present case, although the applicants were not of Latvian origin and lived in Latvia in connection with the service of members of their family in the Soviet army, they had developed personal, social and economic ties there unrelated to their status and it had not been shown that their level of fluency in Latvian was insufficient for them to pursue normal life there. They were therefore sufficiently integrated into Latvian society at the relevant time. Finally, they could not be regarded as endangering national security by reason of belonging to the family of the first applicant's father, a former Soviet officer who had retired in 1986, had remained in the country and was not himself deemed to present any such danger. In all the circumstances, the applicants' removal could not be regarded as having been necessary in a democratic society.
Conclusion: violation (11 votes to 6)
Article 14 in conjunction with Article 8 – It was unnecessary to rule on this complaint. *Conclusion*: not necessary to examine (11 votes to 6).
Article 5(1)(f) – It was not disputed that the applicants' detention was ordered in the context of deportation proceedings against them which were pending on the relevant dates. Moreover, it could not be said that those proceedings were not pursued with due diligence. As to whether the detention was "lawful" and "in accordance with a procedure prescribed by law", although the immigration authority considered that the applicants' arrest was premature, the existence of flaws in a detention order does not necessarily render the detention unlawful, in particular if, as in the present case, a putative error is immediately detected and redressed by release. Moreover, the immigration authority's view may not have been correct, since the deportation order had already become final and it was apparent that no further remedies were available. In that respect, it was significant that the immigration authority did not act on the "appeal". Neither of the arrest warrants lacked a statutory basis in domestic law and there was no evidence that the police had acted in bad faith or arbitrarily. Consequently, the detention was in accordance with Article 5(1)(f).
Conclusion: no violation (16 votes to 1).
Article 5(4) – The applicants had been released speedily before any judicial review of the lawfulness of their detention could take place and Article 5(4) does not deal with remedies which may serve to review the lawfulness of detention which has already ended. It was therefore unnecessary to examine the merits of the applicants' complaint.
Conclusion: not necessary to examine (unanimously).
Article 41 – The Court awarded each of the applicants 10,000 euros in respect of non-pecuniary damage.

FAMILY LIFE
Enforcement of visiting rights by a non-custodial parent: *inadmissible*.

KÁLLÓ - Hungary (N°70558/01)
Decision 14.10.2003 [Section II]

The applicant separated from his wife in 1993 and the couple's sons stayed with their mother. Initially the applicant enjoyed unhindered access to his sons, but thereafter problems in visiting them arose. The District Court took interim measures regulating his access rights, in particular granting him specific entitlements to spend time with his children in 1996. The meetings did not take place, due partly to the mother's refusal to co-operate with the arrangements and partly to the reluctance of the children to go with him. The mother was granted custody in the divorce proceedings and continued not complying with the access regulations, for which she was twice fined by the Welfare Office.

Inadmissible under Article 8 – The obligation of national authorities to take measures to facilitate contact by a non-custodial parent with children pending or after divorce is not absolute. The District Court took various measures to enforce the applicant's right of access and fines were imposed on his former wife for not complying with the measures. Bearing in mind the difficulties in reconciling the opposing positions of the applicant and his wife – coupled with the children's apparent reluctance to meet the applicant – the competent authorities made reasonable efforts to enforce the applicant's right of access to his children.

CORRESPONDENCE
Prohibition on prisoner corresponding in a foreign language: *inadmissible*

CHRISTI – Portugal (Nº 57248/00)
Decision 2.10.2003 [Section III]

The applicant is a United States national of Pakistani origin, who was convicted in Portugal of falsification of credit cards, computer fraud and corruption. He was sentenced to 17 years' imprisonment, later reduced to 14 years. Once in prison serving the sentence, the applicant was not permitted to correspond in Urdu with his family in Pakistan for security reasons. He filed several complaints with the prison governor and allegedly registered to complain to the prison judge. The United States Embassy intervened and offered to find and bear the costs of an English-Urdu translator to translate the applicant's incoming and outgoing mail. The applicant declined the offer on the ground that it could expose his and his family members privacy to others.

Inadmissible under Article 8 – Although the interference was in accordance with the law and pursued the legitimate aim of the prevention of crime, it could have raised a problem under this provision, since the applicant was a foreign inmate without family residing in the country of detention. However, the interference was proportionate given that the prison authorities had authorised the applicant to send mail at Christmas and a reasonable solution of translating his mail had been offered to him, which he had declined for unconvincing reasons: manifestly ill-founded.

ARTICLE 10

FREEDOM OF EXPRESSION
Statements made by a lawyer in the course of judicial proceedings deemed contrary to professional standards: *violation*.

<u>P.S. - Netherlands</u> (Nº 39657/98)
Judgment 28.10.2003 [Section II]

Facts: The applicant is a lawyer who was acting on behalf of a person of Surinamese origin being prosecuted for social security fraud. In the related civil proceedings, the applicant stated that the social security investigating officer, W., had exerted unacceptable pressure on his client to procure an incriminating statement from him. W. filed a disciplinary complaint against the applicant for unfounded insinuations which had tarnished his good reputation. Both the Disciplinary Council and the Appeals Tribunal found the complaint of W. well-founded as the applicant had given a qualification which was not supported by any facts and should, prior to raising such allegations, have sought information from his client as to the circumstances constitutive of the unacceptable pressure. No sanction was however imposed on the applicant.

Law: Article 10 – Despite the fact that a sanction was not imposed on him, the applicant had been subject to a "restriction" or a "formality" on his freedom of expression, as there was a formal finding that he was at fault and this could have had a discouraging effect on the exercise of his professional duties in the future. The interference was prescribed by law and intended to protect the reputation or the rights of others, but failed to answer any pressing social need. The limits of acceptable criticism may in some circumstances be wider with regard to civil servants, and the applicant's statements were directed at W.'s actions in his capacity as an investigating social security officer. The criticism was confined to the court room and did not amount to a personal insult. The applicant's submissions were consistent and based on the fact that his client had not fully understood the incriminating statement, which he had made in the absence of an interpreter. The national authorities had not attempted to establish the truth or falsehood of the applicant's statement or whether it had been made in good faith. Moreover, the threat of *ex post facto* review of his statements could have a "chilling effect" on the exercise of the applicant's professional duties and in defending the interests of his clients in the future.
Conclusion: violation (unanimously).
Article 41 – The applicant did not submit any claims for just satisfaction.

ARTICLE 11

FREEDOM OF PEACEFUL ASSEMBLY
Conviction for participating in purportedly illegal demonstration: *communicated*.

<u>MKRTCHYAN - Armenia</u> (N° 6562/03)
[Section III]

The applicant, who is a member of the Republican Party, participated in a public demonstration organised by several parties in the centre of Yerevan. After the demonstration had ended, the applicant was arrested and held in custody on grounds of having violated the

"prescribed rules" for holding demonstrations. Subsequently, the District Court found that he had participated in an unauthorised demonstration and breached the rules for holding street processions and imposed a financial penalty on him. The applicant appealed to the Civil Court of Appeal claiming that the interference with his right to freedom of assembly had no legal basis as there did not exist any law which prescribed the rules which he had allegedly violated. He asked the Court of Appeal to provide details of the law on which his arrest and sanction had been based. The Court of Appeal's decision was virtually identical to that of the District Court. The applicant's cassation appeal was dismissed.
Communicated under Article 11.

ARTICLE 13

EFFECTIVE REMEDY
Availability of a remedy in respect of the length of civil proceedings: *violation*.

D.M. - Poland (N° 13557/02)
Judgment 14.10.2003 [Section IV]

Facts : In 1994 the applicant initiated civil proceedings against the State Treasury alleging medical malpractice. The proceedings ended in February 2002.

Law : Article 6(1) ─ The overall length of the proceedings, which lasted eight years and five days, was excessive.
Conclusion: violation (unanimously).
Article 13 ─ The requirement for States to guarantee an effective remedy in respect of the excessive length of court proceedings applies equally to criminal and civil proceedings. No remedy was available at the time of lodging the application with the Court, and it had not been shown that the new remedy referred to by the Government would have been effective.
Article 41 ─ The Court awarded the applicant 5,000 euros in respect of non-pecuniary damage.

ARTICLE 35

Article 35(1)

EFFECTIVE DOMESTIC REMEDY (France)
Length of administrative proceedings : effectiveness of an action against the State based on a deficiency in the administration of justice.

BROCA and TEXIER-MICAULT - France (N° 27928/02 and Nº 31694/02)
Judgment 21.10.2003 [Section II]

Fact: These cases concern the length of administrative proceedings which have been concluded in one case and are still pending in the other.

Law: Article 6(1) – *Admissibility:* The Government pleaded non-exhaustion of domestic remedies. They claimed that the *Conseil d'Etat's* judgment of 28 June 2002 in the *Magiera* case had confirmed the recent national case-law under which the State could be held liable for the length of administrative proceedings and the payment of compensation for failure to

comply with Article 6(1) could be justified in such cases. The Court considered that it was clear from that judgment that by bringing an action for damages against the State on account of the defective functioning of the public justice system, members of the public who were parties to administrative proceedings could now obtain a finding of a violation of their right to have their case heard within "a reasonable time", and obtain compensation for the resulting damage. Accordingly, the Court concluded that this remedy was one that had to be used for the purposes of Article 35(1) of the Convention. The Court was persuaded by the Government's argument that this applied to completed and pending proceedings. It decided that any complaint lodged with the Court on or after 1 January 2003 concerning the length of proceedings before the French administrative courts would be inadmissible if it had not previously been submitted to the domestic courts in the context of an action for damages against the State on account of the defective functioning of the public justice service, irrespective of the state of domestic proceedings. The applicants having submitted their application to the Court before 1 January 2003, the objection of non-exhaustion of domestic remedies was dismissed. On the merits, the periods under consideration had lasted, in one case, more than eight years and, in the other, about five years and three months. The Court found that this exceeded a reasonable time.
Conclusion: violation (unanimously).
Article 41 – The Court awarded compensation for non-pecuniary damage. It awarded the costs and expenses claimed by the second applicant.

EFFECTIVE DOMESTIC REMEDY (Italy)
Proceedings for eviction of tenant : applicant absolved from obligation to make use of the remedy introduced by the Pinto Act.

MASCOLO - Italy (N° 68792/01)
Decision 16.10.2003 [Section I]

The applicant complained of the length of proceedings for eviction of a tenant and his prolonged inability to recover his flat.

Admissible under Article 6(1) and Article 1 of Protocol No. 1: The respondent Government argued that the applicant ought to have made use of the remedy for compensation introduced by the Pinto Act. The Court found that, in the present case, the Government themselves had not been satisfied by the domestic remedy introduced by the Pinto Act, since they had waited until the Court of Cassation had confirmed that the Act was applicable to proceedings to evict tenants before raising this objection with the Court, and had failed to supply national judgments, delivered on the basis of the Pinto Act, concerning the financial repercussions for the right of property of the excessive length of proceedings for eviction of a tenant. In addition, when, in its judgment of 18 June 2002, the Court of Cassation had resolved domestic points of contention as to whether the Pinto Act was applicable to proceedings to evict tenants, the deadline had expired for the applicant to be able to use the remedy offered by the Pinto Act. Consequently, the Court ruled that, in the circumstances of the present case, the applicant was absolved from the obligation to avail himself of this remedy. The objection of non-exhaustion was therefore dismissed.

ARTICLE 41

JUST SATISFACTION

SOVTRANSAVTO HOLDING – Ukraine (N° 48553/99)
Judgment (just satisfaction) 2.10.2003 [Section IV]

In a judgment of 25 July 2002, the Court held that there had been a violation of Article 6(1) in that the applicant company's had not had a fair and public hearing by an independent and impartial tribunal. The Court also held that there had been a violation of Article 1 of Protocol No. 1, since the respondent State had failed in its obligation to secure to the applicant company the effective enjoyment of its right of property. The Court reserved the question of the application of Article 41.

Article 41 – Making its assessment on an equitable basis, the Court awarded 500,000 euros for the pecuniary damage suffered by the applicant company as a result of the loss of real opportunities to manage in practice the company of which it was a partial owner and to control the latter's assets, and 75,000 euros for non-pecuniary damage resulting from the situation of prolonged uncertainty in which the applicant company had been placed. The Court awarded 50,000 euros in respect of costs and expenses incurred in the proceedings before the national courts and before the Court.

JUST SATISFACTION
Appointment of expert to assess pecuniary loss.

BELVEDERE ALBERGHIERA SRL – Italy (N° 31524/96)
Judgment (just satisfaction) 30.10.2003 [Section II (former composition)]

In a judgment of 30 May 2000, the Court held that there had been a violation of Article 1 of Protocol No. 1, on the ground that the applicant company had been unlawfully deprived of its land. The question of Article 41 was reserved. In the subsequent proceedings the Chamber decided, on its President's initiative, that it would be appropriate to conduct an expert evaluation with regard to the question of pecuniary damage. Accordingly, the Court assigned terms of reference to an expert selected by the parties and noted that the costs and fees for the evaluation would be payable by the respondent State. The parties had an opportunity to submit observations on the evaluation.

Article 41 – The Court decided to accept as valid the expert's report and to take it into consideration in its decision on pecuniary damage. With regard to the sum to be awarded under this head, the Court endorsed the expert's conclusions.

ARTICLE 44

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. 54, 55 and 56):

SAHINI - Croatia (Nº 63412/00)
Judgment 19.6.2003 [Section I]

CIĄGADLAK - Poland (Nº 45288/99)
FINUCANE - United Kingdom (Nº 29178/95)
Judgments 1.7.2003 [Section IV]

BUFFALO SRL EN LIQUIDATION - Italy (N° 38746/97)
Judgment 3.7.2007 [Section I]

FONTAINE and BERTIN - France (Nº 38410/97 and Nº 40373/98)
Judgment 8.7.2003 [Section II]

GRAVA - Italy (N° 43522/98)
MULTIPLEX - Croatia (Nº 58112/00)
KASTELIC - Croatia (Nº 60533/00)
EFSTATHIOU ET MICHAÏLIDIS & CIE MOTEL AMERIKA - Greece (N° 55794/00)
KONSTANTOPOLOUS AE and others - Greece (Nº 58634/00)
INTEROLIVA ABEE - Greece (Nº 58642/00)
Judgments 10.7.2003 [Section I]

FARINHA MARTINS - Portugal (Nº 53795/00)
BENHABBA - France (Nº 53441/99)
YURTDAŞ and INCI - Turkey (Nº 40999/98)
Judgments 10.7.2003 [Section III]

E.R. - France (Nº 50344/99)
GRANATA - France (no. 2) (Nº 51434/99)
ERDEI and WOLF - Romania (Nº 38445/97)
ERNST and others - Belgium (N° 33400/96)
FORCELLINI - San Marino (Nº 34657/97)
DE BIAGI - San Marino (Nº 36451/97)
SIGURÞÓR ARNARSSON - Iceland (Nº 44671/98)
Judgments 15.7.2003 [Section II]

MOKRANI - France (Nº 52206/99)
R.W. - Poland (Nº 41033/98)
SITAREK - Poland (Nº 42078/98)
BERLIN - Luxembourg (Nº 44978/98)
THE FORTUM CORPORATION - Finland (Nº 32559/96)
Judgments 15.7.2003 [Section IV]

CRAXI - Italy (Nº 25337/94)
LUORDO - Italy (N° 32190/96)
ONORATO RICCI - Italy (Nº 32385/96)
D'OTTAVI - Italy (Nº 33113/96)
TRAINO - Italy (Nº 33692/96)
DEL SOLE - Italy (Nº 36254/97)
ROSATI - Italy (Nº 55725/00)
BOTTARDO – Italy (Nº 56298/00)
Judgments 17.7.2003 [Section I]

PERRY - United Kingdom (Nº 63737/00)
MELLORS - United Kingdom (Nº 57836/00)
Judgments 17.7.2003 [Section III]

J.T. - Hungary (Nº 44608/98)
COSTE - France (Nº 50632/99)
ESEN - Turkey (Nº 29484/95)
YAZ - Turkey (Nº 29485/95)
SA CABINET DIOT and SA GRAS SAVOYE - France (Nº 49217/99 and Nº 49218/99)
DICKMANN - Romania (Nº 36017/97)
ZUILI - France (Nº 46820/99)
Judgments 22.7.2003 [Section II]

Y.F. - Turkey (Nº 24209/94)
AYŞE TEPE - Turkey (Nº 29422/95)
GABARRI MORENO - Spain (N° 68066/01)
Arrêts 22.7.2003 [Section IV]

KARNER - Austria (Nº 40016/98)
Judgment 24.7.2003 [Section I]

SMIRNOVA - Russia (Nº 46133/99 and Nº 48183/99)
Judgment 24.7.2003 [Section III]

YÖYLER - Turkey (Nº 26973/95)
Judgment 24.7.2003 [Section IV (former composition)]

POILLY - France (Nº 68155/01)
Judgment 29.7.2003 [Section II]

DEMADES - Turkey (N° 16219/90)
EUGENIA MICHAELIDOU DEVELOPMENTS LTD et MICHAEL TYMVIOS - Turkey (N° 16163/90)
SOCIEDADE AGRICOLA DO PERAL and another - Portugal (Nº 55340/00)
DORAN - Ireland (Nº 50389/99)
Judgments 31.7.2003 [Section III]

ARTICLE 4 OF PROTOCOL No. 7

NE BIS IN IDEM
Conviction for tax fraud and imposition of a tax surcharge: *inadmissible*.

ISAKSEN - Norway (Nº 13596/02)
Decision 2.10.2003 [Section III]

In his capacity as manager of a company of which he was also the owner, the applicant was convicted, *inter alia*, of tax fraud, and sentenced to two and a half years imprisonment. Later, a tax surcharge of 60% concerning a period of six years was also imposed on him personally. The High Court granted leave to appeal against the sentence and reduced the sentence to two years, proceeding on the assumption that the applicant would have to pay the tax surcharge but in a way that the prohibition on being tried and punished twice for the same offence would not be infringed. Leave to appeal against this decision was refused by the Supreme Court. The tax surcharge was later lowered from 60% to 30%. When the applicant had already started serving his sentence, the Supreme Court's jurisprudence in this area changed, considering as from then that a criminal case should be dismissed if the accused had already been subjected to a tax surcharge of 60%, and that, for the purposes of Article 6 of the Convention, a 30% tax surcharge was a "criminal charge". The applicant made several applications for release and for the reopening of the criminal proceedings, but a decision has not been taken yet. The Supreme Court held in another case that there was no justification for applying its jurisprudence retroactively.

Inadmissible under Article 4(1) of Protocol No. 7 – The applicant's indictment and conviction for tax fraud related to advantages benefiting the company he owned and managed, whereas the tax surcharges were imposed on account of tax advantages benefiting the applicant personally. Although there was a close nexus between the company's and his own tax evasion, the sanctions concerned two distinct legal entities. The offences in question were entirely separate and differed in their essential elements: manifestly ill-founded.

Other judgments delivered in October

Articles 2, 3, 8 and 13, and Article 1 of Protocol No. 1

BAŞAK and others - Turkey (Nº 29875/96)
Judgment 16.10.2003 [Section III]

alleged destruction of possessions and home by the security forces and alleged killing of the brother of one of the applicants by the security forces – friendly settlement (statement of regret, undertaking to take necessary measures and *ex gratia* payment).

Articles 2, 3, 13 and 14

OGRAS and others - Turkey (Nº 39978/98)
Judgment 28.10.2003 [Section IV]

shooting of detainee while allegedly attempting to escape – friendly settlement.

Articles 2 and 5

EREN and others - Turkey (Nº 42428/98)
Judgment 2.10.2003 [Section III]

disappearance of applicants' relative after allegedly being taken into custody – friendly settlement (statement of regret, undertaking to adopt necessary measures, *ex gratia* payment).

Articles 3 and 5(3)

KALIN and others - Turkey (Nº 24849/94, Nº 24850/94 and Nº 24941/94)
Judgment 28.10.2003 [Section IV]

alleged ill-treatment in custody and failure to bring detainee promptly before a judge – friendly settlement (statement of regret, undertaking to adopt necessary measures, *ex gratia* payment).

Articles 5(1) and (3), 6(1) and 8

GORAL - Poland (Nº 38654/97)
Judgment 30.10.2003 [Section III]

continuation of detention on remand on basis of indictment having been lodged, length of detention on remand, length of criminal proceedings and opening by a court of detainee's correspondence with the European Commission of Human Rights – violation.

Article 5(1)(c) and (4)

MINJAT - Switzerland (Nº 38223/97)
Judgment 28.10.2003 [Section II]

refusal of Federal Court to order release of detainee despite quashing detention order due to absence of reasons – no violation.

Article 5(1)(e)

TKÁČIK - Slovakia (Nº 42472/98)
Judgment 14.10.2003 [Section IV]

lawfulness of psychiatric detention – violation.

Article 5(3)

KARATAY - Turkey (Nº 36596/97)
KÖROĞLU - Turkey (Nº 39446/98)
KOVANKAYA - Turkey (Nº 39447/98)
Judgments 28.10.2003 [Section IV]

alleged failure to bring detainee promptly before a judge – friendly settlement.

Article 5(4)

VON BÜLOW - United Kingdom (Nº 75362/01)
Judgment 7.10.2003 [Section IV]

WYNNE - United Kingdom (no. 2) (Nº 67385/01)
Judgment 16.10.2003 [Section III]

absence of review of lawfulness of continuing detention on basis of mandatory life sentence, after expiry of tariff – violation (cf. *Stafford* judgment of 28 May 2002).

Article 6(1)

STONE SHIPPING COMPANY S.A. - Spain (Nº 55524/00)
Judgment 28.10.2003 [Section IV]

dismissal as out of time of an appeal lodged with the duty court within the time-limit – violation.

DURIEZ-COSTES - France (Nº 50638/99)
Judgment 7.10.2003 [Section II]

absence of opportunity for unrepresented appellants to make oral submissions to the Court of Cassation – no violation; failure to communicate observations of *avocat général* to unrepresented appellant in Court of Cassation proceedings – violation.

GAUCHER - France (Nº 51406/99)
Judgment 9.10.2003 [Section III]

failure to communicate observations of *avocat général* to unrepresented appellant in Court of Cassation proceedings – violation.

LILLY FRANCE - France (Nº 53892/00)
Judgment 14.10.2003 [Section II]

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

HAGER - France (Nº 56616/00)
Judgment 9.10.2003 [Section III]

failure to communicate observations of *avocat général* to unrepresented appellant in Court of Cassation proceedings – friendly settlement.

SIGNE - France (Nº 55875/00)
Judgment 14.10.2003 [Section II]

JAMRIŠKA - Slovakia (Nº 51559/99)
ČÍŽ - Slovakia (Nº 66142/01)
DYBO - Poland (Nº 71894/01)
GIDEL - Poland (Nº 75872/01)

HENRYKA MALINOWSKA - Poland (Nº 76446/01)
POREMBSKA - Poland (Nº 77759/01)
I.P. - Poland (Nº 77831/01)
MAŁASIEWICZ - Poland (Nº 22072/02)
Judgments 14.10.2003 [Section IV]

NEVES FERREIRA SANDE E CASTRO and others - Portugal (Nº 55081/00)
Judgment 16.10.2003 [Section III]

NYÍRŐ and TAKÁCS - Hungary (Nº 52724/99 and Nº 52726/99)
Judgment 21.10.2003 [Section II]

CEGIELSKI - Poland (Nº 71893/01)
Judgment 21.10.2003 [Section IV]

NELISSENNE - Belgium (Nº 49518/99)
Judgment 23.10.2003 [Section I]

PIENIĄŻEK - Poland (Nº 57465/00)
Judgment 28.10.2003 [Section IV]

length of civil proceedings – violation.

MAZURKIEWICZ - Poland (Nº 72662/01)
Judgment 14.10.2003 [Section IV]

SZYMAŃSKI - Poland (Nº 75929/01)
Judgment 21.10.2003 [Section IV]

length of civil proceedings – friendly settlement.

ACHLEITNER - Austria (Nº 53911/00)
KANAKIS and others - Greece (Nº 59142/00)
Judgments 23.10.2003 [Section I]

length of administrative proceedings – violation.

CHAINEUX - France (Nº 56243/00)
Judgment 14.10.2003 [Section II]

length of proceedings relating to employment – violation.

HENNIG - Austria (Nº 41444/98)
Judgment 2.10.2003 [Section I]

S.H.K. - Bulgaria (Nº 37355/97)
DIAMANTIDES - Greece (Nº 60821/00)
Judgments 23.10.2003 [Section I]

GONZÁLEZ DORIA DURÁN DE QUIROGA - Spain (Nº 59072/00)
LOPES SOLE Y MARTIN DE VARGAS - Spain (Nº 61133/00)
Judgments 28.10.2003 [Section IV]

length of criminal proceedings – violation.

FADİME ÖZKAN - Turkey (Nº 47165/99)
ERTAN ÖZKAN - Turkey (Nº 47311/99)
GÖNÜLŞEN - Turkey (Nº 59649/00)
SAÇIK - Turkey (Nº 60847/00)
Judgments 9.10.2003 [Section III]

AYŞE KILIÇ - Turkey (Nº 49164/99)
DEMIRTAŞ - Turkey (no. 2) (Nº 37452/97)
Judgments 16.10.2003 [Section III]

ÇAVUŞ and BULUT - Turkey (Nº 41580/98 and Nº 42439/98)
ÇAKAR - Turkey (Nº 42741/98)
EREN - Turkey (Nº 46106/99)
ÖZYOL - Turkey (Nº 48617/99)
ŞIMŞEK - Turkey (Nº 50118/99)
SÜVARIOĞULLARI and others - Turkey (Nº 50119/99)
HAYRETTİN BARBAROS YILMAZ - Turkey (Nº 50743/99)
TUTMAZ and others - Turkey (Nº 51053/99)
DALGIÇ - Turkey (Nº 51416/99)
AKKAŞ - Turkey (Nº 52665/99)
ERGÜL and ENGİN - Turkey (Nº 52744/99)
PEKER - Turkey (Nº 53014/99)
GENÇEL - Turkey (Nº 53431/99)
MESUT ERDOĞAN - Turkey (Nº 53895/00)
Judgments 23.10.2003 [Section III]

independence and impartiality of State Security Courts – violation.

ALFATLI and others - Turkey (Nº 32984/96)
Judgment 2.10.2003 [Section III]

independence and impartiality of State Security Court and length of criminal proceedings – friendly settlement (except in respect of one applicant: see *Uyan v. Turkey*, below).

UYAN - Turkey (Nº 32984/96)
Judgment 30.10.2003 [Section III]

independence and impartiality of martial law court and length of criminal proceedings – violation (cf. *Şahiner* judgment of 25 September 2001; see also *Alfatli and others v. Turkey*, above).

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

SABATINI and DI GIOVANNI - Italy (Nº 59538/00)
BONAMASSA - Italy (Nº 65413/01)
RAGONE - Italy (Nº 67412/01)
Judgments 2.10.2003 [Section I]

SERNI - Italy (Nº 47703/99)
ROBBA - Italy (Nº 50293/99)
GHELARDINI and BRUNORI - Italy (Nº 53233/99)
LARI - Italy (Nº 63336/00)
FEDERICI - Italy (Nº 63523/00)
A.G. - Italy (Nº 66441/01)
Judgments 9.10.2003 [Section I]

TASSINARI - Italy (Nº 47758/99)
SERAFINI - Italy (Nº 58607/00)
DELFINO SAVIO - Italy (Nº 59537/00)
BRIENZA - Italy (Nº 62849/00)
CALOSI - Italy (Nº 63947/00)
Judgments 16.10.2003 [Section I]

CAVICCHI and RUGGERI - Italy (Nº 56717/00)
CUCINOTTA - Italy (Nº 63938/00)
RISPOLI - Italy (Nº 55388/00)
Judgments 30.10.2003 [Section I]

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

SANTORO - Italy (Nº 67076/01)
Judgment 2.10.2003 [Section I]

G.A. - Italy (Nº 40453/98)
SARTORELLI - Italy (Nº 42357/98)
NOTARGIACOMO - Italy (Nº 63600/00)
Judgments 9.10.2003 [Section I]

CIANFANELLI BANCI - Italy (Nº 60663/00)
PIOVANO - Italy (Nº 65652/01)
Judgments 30.10.2003 [Section I]

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

Articles 6(1) and 10

KIZILYAPRAK - Turkey (Nº 27528/95)
Judgment 2.10.2003 [Section I]

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

Article 10

ZARAKOLU - Turkey (no. 1) (Nº 37059/97)
ZARAKOLU - Turkey (no. 2) (Nº 37061/97)
ZARAKOLU - Turkey (no. 3) (Nº 37062/97)
Judgments 2.10.2003 [Section III]

seizure of books considered to contain separatist propaganda and incitement to hatred and hostility – friendly settlement.

DEMIRTAŞ - Turkey (Nº 37048/97)
Judgment 9.10.2003 [Section III]

conviction for insulting the State – friendly settlement.

Article 1 of Protocol No. 1

BIOZOKAT A.E. - Greece (Nº 61582/00)
Judgment 9.10.2003 [Section I]

presumption of benefit accruing from expropriation – violation (cf. *Efstathiou and Michaïlidis & Cie Motel Amerika v. Greece* judgment of 10 July 2003).

Revision

ANDREA CORSI - Italy (Nº 42210/98)
Judgment 2.10.2003 [Section I]

request for revision refused.

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