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COUNCIL OF EUROPE

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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ARTICLE 3

EXPULSION
Expulsion to Eritrea, entailing alleged risk of inhuman treatment for having deserted during military service and criticised army officials: *admissible*.

SAID - Netherlands (Nº 2345/02)
Decision 5.10.2004 [Section II]

The applicant is an Eritrean national who arrived in the Netherlands in 2001 and applied for asylum. He alleged that in 1998, during the war between Eritrea and Ethiopia, there was a general mobilisation and he was called up to serve in the army. After the war had ended in 2000, the troops were not demobilised and he continued in service. During a meeting of the applicant's battalion, he voiced criticism of the higher echelons of the army. A few months later, when he had forgotten about the event, he was detained in an underground cell for five months for having incited other soldiers during that meeting. He managed to escape from the army in 2001, and arrived in the Netherlands via Sudan and Belgium. His asylum application was rejected by the Deputy Minister of Justice, who found that his account lacked credibility. The Regional Court dismissed the applicant's appeal and request for further investigation. It considered it unlikely that the army would still have been mobilised when the applicant claimed to have fled, and did not consider it necessary to hear the applicant's witness. The applicant lodged a further appeal to the Council of State, which he subsequently withdrew. Several country reports on Eritrea (including by the Dutch authorities and Amnesty International) indicate that persons caught for deserting or protesting against the military services are frequently tortured and arbitrarily detained.

Admissible under Articles 2 and 3: the applicant could not be reproached for having withdrawn his appeal to the State Council, given that it stood no prospects of success.

EXPULSION
Decision to deport to another Contracting State a mother whose state of health is of concern and who has made credible threats to commit suicide: *inadmissible*.

DRAGAN and others - Germany (N° 33743/03)
Decision 7.10.2004 [Section III]

The applicants, a mother and her children, were living in Germany without a residence permit. They had renounced their original Romanian nationality with the Romanian authorities' consent. As stateless persons, they could not at first be sent back to their country of origin. This obstacle was subsequently removed following an agreement between Germany and Romania by which Romania undertook to accept its former nationals who had renounced their citizenship. The German authorities ordered the applicants to leave German territory and announced their deportation. The applicants appealed unsuccessfully. They filed new applications for leave to remain, without success. The first applicant suffered from physical and psychological illness. In particular, she was diagnosed as suffering from hepatitis C and severe depression. The social services considered credible her threat to commit suicide if she were obliged to leave Germany. In September 2003 the relevant medical service stated that the first applicant was capable of supporting the journey in the event of deportation, so long as continuous medical assistance was provided to prevent any act of self-mutilation or suicide. However, they unreservedly advised against such a journey. The applicant's children, who

had been living in Germany for more than ten years, argued that their presence alongside their mother was essential, given her state of health and her suicide threats; they also asked to be able to complete their education in Germany. The authorities granted them extensions of leave to remain for that purpose, subject to certain conditions. In June 2004 the authorities instructed the applicants to leave Germany but, taking the first applicant's suicide threats seriously, decided, as a precautionary measure, not to inform the applicants of the date of their deportation. It was also decided that the applicant would undergo a medical examination before her departure and that she would be provided with medical support until her arrival in Romania. In September 2004 the authorities stated that the deportation was not imminent, in view of the Strasbourg Court's request, under Rule 39 of its Rules of Court, to suspend provisionally the applicants' deportation to Romania. The applicants lodged appeals against the expulsion orders, without success.

Inadmissible under Article 3: (a) *The first applicant's alleged inability to support the transfer to Romania and the risk of suicide in the event of deportation*: the fact that a person whose deportation had been ordered threatened to commit suicide did not require the Contracting State to abstain from enforcing the envisaged measure, provided that they took specific steps to prevent those threats being realised. In this present case, the suicide threats could not prevent the authorities from proceeding with the applicants' deportation, and none of the evidence submitted to the Court indicated that those authorities would not take the necessary precautions which were incumbent on them under the Convention.
(b) *Alleged impossibility of ensuring appropriate treatment for the first applicant's health problems in Romania*: Backed up by a letter from a doctor trusted by their embassy in Bucharest, the German Government argued that the applicant's physical and psychological illnesses could be treated in Romania, and that the treatment for hepatitis which she received in Germany, using expensive medication, was not essential to control the disease. The Romanian Government – which submitted observations as a third-party intervener – confirmed that the applicants could receive appropriate care in Romania and that they would enjoy the same statutory welfare conditions as Romanian citizens, even if they sought to maintain their status as stateless persons, provided that they established their residence in Romania. Accordingly, the Court found that the applicants had not proved that their illnesses could not be treated in Romania. The fact that the situation with regard to the first applicant's health care provision would be less favourable in Romania than in Germany was not decisive from the perspective of Article 3. Admittedly, the applicant's health was a matter of concern. Having regard, however, to the high threshold set by Article 3, particularly where the case did not concern the Contracting State's direct responsibility for the infliction of harm, in the absence of exceptional circumstances and in the light of the Court's recent case-law on the deportation and expulsion of aliens to third countries, the Court did not find that there was a sufficiently real risk that the applicants' removal to Romania - a Contracting State to the Convention - would be incompatible with Article 3: manifestly ill-founded.

Inadmissible under Article 8 (family life): The applicants had never obtained residence in Germany. Their applications for that purpose had all been unsuccessful. Consequently, the applicants were obliged to leave German territory in application of the Aliens Act. However, enforcement of the deportation orders proved impossible, since the applicants had renounced their Romanian nationality with the Romanian authorities' consent, and the Romanian state refused for many years to accept former citizens. However, those obstacles to the applicants' deportation did not lead to a decision by the German authorities' to remove the obligation to leave the territory. Consequently, the applicants' deportation did not constitute a lack of respect for their family life within the meaning of Article 8(1). The fact that the applicants refused to return to Romania and sought to remain in Germany could not be considered relevant in that respect: manifestly ill-founded.

ARTICLE 5

Article 5(1)

DEPRIVATION OF LIBERTY
Psychiatric confinement as "informal patient" of person incapable of giving or refusing consent.

H.L. - United Kingdom (Nº 45508/99)
Judgment 5.10.2004 [Section IV]
(see below).

LAWFUL DETENTION
Delay in implementing decision to release from detention : *violation*.

BOJINOV - Bulgaria (N° 47799/99)
Judgment 28.10.2004 [Section I]

After placing the applicant in pre-trial detention, the court decided to release him, subject to payment of bail, at the close of a hearing which ended at 9.15 am on 4 June 1998. The sum fixed as bail was paid on the same day and the court forwarded the decision to the prison for enforcement and informed the police. The applicant was released at an unspecified time in the course of the following day.

Article 5(1) (extract) – "… the applicant's release was ordered at 9.15 am on 4 June 1998. The evidence in the file does not reveal at what time the court was informed that the condition attached to this release, namely the payment of bail by the applicant, had been fulfilled. Nonetheless, it appears that this was done in the course of the day and that the registrar of the court sent a letter to the prison indicating that enforcement could occur on the same day, in all probability during the court's opening hours. The Government have not specified how this letter was transmitted - by fax or by internal or external mail, nor the exact time at which the applicant was released on the following day, 5 June 1998. The Court considers that, in the absence of a detailed hour-by-hour list of the acts and steps taken, the Government's argument to the effect that there was no delay in releasing the applicant cannot be accepted. In particular, it notes that no action seems to have been taken by the relevant authorities in the evening and during the night of 4 to 5 June 1998. Whether that lapse of time was necessary to deliver the mail from the court to the prison or was due to inactivity on the part of the prison authorities, it seems that the applicant's continued detention during that period did not amount to a first step in the execution of the order for his release and therefore did not come within sub-paragraph 1 (c), or any other sub-paragraph, of Article 5. Accordingly, there has been a violation of Article 5 § 1 on that account."

Article 5(1)(e)

PERSONS OF UNSOUND MIND
Psychiatric confinement as "informal patient" of person incapable of giving or refusing consent : *violation*.

H.L. - United Kingdom (Nº 45508/99)
Judgment 5.10.2004 [Section IV]

Facts: The applicant, who is autistic and has a history of self-harm, lacks the capacity to consent or object to medical treatment. From 1994, after a number of years as an in-patient at a hospital Intensive Behavioural Unit (IBU), he resided with paid carers, although the hospital remained responsible for his care and treatment. In July 1997, while at a day centre, he started inflicting harm on himself. He was taken to the hospital, where he was assessed by a psychiatrist as being in need of in-patient treatment and transferred to the IBU. A second psychiatrist decided that committal under the Mental Health Act 1983 was not necessary, as the applicant was compliant and did not resist admission, and the applicant was consequently admitted as an "informal patient". The applicant, represented by a relative, subsequently sought leave to apply for judicial review of the decision to admit him, a writ of habeas corpus and damages for false imprisonment. Leave was refused by the High Court, which considered that the applicant had not been "detained". The Court of Appeal, however, considered that the applicant had been detained, since the hospital would not have allowed him to leave. It held that since the statutory provision allowing informal admission applied only to those who could give consent, the applicant's detention had been unlawful. In the meantime, as the Court of Appeal had indicated that it would decide in the applicant's favour, the applicant had been detained under the Mental Health Act. However, in December 1997 he had been released to his carers after two psychiatrists had recommended his discharge in the context of separate proceedings before the Mental Health Review Tribunal. In June 1998 the House of Lords allowed the hospital's appeal, holding that the measures taken had been justified on the basis of the common law doctrine of necessity.

Law: Article 5(1)(e) – As to whether the applicant had been deprived of his liberty, the key factor was that the health care professionals involved had exercised complete and effective control over his care and movements. It was clear that had he tried to leave he would have been prevented from doing so. Thus, the concrete situation was that the applicant had been under continuous supervision and control and had not been free to leave. He had therefore been "deprived of his liberty".
It was not disputed that he was suffering from a mental disorder when he was hospitalised and there was adequate evidence to justify the initial decision to detain him. The consistent clinical view throughout the relevant period was that the applicant required admission for assessment and treatment and his subsequent committal was based on two medical certificates attesting to the necessity of such committal. The fact that he was later found not to be suffering from a mental impairment which warranted confinement did not undermine the validity of prior assessments. The applicant had therefore been reliably shown to be suffering from a mental disorder of a kind or degree warranting compulsory confinement which persisted during his detention.
The essential objective of Article 5 – to prevent individuals being deprived of their liberty in an arbitrary fashion – and the condition that detention be in accordance with a procedure prescribed by law require the existence of adequate legal protections and fair and proper procedures. In the present case, the domestic legal basis for the applicant's detention was clearly the common law doctrine of necessity which, when applied in the area of mental health, accommodated the minimum conditions for lawful detention of those of unsound

mind. It was true that at the time the doctrine was still developing but whether or not the applicant could reasonably have foreseen his detention on that basis, the further element of lawfulness, the aim of avoiding arbitrariness, had not been satisfied. The Court was struck by the lack of any fixed procedural rules by which the detention of compliant incapacitated persons was conducted, in contrast to the extensive network of safeguards applicable to compulsory committal. As a result of the lack of procedural regulation and limits, the health care professionals assumed full control of the liberty and treatment of a vulnerable individual solely on the basis of their own clinical assessments and, while the Court did not question their good faith or that they acted in what they considered the applicant's best interests, the very purpose of procedural safeguards is to protect individuals against misjudgments and professional lapses. This absence of procedural safeguards failed to protect against arbitrary deprivations of liberty on grounds of necessity and there had therefore been a violation of Article 5(1).
Conclusion: violation (unanimously).

Article 5(4) – The review conducted in habeas corpus proceedings was not wide enough to bear on those conditions which were essential for "lawful" detention of persons of unsound of mind, since it did not allow a determination of the merits of whether the mental disorder persisted. Moreover, the principles of judicial review as applied prior to incorporation of the Convention would at the time have placed the bar of unreasonableness so high as effectively to exclude any adequate examination of the merits of the clinical views. As far as a claim for damages in negligence was concerned, the applicant had not alleged any negligence, and as to an action for false imprisonment, the action brought by the applicant had not involved any expert evidence. Finally, with regard to seeking declaratory relief from the High Court, no similar case from the relevant time had been cited. In sum, it had not been demonstrated that the applicant had had available to him a procedure satisfying the requirements of Article 5(4).
Conclusion: violation (unanimously).

Article 14 in conjunction with Article 5 – The Court concluded unanimously that it was unnecessary to examine this complaint.

Article 41 – The Court considered that the finding of a violation constituted sufficient just satisfaction with regard to non-pecuniary damage. It made an award in respect of costs and expenses.

LAWFUL DETENTION
Placement in psychiatric institutions, allegedly without consent of person concerned: *admissible*.

STORCK - Germany (Nº 61603/00)
Decision 26.10.2004 [Section III]

The applicant claims she was placed several times in different psychiatric hospitals at the demand of her father and against her will. She alleges that she was wrongly diagnosed and forced to take medicaments that ruined her physically and psychologically. Moreover, the medicaments had caused her to develop a post-poliomyelitis syndrome (an illness which she had suffered at the age of the three) and she was presently 100% handicapped. Her main complaint concerned her confinement in a private clinic in Bremen from 1977 to 1979. At the time she was 18 years old and had not signed a declaration consenting to her placement in that institution. On several occasions she had tried to flee from the clinic but had been brought back by the police by force. In 1981, she had again been confined to this institution for some months. In 1991, the applicant received treatment in a clinic in Mainz. In 1994 a medical report prepared on the applicant's demand certified that she had at no point suffered from children's schizophrenia, and that her excessive behaviour resulted from family conflicts and

a puberty crisis (this was later confirmed by a second expert opinion). In 1997 the applicant brought an action for damages against the private clinic in Bremen. The Regional Court allowed the action as her detention had been illegal and concluded she was entitled to damages. However, this judgment was quashed by the Court of Appeal, which found that it had not been established that the applicant had been detained against her will or that the treatment or dosage of medicaments had been erroneous. The applicant lodged a constitutional complaint against the Court of Appeal's decision, which the Constitutional Court refused to entertain. The Constitutional Court held that the complaints were not of fundamental importance and that it was not its function to deal with errors of law allegedly committed by civil courts. The applicant complains that her placement in different institutions against her will breached her rights under Article 5, that the medical treatment she received against her will interfered with her private life, and that she was not afforded a fair trial due to the interpretation of national law which the courts had made and the manner in which they had assessed expert evidence.

Admissible under Articles 5, 6 (fair hearing) and 8, concerning the applicant's complaints concerning her stays in the clinics in Bremen and Mainz. Government's objections: (i) *res iudicata*: although a committee had declared the application inadmissible in October 2002, in exceptional circumstances and in the interests of justice, the Court had the power to reopen a case, (ii) non-exhaustion: the Court was satisfied that the applicant had exhausted domestic remedies as she had raised the substance of her complaints before the Constitutional Court.

Article 5(4)

PROCEDURAL GUARANTEES OF REVIEW
Prolongation of detention on remand without public hearing: *communicated*.

REINPRECHT - Austria (N° 67175/01)
[Section IV]

The applicant was placed in pre-trial detention by an order of the Regional Criminal Court on suspicion of attempted sexual coercion in May 2000. The court prolonged the order on several occasions, after holding hearings in the presence of the parties, as there were reasonable suspicions against the applicant in the light of his repeated relapse into crime. Several appeals by the applicant against the prolongation of his pre-trial detention were dismissed by the Court of Appeal sitting in camera. The Supreme Court, also sitting in camera, confirmed that there were reasons to continue the applicant's detention on remand. In October 2000, the Regional Court convicted the applicant of attempted sexual coercion and imposed a two year prison sentence. The applicant complains that the hearings concerning the continuation of his pre-trial detention were not public.

Admissible under Articles 5(4) and 6(1): The Government contested the applicability of Article 6 to the proceedings concerning review of lawfulness of detention, distinguishing the present casde from *Aerts v. Belgium* (*Reports* 1998-V). The Court considered that the complaint, besides the question of applicability of Article 6, also raised an issue under Article 5(4).

ARTICLE 6

Article 6(1) [civil]

APPLICABILITY
Applicability of Article 6 to the right to liberty: *communicated*.

REINPRECHT - Austria (N° 67175/01)
[Section IV]
(see Article 5(4), above).

ACCESS TO COURT
Refusal to institute criminal proceedings on account of immunity of foreign Heads of State : *communicated*.

ASSOCIATION SOS ATTENTATS and Béatrice DE BOËRY - France (N° 76642/01)
[Section II]

The applicant association brought together victims of terrorist acts and their families. The second applicant is the sister of a victim of a terrorist attack against an aircraft. The applicants, who accused the Libyan Head of State of being involved in the attack, filed a criminal complaint against him in France, with an application to be joined to the proceedings as a civil party. The investigating authorities considered that there were grounds for opening an investigation. The Court of Cassation refused, relying on international custom concerning the principle of immunity for foreign Heads of State whilst in office. An agreement signed three years later provided for compensation for the victims' families.
Communicated under Articles 34 and 6(1) (applicability and access to a court).

IMPARTIAL TRIBUNAL
Composition of a Labour Court including lay judges appointed by labour market organisations: *no violation*.

KURT KELLERMANN AB - Sweden (N° 41579/98)
Judgment 26.10.2004 [Section IV]

Facts: The applicant company was not a member of any employers' association. A trade union requested the company to enter negotiations with a view to concluding a collective agreement. As the company refused, the trade union took industrial action and all work at the company was stopped during one day. In subsequent proceedings in the Labour Court, the applicant company maintained that the industrial action had been aimed at forcing it to join an employers' association, in violation of Article 11 of the Convention, which also guaranteed its right not to join an association. The union argued that the action had served the legitimate aim of improving the employment situation for the union members employed by the company. In a judgment of February 1998, the Labour Court found in favour of the union, concluding that the industrial action had not violated the applicant company's rights under Article 11. Despite the judgment, the company again refused to conclude a collective agreement, in view of which the union applied for a declaratory judgment to take allow it to further immediate industrial action against the company. In a new judgment of March 2003 the Labour Court granted the request. The Labour Court which delivered both the judgments in February and

March 2003 was composed of seven judges, of whom four were lay assessors, two appointed by employers' associations and two by employees' associations. Following an unsuccessful appeal by the applicant company to the Supreme Court, the union proceeded with the industrial action. The company ended up joining the association and being bound by a collective agreement. Some months later, due to declining profitability, the company went into voluntary liquidation.

Law : Article 6 (impartial tribunal) – The lay assessors who were sitting in the Labour Court appeared in principle to be experts in the field and thus qualified to adjudicate on the labour dispute in question. The decisive question was whether the balance of interests in the composition of the Labour Court had been upset to an extent which could affect the impartiality of this court. The dispute in the Labour Court had focused on whether the applicant's negative freedom of association had been violated and on whether the terms of employment in the collective agreement proposed by the trade union were more favourable to the employees. Given the nature of the dispute, the role of the lay assessors could not objectively have been other than to examine these questions from the viewpoint of the principles in Article 11 of the Convention (which forms part of Swedish law). It was not conceivable that the lay assessors could have had interests which were contrary to those of the applicant company. Moreover, the labour market organisations which had appointed the two lay assessors had no links with or direct interest in the dispute between the applicant company and the trade union, which differentiated this case from *Langborger v. Sweden* (judgment of 22 June 1989), in which the Court had found that the lay assessors did have such an interest. It could not be held that in all cases where lay assessors had been nominated by a labour market organisation and one of the parties in the dispute was not affiliated to any such organisation this would always imply that the composition of the Labour Court would fail to meet the "impartial tribunal" requirement. In conclusion, the applicant company could not fear that the lay assessors had interests contrary to its own, and hence the balance of interest had not been upset to such an extent that the Labour Court fell short of meeting the impartiality requirement.
Conclusion: no violation (five votes to two).

Article 6(1) [criminal]

FAIR TRIAL
Non-disclosure by prosecution, on ground of public interest, of material potentially relevant to defence of entrapment: *violation*.

EDWARDS and LEWIS - United Kingdom (Nº 39647/98 and Nº 40461/98)
Judgment 27.10.2004 [Grand Chamber]

Facts: The first applicant was convicted of drugs offences after being arrested in the company of an undercover police officer. As the applicant was the only person charged with an offence, he suspects that the other participants were also undercover officers or informers acting on police instructions. Prior to his trial, the prosecution gave notice to the defence that an *ex parte* application had been made to withhold evidence. The judge, who considered the material in the absence of the defence, concluded that it would not assist the defence and that there were genuine public interest grounds for withholding it. This ruling was confirmed by the trial judge after hearing submissions on behalf of the defence. The trial judge also refused a request to exclude the evidence of the undercover officer on the ground that the applicant had been entrapped into committing the offence. The applicant's appeal against his conviction was refused by the Court of Appeal, which examined the undisclosed material.

The second applicant, who was convicted of supplying counterfeit banknotes, also claimed that he had been entrapped by undercover police officers or informers. The judge, having heard an *ex parte* application by the prosecution to withhold evidence on grounds of public interest immunity, refused to order disclosure. He also refused to exclude the evidence of police undercover agents. As a result, the applicant pleaded guilty.

Law: Article 6(1) – The Government, who had requested referral of the case to the Grand Chamber, had indicated that they no longer wished to pursue the referral and were content for the Grand Chamber to endorse the Chamber's judgment. The Grand Chamber saw no reason to depart from the Chamber's findings and found that there had been a violation of Article 6 for the reasons elaborated by the Chamber.
[Summary of the Chamber's judgment – The requirements of a fair trial preclude the use of evidence obtained as a result of police incitement. While in English law entrapment does not constitute a substantive defence, it places the judge under a duty either to stay the proceedings as an abuse of process or to exclude any evidence obtained by entrapment. It was not possible for the Court to determine whether there had been entrapment, contrary to Article 6, in the present cases, since the relevant information had not been disclosed. It was therefore essential for the Court to examine the procedure whereby the plea of entrapment was determined in each case, to ensure that the rights of the defence had been adequately protected. Article 6 requires, in addition to respect for adversarial proceedings and equality of arms, that the prosecution disclose to the defence all material evidence. That entitlement is not absolute, but only such measures restricting the rights of the defence as are strictly necessary are permissible. Moreover, any difficulties caused to the defence must be sufficiently counterbalanced by the procedures followed, which must, as far as possible, comply with the requirements of adversarial proceedings and equality of arms and incorporate adequate safeguards. In the case of *Jasper* (judgment of 16 February 2000), the Court had considered that it was sufficient to comply with Article 6 that the trial judge, with full knowledge of the issues in the trial, had carried out the balancing exercise between the public interest and the rights of the defence. However, it was material that the withheld evidence had not formed part of the prosecution case and had never been put to the jury. In the present case, in contrast, the undisclosed evidence related or may have related to an issue of fact decided by the trial judge. The applications to exclude evidence on the basis of entrapment were of determinative importance, since their success would have led to the prosecutions being discontinued, and the undisclosed evidence may have related to facts connected with these applications. The non-disclosure made it impossible for the defence to argue the case for entrapment in full. Moreover, the judges who rejected the submissions on entrapment had already seen prosecution evidence which may have been relevant to that issue. In these circumstances, the procedure followed did not comply with the requirements of adversarial proceedings and equality of arms and did not incorporate adequate safeguards to protect the interests of the accused.]
Conclusion: violation (unanimously).

Article 41 – The Court considered that the finding of a violation constituted sufficient just satisfaction in respect of non-pecuniary damage. It made awards in respect of costs and expenses.

FAIR HEARING
Length of oral pleadings before a criminal court : *violation*.

MAKHFI - France (N° 59335/00)
Judgment 19.10.2004 [Section II]

Facts: The applicant, who was accused of rape and theft as a member of a gang and had previous convictions for the second offence, appeared with another defendant before an

Assize Court. On the first day of the proceedings, the hearing lasted five and a quarter hours. The following day, the proceedings began at 9.15 a.m. The hearing was suspended at 1 pm and resumed from 2.30 to 4.40 p.m., then continued from 5 to 8 pm and from 9 p.m. to 0.30 a.m. The proceedings resumed at 1 a.m. Counsel for the applicant applied for an adjournment until the following morning, referring to the rights of the defence. This request having been dismissed, the proceedings resumed until 4 a.m. After a break of 25 minutes, the final submissions, those of the defence, were made. Counsel for the applicant gave his address towards 5 a.m., by which time the sitting had lasted for 15 hours and 45 minutes. The defendants, including the applicant, were the last to speak. On that one day alone, the hearing lasted 17 hours and 15 minutes. At the end of the sitting, the jury found the applicant guilty and sentenced him to eight years' imprisonment. An appeal on points of law was unsuccessful.

Law: Article 6(3) and (1), taken together – The Court considered it essential that not only those charged with an offence but also their counsel should be able to follow the proceedings, answer questions and make their submissions without suffering from excessive tiredness. Similarly, it was vital that judges and jurors should be in full control of their faculties of concentration and attention in order to follow the proceedings and to be able to give an informed judgment.
The conditions in which the applicant's trial was held failed to meet the requirements of a fair trial, particularly with regard to respect for the rights of the defence and the principle of equality of arms.
Conclusion: violation (unanimously).
Article 41 – The Court made awards in respect of non-pecuniary damage and costs and expenses.

FAIR HEARING
Use in criminal proceedings of evidence obtained from the accused by forced administration of emetics: *admissible*.

JALLOH - Germany (Nº 54810/00)
Decision 26.10.2004 [Section III]

The applicant, who was suspected by plain-clothes policemen of selling drugs, was arrested. While under arrest he swallowed a small bag which led the prosecutor to order that emetics be administered to the applicant to provoke regurgitation of the bag. As the applicant refused, a salt solution and syrup were forcibly administered by way of a tube introduced into his nose and another substance was injected. Thereafter, the applicant was placed in detention on remand until he was convicted by a District Court for drug trafficking. Prior to his conviction his lawyer submitted that the relevant pieces of evidence had been obtained by illegal means and that the administration of emetics had been a disproportionate measure under the Code of Criminal Procedure, as it would have been possible to obtain the same result by waiting until the bag was excreted in a natural way. These arguments, which the applicant repeated at three levels of jurisdiction, were dismissed by the courts, which held that the administration of the products even against the will of the applicant had been legal and necessary to conserve the evidence of drug trafficking. The Constitutional Court refused to entertain the applicant's complaint as he had not availed himself of all remedies at his disposal. It also held that the measure in question did not raise any constitutional objections of principle with respect to human dignity or concerning the protection against self-incrimination.

Admissible under Articles 3, 6 (fair hearing) and 8: As to exhaustion of domestic remedies, by finding that the impugned measure had not raised any constitutional objections of principle the Constitutional Court had examined, at least partially, the substance of the applicant's complaint.

Inadmissible under Article 13: The applicant had several judicial remedies at his disposal to challenge the lawfulness of the contested measure: manifestly ill-founded.

[The Chamber proposed to *relinquish jurisdiction* in favour of the Grand Chamber.]

FAIR TRIAL
Obligation of car owner to disclose identity of driver : *communicated*.

O'HALLORAN and FRANCIS - United Kingdom (Nº 15809/02 and Nº 25624/02)
[Section IV]
(see Article 6(2), below).

EQUALITY OF ARMS
Length of oral pleadings before a criminal court : *violation*.

MAKHFI - France (N° 59335/00)
Judgment 19.10.2004 [Section II]
(see above).

Article 6(2)

PRESUMPTION OF INNOCENCE
Imposition of a fine to a registered car owner, though he had not been the actual driver at the time of the offence: *inadmissible*.

FALK - Netherlands (Nº 66273/01)
Decision 19.10.2004 (Section II)

An administrative fine was imposed on the applicant for a traffic offence involving a car registered in his name. The applicant filed an appeal with the prosecutor providing the name and address of the person who had been driving his car at the time of the offence. The appeal was rejected in accordance with Article 5 of the Act on the Administrative Enforcement of Respect for Traffic Regulations, which stipulated that the registered owner of a vehicle remained liable for the fine when the identity of a driver could not be established at the time of the offence. The Act contained a number of exceptions to the strict liability rule, for example when a registered car owner demonstrated that the vehicle had been used by another person against his/her will. The applicant's cassation appeal to the Supreme Court, complaining that the strict liability approach in the above-mentioned Act was incompatible with Article 6(2) of the Convention was rejected.

Inadmissible under Article 6(2): Whilst presumptions of fact or law are not prohibited in principle, they must be reasonably proportionate to the aim pursued by the State. In the present case, the aim of the impugned strict liability rule in the Traffic Regulations Act was to secure effective road safety and ensure that offences committed by a driver whose identity could not be established would not go unpunished. The principle of proportionality had thus been observed. Moreover, the person fined under the Act could challenge the fine before the courts and exercise his/her rights of defence. In such circumstances, Article 5 of the Act – which obliged a registered car owner to assume responsibility for the decision of allowing

another person to use his or her car – was not incompatible with Article 6(2): manifestly ill-founded.

PRESUMPTION OF INNOCENCE
Obligation of car owner to disclose identity of driver : *communicated*.

O'HALLORAN and FRANCIS - United Kingdom (Nº 15809/02 and Nº 25624/02)
[Section IV]

The applicants are the owners of cars which were caught exceeding the speed limit. Each applicant received a notice of intention to prosecute the driver and was requested to furnish the name and address of the driver at the relevant of time or to provide information which would lead to the driver's identification. Failure to provide information was a criminal offence under section 172 of the Road Traffic Act 1988. The first applicant confirmed that he was the driver and was convicted of speeding on the basis of that admission. The second applicant refused to supply the information requested and was convicted of failing to comply with the obligation under section 172.
Communicated under Article 6(1) and (2).
[The following group of similar cases was also communicated: Nos. 35594/02, 11046/03, 17888/03, 6892/04, 6387/04 and 7900/04.]

PRESUMPTION OF INNOCENCE
Statements made to the press by the police with regard to suspects, photographed by journalists, prior to being brought before a judge : *violation*.

Y.B. and others - Turkey (N° 48173/99 and N° 48319/99)
Judgment 28.10.2004 [Section III]

Facts: The five applicants were arrested and taken into police custody. Before they had been brought before a judge, the police investigators presented them to the press at a press conference held in the security police's premises. The police officers stated that the applicants were members of an illegal organisation and that it had been established that they were involved in criminal activities; those activities were then listed in the press release issued by the police (which did not name the applicants). Journalists took photographs of the applicants. On the day on which the applicants were brought before the prosecutor and the judge, a daily newspaper published an article which described them as the perpetrators of specific named offences. They were named and their photographs were published. A few days later, the applicants were charged with those offences. At the close of a trial, held in the same year before a National Security Court which included a military judge, the applicants were found guilty of membership of and assistance to an illegal organisation. They were each sentenced to terms of imprisonment

Law: Article 6(2) – The publication of photographs of the suspects, who were subject to criminal proceedings, did not in itself amount to a breach of the presumption of innocence. The national authorities were entitled to inform the public about ongoing criminal investigations, provided this was done with all the discretion and prudence required. Where they made public objective information concerning criminal proceedings, this information was to be free from any assessment or prejudging of guilt.
In the present case, although the press release had not mentioned the applicants' names and although it was stated that they were to be brought before the public prosecutor, the way in which the applicants had been presented to the press made them very easily identifiable; in addition, their names and photographs had appeared in the press articles. Similarly, the content of the press release drawn up by the police and distributed to the press had referred to

the applicants, without any qualification or reservation, as "members of the illegal organisation" and stated that it had been "established" that they had committed several offences. Those two statements could have been construed as confirmation that, according to the police, the applicants had committed the offences of which they were accused. Taken as a whole, the attitude of the police authorities, in so far as it entailed a prior assessment of the charges which the applicants might face and provided the press with an easy physical means of identifying them, was incompatible with the presumption of innocence.
Conclusion: violation (unanimously).
Article 41 – The Court made awards in respect of the non-pecuniary damage suffered by the applicants on account of the violation of the presumption of innocence. It awarded them a sum jointly for costs and expenses.

Article 6(3)

DEFENCE RIGHTS
Length of oral pleadings before a criminal court : *violation*.

MAKHFI - France (N° 59335/00)
Judgment 19.10.2004 [Section II]
(see Article 6(1), above).

ARTICLE 7

NULLUM CRIMEN SINE LEGE
Conviction allegedly not based on any provision of national or international law: *communicated*.

KORBÉLY - Hungary (Nº 9174/02)
[Section II]

The applicant is a retired military officer who in the 1956 uprising in Hungary commanded the quelling of a riot in the course of which several civilians were killed. In 1994, the Public Prosecutor's Office charged him with murder on account of those past events. The Regional Court discontinued the proceedings as the crime was statute-barred, but the Supreme Court quashed the decision, and remitted the case for investigation. New charges were brought against the applicant for a crime against humanity on the basis of the 1949 Geneva Convention on the Protection of Civilian Persons in Times of War. The applicant's defence counsel argued that the Geneva Convention could not be applied to the case because it had not been properly proclaimed in Hungary. The case was discontinued again, but following a series of referrals between the Regional Court and the Supreme Court, it ended with a final judgment of the Supreme Court in November 2001, in which the applicant was convicted of a crime against humanity and sentenced to five years' imprisonment. The applicant's subsequent appeals were dismissed. He started serving his sentence in March 2003. He complains that he was wrongfully convicted for an action which did not constitute a crime at the time when it was committed and that the Geneva Convention had not been properly proclaimed at the material time.
Communicated under Articles 6 and 7.

ARTICLE 8

PRIVATE LIFE
Forced administration of emetics to a suspected drug trafficker: *admissible*.

JALLOH - Germany (Nº 54810/00)
Decision 26.10.2004 (Section III)
(see Article 6(1) [criminal], above).

PRIVATE LIFE
Exhumation of corpse for the purpose of genetic examination: *communicated*.

ESTATE OF KRESTEN FILTENBORG MORTENSEN – Denmark (Nº 1338/03)
[Section I]

The application is brought by the estate of K., represented by his only legitimate son. K. was allegedly also the biological father of two other sons born out of an extra-marital relationship. When these sons were informed that K. was their biological father, subsequent to his death, they initiated proceedings in the City Court to establish paternity. The court, after having heard evidence from K.'s siblings and other acquaintances who spoke in favour of K.'s paternity of these two other sons, decided that the corpse of K. should be exhumed for the purpose of taking DNA samples with a view to establishing paternity. This decision was amended in appeal proceedings by the High Court, which found that there was no provision in Danish law which permitted enforcing a legal-genetic examination of a deceased person for the purpose of paternity proceedings. However, the Supreme Court upheld the City Court's decision and permitted the taking of corporal material from K.'s corpse. It found that although there were no specific rules on the question, relevant legislation did not preclude the possibility of undertaking a legal-genetic examination in the circumstances of the case. It appears that the exhumation of K.'s corpse has not yet been carried out.
Communicated under Article 8, with a question on whether the estate can claim be a victim within the meaning of Article 34.

FAMILY LIFE
Refusal to allow access of two elder sisters to their biological sister: *inadmissible*.

I. and U. - Norway (N° 75531/01)
Decision 21.10.2004 [Section III]

The applicants are the elder daughters of two parents who suffer from mental illness. In 1993, the applicants were placed in a foster home because of the parents' inability to provide proper care for them. In 1997, a third daughter, X., was born whilst the mother was committed to a psychiatric hospital. The authorities immediately placed X. in a different foster home to that of her sisters and deprived the parents of parental responsibilities and access in respect of her. The parents did not dispute compulsory public care of X. from her birth but appealed to the courts that cutting off X. from her biological parents, and in particular not permitting their elder daughters access to X., was unjustified. The courts, at two levels of jurisdiction, dismissed the parents' claims that the elder daughters should have an independent right of access. They found that with a view to X.'s adoption and safe upbringing, it was in her best interest to cut off all bonds with the biological parents and that

it was impossible to achieve that goal without refusing access also for the sisters. In 2004, the authorities authorised X.'s adoption by her foster parents. The applicants complain that the refusal to grant them access to their younger sister entailed an interference with their family life.

Inadmissible under Article 8: The Court had doubts as to whether there existed a "family life" in the sense of Article 8 between the younger child and her biological family at the time when the authorities refused their access to her. The elder sisters had long since been separated from their parents and had never met their younger sister. Even proceeding on the assumption that the contested measure had to a degree amounted to an interference with the "family life" of the elder sisters, it had been in accordance with the law and had pursued the legitimate aim of protecting the best interests of the child. As to the necessity of the interference, the weak bonds between the applicants and their younger sister, as well as the latter's psychological vulnerability which had been medically certified, were factors to be given particular attention. Granting access to the older sisters could not have been envisaged without exposing the younger child to contact with her biological parents, which was potentially damaging for her mental health and well-being and likely to disturb her stable conditions in the foster home. Against this background, the interests of protecting the younger child's situation in the foster home carried greater weight than the applicants' interest in being granted a right of access to her. The measure could thus be seen to be "necessary" in the light of the interests of the child: manifestly ill-founded.

EXPULSION
Expulsion of stateless persons having given up their nationality and not having a residence permit : *inadmissible*.

DRAGAN and others - Germany (N° 33743/03)
Decision 7.10.2004 [Section III]
(see Article 3, above).

ARTICLE 11

FREEDOM OF PEACEFUL ASSEMBLY
Requirement to obtain ministerial autorisation for participation in meetings abroad : *admissible*.

İZMİR SAVAŞ KARŞITLARI DERNEĞİ and others – Turkey (N° 46257/99)
Decision 23.9.2004 [Section III]

The application was lodged by three members of an association registered under Turkish law, the "Izmir Association against the War" and by the association itself, which was represented by its chairperson. The applicants had been instructed by the association to travel abroad on its behalf to represent it at meetings of voluntary organisations which were opposed to the war. They were prosecuted for doing this, since no prior request for authorisation had been submitted before their departure. Under the Associations Act in force between 1983 and 2004, members of an association could only travel abroad at the invitation of foreign associations or organisations if they received authorisation to that effect. The three members of the association were ordered to pay fines for breach of that requirement.

Admissible under Article 11 of the Convention: The applicant association dissolved voluntarily in 2001, subsequent to the conviction of its members and the lodging of this

application with the Court. The applicants had lodged their application on their own behalf and on behalf of the Association, represented by its chairperson; they complained of an interference with their right to freedom of association while they were members of the Association and while it had legal personality as required at the material time. Consequently, the association represented by its chairperson had an interest giving it standing as a "victim". The objection submitted by the respondent Government was accordingly dismissed.

FREEDOM OF ASSOCIATION
Judicial dissolution of an association on account of illicit activities: *inadmissible*.

BOTA - Romania (N° 24057/03)
Decision 12.10.2004 [Section II]

The applicant was chairperson of an association which described itself as charitable in nature. After being legally registered in Romania, this association decided to set up the Romanian Constitutional Bar Association. However, the domestic legislation prohibited the creation of bar associations and exercise of the profession of lawyer independently of the "Union of Romanian Lawyers". A county bar association brought an action before the courts opposing the association's decision. The domestic courts found that, in taking the contested decision, the association had placed itself outside the statutory framework for the exercise of the profession of lawyer and that its activity was consequently unlawful. In application of the regulations governing this area, the courts ordered the association's dissolution and the opening of compulsory liquidation proceedings against it. At the close of those proceedings, the association's remaining assets were to be transferred to other legal entities.

Inadmissible under Article 11: (a) The interference in its members' right to freedom of association represented by the association's judicial dissolution was provided for in national regulations. Justified by the domestic courts with reference to the importance of the lawyer's role and the need to preserve the quality of legal assistance, the interference pursued legitimate aims within the meaning of the Convention, namely the protection of public order and of the rights and freedoms of others. With regard to the necessity of the interference in a democratic society, the Court noted that the association's statutory objectives included "the creation of bar associations", which was contrary to national statutory provisions prohibiting the creation of bar associations and exercise of the profession of lawyer independently of the Union of Romanian Lawyers. In particular, the members of the association had carried out specific actions, namely the setting up of a bar association, and had usurped prerogatives that belonged exclusively to the Union of Romanian Lawyers: manifestly ill-founded.

(b) *Applicability* of Article 11: Article 11 did not apply to professional organisations, which were public-law institutions governed by the law and which pursued aims serving the public good. The Union of Romanian Lawyers, which met those criteria, was not therefore an "association" within the meaning of Article 11. Accordingly, the complaint that the obligation of belonging to that Union infringed the applicant's negative freedom of association was incompatible *ratione materiae*.

Article 1 of Protocol No. 1: The applicant complained of the decision ordering the transfer of the association's assets to other legal entities after its dissolution. However, an order to forfeit items whose use has lawfully been adjudged illicit by the domestic courts did not constitute a violation of Article 1 of Protocol No. 1. In any event, the criticised measure was merely a secondary effect of the dissolution which, as the Court had found, did not violate Article 11. The Court held that there was no need to examine this complaint separately.

ARTICLE 14

DISCRIMINATION (Article 11)
Discrimination against employees, allegedly because of their trade-union membership: *admissible*.

DANILENKOV and others - Russia (Nº 67336/01)
Decision 19.10.2004 [Section IV]

The applicants worked as dockers at the Kaliningrad seaport and were affiliated to the Dockers' Union of Russia (DUR). They claim that the seaport management company which employed them was under the effective control of the State (both because of its holding of shares in the company and its appointment of officials to the managing body). In October 1997, DUR began a two-week strike for better pay and working conditions. The applicants claim that thereafter DUR members were penalised for the strike and incited to relinquish their union membership. They allege that the majority of dockers who had taken part in the strike were subsequently transferred to "reserve gangs" or to the least lucrative work, which resulted in their earnings being substantially reduced (in some cases the applicants' income fell by a half to three quarters). They submit that the decrease in their earnings was acknowledged by the State Labour Inspector, who in January 1998 ordered the company to compensate dockers who had been transferred to re-organised gangs. The applicants maintain they were also discriminated against concerning the 1998 annual test of dockers' knowledge of work safety regulations, which was failed by the vast majority of DUR members as the conditions of the test had not been fair. Other complaints of discrimination concerned arbitrary notifications to several DUR members that they would be made redundant, transfers to part-time working schedules or exclusion from more lucrative posts in a subsidiary company. The applicants brought proceedings against the seaport authorities, but the District Court held that their discrimination complaint was unsubstantiated. Following the applicants' appeal, the Regional Court ordered the discontinuance of the civil proceedings concerning the discrimination complaint. The court held that the existence of discrimination could only be established in criminal proceedings, and that a legal entity such as the seaport could not be held criminally liable.

Admissible under Articles 11, 14 and 13: The Government's objection that the application was to be dismissed as an *actio popularis* was dismissed because each of the applicants appeared to have been affected by the alleged violations of his rights.

ARTICLE 34

VICTIM
Political party unable to claim to be a victim of a court order suspending the activities of a purported regional branch: *preliminary objection allowed*.

VATAN - Russia (N° 47978/99)
Judgment 7.10.2004 [Section III]

Facts: Vatan is a political party which carries out its activities across the territory of the Russian Federation with the aim of protecting and advancing the rights and freedoms of citizens of Tartar origin. A Regional Organisation of the party was created in the Ulyanovsk

region, which Vatan claimed was a branch of the main party. In 1997, the Regional Organisation issued harsh statements against, *inter alia*, the regional administration and local governors, connected to the planned celebrations for the 350th anniversary of the founding of the city of Simbirsk, which was referred to as the date of a "colonisation". The announcement also contained calls in favour of increased teaching of the national language and the preservation of Islamic values. In May 1998, the Regional Organisation was authorised to hold a ceremony in places of worship and cemeteries, but it nevertheless held a memorial ceremony in the city centre. Some days later, the prosecutor applied for a suspension of the Regional Organisation's activities. The Regional Court examined the prosecutor's claim and found that some of the statements which the Regional Organisation had made in 1997 were incompatible with the Constitution and that the 1998 memorial ceremony had breached the mayor's permit. It concluded that the Regional Organisation's activities had violated the Federal Law on Public Associations and thus suspended its activities for six months. The Regional Organisation was *ipso jure* prohibited from holding meetings, demonstrations and other public actions or taking part in elections. The Regional Organisation appealed to the Supreme Court, which upheld the Regional Court's decision. The Regional Organisation was subsequently dissolved for failure to bring its Charter into compliance with new legislation.

Law: The Government's preliminary objection (victim status): The Court found that Vatan and the Regional Organisation could not be regarded as one political party which would permit considering them as a single non-governmental organisation for the purposes of lodging an application under Article 34. This conclusion was supported by the fact that there was only one implicit reference to Vatan in the Regional Organisation's constituent documents, and nothing prevented it from pursuing political goals other than those approved by Vatan. As to whether Vatan could claim to be a victim of the suspension applied to the Regional Organisation, it was noted that Vatan had only been indirectly affected by such a measure (in the sense of not having been able to rely on the Regional Organisation to convey its political ideas during six months). Referring to the *Agrotexim v. Greece* judgment (Series A no. 330-A), the Court concluded that there were no exceptional circumstances which justified accepting the application, in particular considering that the Regional Organisation could have lodged an application itself as direct victim. Moreover, as Vatan had never pursued any domestic proceedings in its own name, the application would have in any event been inadmissible for non-exhaustion. Hence, the Government's preliminary objection was well-founded and Vatan could not claim to be a victim.
Conclusion: incompatible *ratione personae* (unanimously).

VICTIM
Dissolution of applicant association after introduction of the application.

İZMİR SAVAŞ KARŞITLARI DERNEĞİ and others – Turkey (N° 46257/99)
Decision 23.9.2004 [Section III]
(see Article 11, above)

HINDER THE EXERCISE OF THE RIGHT OF PETITION
Refusal to send a detainee's letters of complaint to the Court: *violation*.

POLESHCHUK - Russia (Nº 60776/00)
Judgment 7.10.2004 [Section I]

Facts: The applicant, who is currently serving a prison sentence, submitted letters to the Court in May and December 1999 complaining of a lack of a fair trial in the proceedings which led to his conviction. On both occasions the prison authorities refused to dispatch the letters unless he previously filed his complaint with the domestic courts. After having unsuccessfully

instituted actions with the domestic courts, the applicant succeeded in having his application sent to the Court in February 2000, in which he complained not only of an unfair trial but also that he had exceeded the six months time-limit under Article 35(1) of the Convention because he had been prevented by the prison authorities from dispatching the application earlier. Following a request of the Court to the Government under Rule 49(2) of the Rules of Court for additional information on the applicant's allegations that the letters had not been dispatched, the authorities issued circular letters to penitentiary institutions requesting them to avoid hindering exercise of the right of individual petition by detainees. An inquiry into the refusal to post the applicant's letters was conducted, but its results remain unknown to the Court. The applicant maintains that after his application was lodged he was subject to pressures and transferred to a stricter level of security.

Law: Article 34 – *Concerning the refusal to post the applicant's original letters to the Court*: Government's preliminary objection (victim status) – although the Government had expressly acknowledged a violation in their observations on admissibility and the merits and general measures had been taken to prevent violations of this kind in the future, such measures could not be accepted as redress which deprived the applicant of his victim status: objection dismissed.
Merits – As a result of the refusal on two occasions by the prison administration to post the applicant's letters to the Court, his application had been delayed by more than eight months. This had constituted an interference with his right of individual petition, resulting in a failure of the respondent State to comply with its obligations under this provision.
Conclusion: violation (unanimously).

Inadmissible under Article 34 (*concerning the alleged pressure after the application had been lodged)*: The applicant's allegation that there had been a connection between his application to the Court and the imposition of additional disciplinary penalties and sanctions on him was unsubstantiated: manifestly ill-founded.

ARTICLE 37

Article 37(2)

RESTORATION TO THE ROLE
Absence of circumstances justifying restoration of a struck out application to the list of cases.

SCHNEIDER - Germany (N° 44842/98)
Decision 14.10.2004 [Section III]

The applicant requested the restoration to the list of cases of an application that had been lodged by his lawyer in 1998 and which was struck out of the list in 2001. This striking-out had been decided on the basis of Article 37(1) of the Convention, since the applicant's representative had failed to submit his observations in the case, despite reminders to that effect. In 2004 the applicant applied to the Court asking that examination of the application be resumed and claiming that he himself had been informed of the striking-out only a few days previously.

Decision not to restore the application to the list: The applicant explained that, when his application was lodged in 1998, his former representative had informed him in writing that the proceedings before the Court could take a certain time and that he would keep the applicant informed of progress in the case; his lawyer had then left the chambers where he

worked without informing him; finally, the applicant had been imprisoned until October 2000 and subsequently experienced personal problems. The applicant considered that this explained why he had not taken steps on his own initiative to remain informed of the state of proceedings before the Court. In the Court's opinion, this could not justify the fact that the applicant had only been able to obtain information about the state of his application more than three years after his release from prison. In addition, the applicant had not been in prison when the case had been struck out of the list. In short, the applicant had failed to display the diligence which one might expect from him in ensuring that his interests were defended before the Court.

ARTICLE 1 OF PROTOCOL No. 1

POSSESSIONS
Confirmation, after adoption of a new law, of tax debts which had been annulled by the lower courts: *inadmissible*.

CAISSE REGIONALE DE CREDIT AGRICOLE MUTUEL NORD DE FRANCE - France (N° 58867/00)
Decision 19.10.2004 [Section II]

The applicant company was a banking establishment. In that capacity, it enjoyed exemption from value-added tax (VAT) for a large number of operations with its clients. The rules for pro-rata calculation of the VAT deduction, provided for in the General Tax Code, were the result of transposition into French law of a European directive of 1977. The interpretation of those calculation rules was the subject of a dispute between the applicant company and the tax authorities, which challenged the method of calculating the right to a tax reduction used by the applicant company. The company was consequently issued with a supplementary tax demand, and it applied for its cancellation. It was successful both before the court of first instance and on appeal. The Government submitted draft legislation to Parliament concerning the interpretation of the relevant texts. While the case was pending before the final appeal court, an interpretative Act was enacted at the end of July 1991, defining the terms of the tax regulations at the origin of the dispute; the interpretation of those rules was also the subject of a judicial opinion by the final instance. In 1994 the *Conseil d'Etat*, the final appeal court in this matter, held that the lower courts had applied the applicable texts incorrectly and that the calculation method chosen by the applicant company was not based on a technical interpretation of the texts. Consequently, the judicial decisions in favour of the applicant company were overturned. At the close of new proceedings, the applicant company's application was finally dismissed.

Inadmissible under Article 1 of Protocol No. 1: The Court notes that, in all likelihood and without the intervention of the 1991 Act, the *Conseil d'Etat* – which had not given a judgment justifying the applicant company's arguments – would nonetheless have ruled, in contradiction to the lower courts, that the applicant company's arguments were ill-founded. In any event, the judgments in the applicant company's favour had not become final. Consequently, although the cancellation of tax debts decided by those judgments could amount to a "claim" against the State, in the present case this was neither certain, nor established, nor due, so that the applicant company no longer had any legitimate expectation of recovering it within the meaning of the Court's case-law (*cf.* the judgment in *Kopecký*, 28 September 2004, § 50, Case-Law Report No. 67). A mere hope did not constitute a legitimate expectation. In short, in the absence of a "legitimate expectation" of having the tax assessments set aside, the applicant company did not have any "possessions": incompatible *ratione materiae*.

PEACEFUL ENJOYMENT OF POSSESSIONS
Termination of a disability pension after having received it for nearly twenty years: *violation*.

KJARTAN ÁSMUNDSSON - Iceland (N° 60669/00)
Judgment 12.10.2004 [Section II]

Facts: The applicant, who worked as a seaman, sustained a serious work accident on board of a trawler. His disability was assessed at 100%, which made him eligible for a disability pension from the Seamen's Pension Fund. The assessment was made under an Act which entitled any member of the Fund to a pension in the event of suffering a loss of working capacity of 35% or more in relation to the job being carried out at the time of the accident. The applicant found employment in office work after the accident and earned some income from it, in addition to receiving his pension. However, subsequent legislative amendments introduced in the aforementioned Act resulted in a fresh assessment of the applicant's disability based on his capacity for work in general (and not capacity to perform the same work). The new assessment concluded that his disability did not reach the minimum level of 35%, and, in 1997, the Pension Fund stopped paying him the disability pension and relevant child benefits which he had been receiving for nearly 20 years. The applicant instituted proceedings against the Pension Fund and the Icelandic State, but the District Court dismissed the claim. The Supreme Court upheld the judgment, finding that the measures taken by the Pension Fund after the legislative amendments had been justified due to the Fund's financial difficulties.

Law: Article 1 of Protocol No. 1 – The parties agreed that the termination of the applicant's disability pension had amounted to an interference with his right to peaceful enjoyment of his possessions. The Court accepted the arguments of the Supreme Court of Iceland on the lawfulness of the contentious measure, which aimed at reducing the Fund's financial difficulties by avoiding that a considerable number of former seamen continued to receive disability pensions while being in full employment on shore. However, the issue which lied at the heart of the case was not one of lawfulness but rather of proportionality, and whether there had been an unjustified differential treatment of the applicant in comparison to other disability pensioners. It was striking that under the new rules only it was only a small number of disability pensions that were discontinued altogether in July 1997. The vast majority of disability pensioners continued to receive benefits at the same level as before the adoption of the rules, whereas the applicant and another small group had to bear the drastic measure of total loss of their pension entitlements. Thus, the impugned measure was tainted with an unjustified differential treatment in the sense of Article 14, which carried great weight in the assessment of the proportionality issue under Article 1 of Protocol No. 1. The applicant could claim that he had a legitimate expectation that his disability would have continued to be assessed on the basis of his incapacity to perform his previous job, in accordance with the law which was in force at the time of the accident. Although after his accident the applicant found employment as an office assistant in a transport company onshore, the changes in the law had affected him in a particularly harsh manner, depriving him of a pension entitlement which he had received nearly 20 years and had constituted no less than one third of his gross monthly income at the time when it was withdrawn. Hence, even having regard to the margin of appreciation of States in the area of social legislation, the applicant was made to bear an excessive and disproportionate burden which could not be justified. It would have been otherwise had the applicant been obliged to endure a reasonable and commensurate reduction rather than the total deprivation of his entitlements. Accordingly, there had been a violation of Article 1 of Protocol No. 1.
Conclusion: violation (six votes to one)
Article 41 – The Court awarded the applicant 76,500 euros under both heads of damage.

DEPRIVATION OF PROPERTY
Absence of compensation following annulment of a title to property and the demolition of the building erected on the property with appropriate permits: *admissible*.

N.A. and others - Turkey (N° 37451/97)
Decision 14.10.2004 [Section III]

The applicants had inherited a plot of land which was included on the land register, for which they paid duties and taxes in due form. They began construction work on a hotel complex after obtaining the necessary administrative permits. While the work was being carried out, the State Treasury applied for cancellation of their property title and demolition of the building. It was successful: the applicants' land, situated on the sea sand, was part of the sea coast and consequently, in accordance with the Constitution, could not belong to private individuals. The applicants requested compensation for the financial losses sustained as a result of the loss of their property title and demolition of the hotel. Their application was dismissed. The courts pointed out that the coasts were State property; the applicants had been able to observe for themselves that their plot was situated on the sand. In addition, as the land was situated on State property, its inclusion in the land register under the applicants' names was held to be unlawful *ab initio*. For those reasons, the applicants had no right to any form of compensation. The applicants complained before the Court about the lack of compensation.

Admissible under Article 1 of Protocol No. 1, after rejection of the objections raised by the respondent Government.

ARTICLE 3 OF PROTOCOL No. 1

STAND FOR ELECTION
Refusal to register a candidate in parliamentary election: *violation*.

MELNYCHENKO - Ukraine (N° 17707/02)
Judgment 19.10.2004 [Section II]

Facts: The applicant worked in the Department of Security of the President of Ukraine and was responsible for guarding his office. In the course of his duties he allegedly tape-recorded conversations of the President which revealed the possible involvement of the latter in the disappearance of the well-known political journalist (see *Gongadze v. Ukraine*, N° 34056/02). When the tape recordings were publicly disclosed, the applicant left Ukraine for fear of political persecution and was granted refugee status in the United States. Criminal proceedings were instituted by the General Prosecutor's Office against the applicant on charges of defamation of the President, forgery, disclosure of State secrets and abuse of power. A warrant for his arrest and detention pending trial was issued by the District Court. The facts which gave rise to the applicant's complaints were related to his subsequent nomination by the Socialist Party as a candidate for the *Verkhovna Rada* (Parliament). The Central Electoral Commission (CEC) rejected his registration given that he had not resided in the country for the last five years, as required by electoral legislation, and had submitted untrue data regarding his place of residence in the registration documents. When fleeing to the United States the applicant had kept his internal passport (*propiska*), a document which stated that he was *formally* a resident in Ukraine, and had used it for his electoral registration request. He appealed to the Supreme Court against the refusal of his registration, but the complaint was dismissed on the same grounds as those given by the CEC.

Law: Article 3 of Protocol No. 1 – The domestic rules and legislations on eligibility to become a Member of Parliament, which were very diverse across Council of Europe member States, had to be evaluated in the light of the political evolution in a given country. The Court had never expressed its opinion on the specific question of a residency requirement in relation to the right to stand for elections, but accepted that strict conditions on eligibility to stand for parliamentary elections could be justified. Thus, the imposition of a five-year continuous residency requirement for parliamentary candidates could not be precluded outright. However, in the instant case, the Court found that domestic legislation and practice did not contain an explicit requirement of "continuous" residence in Ukraine. The only proof of legal registration at the material time was the internal passport of a person, which did not always correspond to that person's habitual place of residence. Parliamentary candidates were only under the obligation to provide information based on their internal passport (*propiska*). The applicant had left Ukraine for an objective fear of persecution after his involvement in the release of tapes which incriminated the President in the disappearance of the journalist and was therefore in a difficult situation: had he stayed, his physical integrity might have been endangered and rendered the exercise of his political rights impossible, whereas in leaving he was also prevented from exercising such rights. Thus, the refusal of his candidacy to the *Verkhovna Rada* as untruthful, although he still held a valid registered place of legal residence in Ukraine, was in breach of Article 3 of Protocol No. 1.
Conclusion: violation (six votes to one)
Article 41 – The Court awarded the applicant 5,000 euros for non-pecuniary damage.

Other judgments delivered in October

Articles 2 and 13

Zengin - Turkey (Nº 46928/99)
Judgment 28.10.2004 [Section III]

death of applicant's husband during armed clash – no violation; lack of effective investigation – violation.

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

Çaçan - Turkey (Nº 33646/96)
Judgment 26.10.2004 [Section II]

alleged destruction of possessions and home by security forces in 1993 – no violation.

Binbay - Turkey (Nº 24922/94)
Judgment 21.10.2004 [Section I]

alleged assault by police and damage to property – friendly settlement (statement of regret, undertaking to take appropriate measures and *ex gratia* payment of 45,000 euros).

Article 3

Barbu Anghelescu - Romania (Nº 46430/99)
Judgment 5.10.2004 [Section II]

ill-treatment by police carrying out a road traffic control and effectiveness of investigation – violation.

Articles 3 and 6

Bursuc - Romania (Nº 42066/98)
Judgment 12.10.2004 [Section II]

torture in police custody and lack of effective investigation; length of criminal proceedings – violation.

Articles 3 and 13

Çelik and İmret - Turkey (Nº 44093/98)
Judgment 26.10.2004 [Section IV]

ill-treatment in police custody – violation (first applicant)/no violation (second applicant); lack of effective investigation – violation.

Article 5(3)

Paszkowski - Poland (Nº 42643/98)
Judgment 28.10.2004 [Section III]

length of detention on remand (over 3 years 8 months) – violation.

Articles 5(3) and 8

Blondet - France (Nº 49451/99)
Judgment 5.10.2004 [Section II]

length of detention on remand and opening of detainee's correspondence with the Court – violation.

Article 6(1)

Nordica Leasing s.p.a. - Italy (Nº 51739/99)
Judgment 14.10.2004 [Section I]

access to court – expiry of time-limit for having debtor declared bankrupt, as a result of delays by the authorities in providing court with information – violation.

Neshev - Bulgaria (Nº 40897/98)
Judgment 28.10.2004 [Section III]

exclusion of court review of dismissal of employees of State railways and rejection of appeal as out of time, despite non-notification of judgment appealed against – violation.

Crnojević - Croatia (Nº 71614/01)
Marinković - Croatia (Nº 9138/02)
Judgments 21.10.2004 [Section I]

legislation staying all proceedings relating to claims for damages in respect of terrorist acts – violation.

Varićak - Croatia (Nº 78008/01)
Judgment 21.10.2004 [Section I]

Dragović - Croatia (Nº 5705/02)
Judgment 28.10.2004 [Section I]

legislation staying all proceedings relating to claims for damages in respect of terrorist acts or resulting from acts of members of the army or police during the war in Croatia – violation.

Grubišić - Croatia (Nº 15112/02)
Bubaš - Croatia (Nº 15308/02)
Klajić - Croatia (Nº 3745/02)
Marković - Croatia (Nº 4469/02)
Judgments 21.10.2004 [Section I]

legislation staying all proceedings relating to claims for damages in respect of terrorist acts – friendly settlement.

Bulat - Croatia (Nº 10438/02)
Judgment 21.10.2004 [Section I]

legislation staying all proceedings relating to claims for damages resulting from acts of members of the army or police during the war in Croatia – friendly settlement.

Chesnay - France (Nº 56588/00)
Judgment 12.10.2004 [Section II]

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

Casalta - France (Nº 58906/00)
Judgment 12.10.2004 [Section II]

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

Lafaysse - France (Nº 63059/00)
Judgment 12.10.2004 [Section II]

non-disclosure in Court of Cassation proceedings of report of the *conseiller rapporteur*, available to the *avocat général*; failure to communicate observations of *avocat général* to unrepresented appellant in Court of Cassation proceedings – violation.

Dala - Hungary (Nº 71096/01)
Móder - Hungary (Nº 4395/02)
Molnár - Hungary (Nº 22592/02)
Judgments 5.10.2004 [Section II]

Falęcka - Poland (Nº 52524/99)
Malinowska-Biedrzycka - Poland (Nº 63390/00)
Kuśmierkowski - Poland (Nº 63442/00)
Sikora - Poland (Nº 64764/01)
Przygodzki - Poland Nº 65719/01)
Kruk - Poland (Nº 67690/01)
Lizut-Skwarek - Poland Nº 71625/01)
Dudek - Poland Nº 2560/02)
Nowak - Poland Nº 27833/02)
Judgments 5.10.2004 Section IV]

Baumann - Austria Nº 76809/01)
Judgment 7.10.2004 Section I]

Velliou - Greece Nº 20177/02)
Judgment 14.10.2004 [Section I]

Yorgiyadis - Turkey Nº 48057/99)
Judgment 19.10.2004 Section II]

R.P.D. - Poland Nº 77681/01)
Judgment 19.10.2004 Section IV]

Ullrich - Austria Nº 66956/01)
Judgment 21.10.2004 [Section I]

Fackelman ČR, Spol. S.R. O. - Czech Republic (Nº 65192/01)
Konečný - Czech Republic º 47269/99, Nº 64656/01 and Nº 65002/01)
Judgments 26.10.2004 [Section II]

length of civil proceedings – violation.

Jahnová - Czech Republic (Nº 66448/01)
Judgment 19.10.2004 [Section II]

length of several sets of civil proceedings – violation/no violation.

Kútfalvi - Hungary (Nº 4853/02)
Judgment 5.10.2004 [Section II]

Lipowicz - Poland (Nº 57467/00)
Mejer and Jałoszyńska - Poland (Nº 62109/00)
Judgments 19.10.2004 [Section IV]

Wiatrzyk - Poland (Nº 52074/99)
Judgment 26.10. 2004 [Section IV]

Jírů - Czech Republic (Nº 65195/01)
Judgment 26.10.2004 [Section II]

length of proceedings relating to employment – violation.

Pištorová - Czech Republic (Nº 73578/01)
Judgment 26.10.2004 [Section II]

length of proceedings relating to restitution of property – violation.

Koliha - Czech Republic (Nº 52863/99)
Judgment 26.10.2004 [Section II]

length of proceedings relating to restitution of property – friendly settlement.

Gialamas - Greece (Nº 70314/01)
Judgment 21.10.2004 [Section I]

length of proceedings before the Council of State concerning the refusal to annul a medical certificate establishing the applicant's mental illness – violation.

Onnikian - France (Nº 15816/02)
Mitre - France (Nº 44010/02)
Reisse - France (Nº 24051/02)
Rey and others – France (Nº 68406/01, Nº 68408/01, Nº 68410/01 and Nº 68412/01)
Judgments 5.10.2004 [Section II]

Rajnai - Hungary (Nº 73369/01)
Judgment 26.10.2004 [Section II]

length of administrative proceedings – violation.

Andersson and others - Sweden (Nº 49297/99)
Judgment 14.10.2004 [Section I]

Hutten - Netherlands (Nº 56698/00)
Judgment 26.10.2004 [Section II]

length of administrative proceedings – friendly settlement.

Caille - France (Nº 3455/02)
Judgment 5.10.2004 [Section II]

length of administrative proceedings concerning retaired civil servant's right to disability pension – violation.

Bettina Malek - Austria (Nº 16174/02)
Judgment 21.10.2004 [Section I]

length of administrative criminal proceedings – violation.

Hradecky - Czech Republic (Nº 76802/01)
Judgment 5.10.2004 [Section II]

Rodopoulos - Greece (Nº 11800/02)
Judgment 14.10.2004 [Section I]

length of criminal proceedings – violation.

Pedersen and Pedersen - Denmark (Nº 68693/01)
Judgment 14.10.2004 [Section I]

length of criminal proceedings – no violation.

Miller and others - United Kingdom (Nº 45825/99, Nº 45826/99 and Nº 45827/99)
Judgment 26.10.2004 [Section IV]

independence and impartiality of court martial – violation.

Yanikoğlu - Turkey (Nº 46284/99)
Judgment 14.10.2004 [Section III]

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

Mehmet Bülent Yilmaz and Şahin Yilmaz - Turkey (Nº 42552/98)
Judgment 7.10.2004 [Section III]

Durmaz and others - Turkey (Nº 46506/99, Nº 46569/99, Nº 46570/99 and Nº 46939/99)
Judgment 14.10.2004 [Section III]

Döner - Turkey (Nº 34498/97)
Judgment 26.10.2004 [Section IV]

Epözdemir - Turkey (Nº 43926/98)
Kaymaz and others – Turkey (Nº 57758/00)
Judgments 28.10.2004 [Section III]

independence and impartiality of State Security Court – violation.

Articles 6(1) and 10

Varli and others - Turkey (Nº 38586/97)
Judgment 19.10.2004 [Section II]

Doğaner - Turkey (Nº 49283/99)
Judgment 21.10.2004 [Section III]

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

Riza Dinç - Turkey (Nº 42437/98)
Judgment 28.10.2004 [Section III]

conviction of publisher for membership of an illegal organisation – no violation; independence and impartiality of State Security Court – violation.

Article 8

Ospina Vargas - Italy (Nº 40750/98)
Judgment 14.10.2004 [Section I]

control of prisoner's correspondence – violation.

Article 11

Presidential Party of Mordovia - Russia (Nº 65659/01)
Judgment 5.10.2004 [Section II]

refusal to register political party – violation.

Article 14 in conjunction with Article 8

Woditschka and/et Wilfling - Austria (Nº 69756/01 and Nº 6306/02)
Judgment 21.10.2004 [Section I]

Different age of consent for homosexual acts between adults and adolescents – violation (cf. *L. and V. v. Austria* judgment of 9 January 2003).

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

Ettotre Caracciolo - Italy (Nº 52081/99)
Judgment 14.10.2004 [Section I]

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

Assymomitis - Greece (Nº 67629/01)
Judgment 14.10.2004 [Section I]

prolonged suspension of building work on account of authorities' opposition, despite existence of planning permission; length of administrative proceedings – violation.

Article 1 of Protocol No. 1

Uğur and others - Turkey (Nº 49690/99)
Kartal Makina Sanayi ve Ticaret Koll.Şti. - Turkey (no. 1) (Nº 49698/99)
Kapucu - Turkey (Nº 49718/99)
Verep - Turkey (Nº 49751/99)
Önk and others - Turkey (Nº 49762/99)
Koçyiğit and Uzuner - Turkey (Nº 49923/99)
Kartal Makina Sanayi ve Ticaret Koll.Şti. - Turkey (no. 2) (Nº 50011/99)
Seçenler Kaucuk ve Plastik San. ve Tic. A.Ş. - Turkey (Nº 50042/99)
Çebi - Turkey (Nº 50728/99)
Yurtkuran and others - Turkey (Nº 50730/99)
Çiftçi - Turkey (Nº 50732/99)
Gürkan and Aktan - Turkey (Nº 50741/99)
Velioğlu and others - Turkey (Nº 51481/99)
Penbe Demir and others - Turkey (Nº 51482/99)
Yazar - Turkey (Nº 51483/99)
Turan - Turkey (Nº 51485/99)
Telli and others - Turkey (Nº 51488/99)
Judgments 7.10.2004 [Section III]

Çiloğlu and others - Turkey (Nº 50967/99)
Çenesiz and others - Turkey (Nº 54531/00)
Judgments 28.10.2004 [Section III]

delay in payment of compensation for expropriation – violation.

Just satisfaction

Terazzi - Italy (Nº 27265/95)
Judgment 26.10.2004 [Section IV]

Relinquishment of jurisdiction in favour of the Grand Chamber

Article 30

HEPPLE and others and KIMBER - United Kingdom (Nº 65731/01 and N° 65900/01)
Decision 24.8.2004 [Section IV]

Differences in the entitlement for men and women to certain industrial injuries social security benefits.

DRAON and DRAON - France (N° 1513/03)
MAURICE and others - France (N° 11810/03)
Decisions 6.7.2004 [Section II]

Amount of compensation paid to parents of child born with a handicap undetected during pregnancy as a result of an error in diagnosis; immediate application of a new law to pending proceedings.

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):

VALOVÁ and others – Slovakia (Nº 44925/98)
Judgment 1.6.2004 [Section IV]

KAYA and others – Turkey (Nº 54335/00)
Judgment 24.6.2004 [Section III]

KRÁLICEK – Czech Republic (Nº 50248/99)
KASTNER – Hungary (Nº 61568/00)
Judgments 29.6.2004 [Section II]

WALSER - France (Nº 56653/00)
ENTREPRISE ROBERT DELBRASSINNE S.A. - Belgium (Nº 49204/99)
Judgments 1.7.2004 [Section I]

YESIL – Turkey (Nº 50249/99)
BAKBAK – Turkey (Nº 39812/98)
SANTORO - Italy (Nº 36681/97)
Judgments 1.7.2004 [Section III]

GOBRY - France (Nº 71367/01)
DONDARINI – San Marino (Nº 50545/99)
Judgments 6.7.2004 [Section II]

BOCANCEA and others – Moldova (Nº 18872/02, Nº 20490/02, Nº 18745/02, Nº 6241/02, Nº 6236/02, Nº 21937/02, Nº 18842/02, Nº 18880/02 and Nº 18875/02)
MADONIA – Italy (Nº 55927/00)
Judgments 6.7.2004 [Section IV]

KALKANIS - Greece (Nº 67591/01)
LAZAROU – Greece (Nº 66808/01)
PRONK – Belgium (Nº 51338/99)
KATSOULIS – Greece (Nº 66742/01)
WOHLMEYER BAU GmbH – Austria (Nº 20077/02)
KLIAFAS and others - Greece (N° 66810/01)
VACHEV - Bulgaria (N° 42987/98)
DJANGOZOV – Bulgaria (Nº 45950/99)
Judgments 8.7.2004 [Section I]

KARAGIANNIS – Greece (Nº 51354/99)
Judgment (revision) 8.7.2004 [Section I]

AYSENUR ZARAKOLU and others – Turkey (Nº 26971/95 and Nº 37933/97)
ERKEK – Turkey (Nº 28637/95)
Judgments 13.7.2004 [Section II]

M.K. – Turkey (Nº 29298/95)
REZETTE - Luxembourg (N° 73983/01)
CISZEWSKI – Poland (Nº 38668/97)
TOMKOVÁ – Slovakia (Nº 51646/99)
Judgments 13.7.2004 [Section IV]

VAYOPOULOU - Greece (Nº 19431/02)
POTHOULAKIS – Greece (Nº 16771/02)
THEODOROPOULOS – Greece (Nº 16696/02)
E.O. – Turkey (Nº 28497/95)
BEDNARSKA – Poland (Nº 53413/99)
Judgments 15.7.2004 [Section I]

KARAGIANNIS – Greece (Nº 51354/99)
Judgment (just satisfaction) 15.7.2004 [Section I]

ÇOLAK – Turkey (no. 1) (Nº 52898/99)
ÇOLAK – Turkey (no. 2) (Nº 53530/99)
AKSAÇ – Turkey (Nº 41956/98)
Judgments 15.7.2004 [Section III]

BALOGH – Hungary (Nº 47940/99)
MEHMET EMIN YÜKSEL – Turkey (Nº 40154/98)
SHMALKO – Ukraine (Nº 60750/00)
Judgments 20.7.2004 [Section II]

EASTAWAY - United Kingdom (Nº 74976/01)
CROITORU – Moldova (Nº 18882/02)
HRICO - Slovakia (Nº 49418/99)
Judgments 20.7.2004 [Section IV]

MUHEY YASAR and others – Turkey (Nº 36973/97)
Judgment 22.7.2004 [Section I]

SIDABRAS and DŽIAUTAS - Lithuania (Nº 55480/00 and 59330/00)
SLIMANI - France (N° 57671/00)
Judgments 27.7.2004 [Section II]

MORA DO VALE and others – Portugal (Nº 53468/99)
Judgment 29.7.2004 [Section III]

Statistical information[1]

Judgments delivered	October	2004
Grand Chamber	1(2)	11(12)
Section I	25(26)	154(163)
Section II	31(36)	149(165)
Section III	31(35)	115(139)
Section IV	19(21)	139(171)
former Sections	0	3
Total	**107(120)**	**571(653)**

Judgments delivered in October 2004					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	1(2)	0	0	0	1(2)
Section I	18(19)	7	0	0	25(26)
Section II	29(34)	2	0	0	31(36)
Section III	30(34)	0	0	1	31(35)
Section IV	18(20)	0	0	1	19(21)
former Section II	0	0	0	0	0
Total	**96(109)**	**9**	**0**	**2**	**107(120)**

Judgments delivered in 2004					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	10(11)	0	0	1	11(12)
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	125(130)	23(27)	2	4	154(163)
Section II	133(149)	9	2	5	149(165)
Section III	109(133)	5	0	1	115(139)
Section IV	121(153)	15	2	1	139(171)
Total	**499(577)**	**52(56)**	**6**	**14**	**571(653)**

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

Decisions adopted		October	2004
I. Applications declared admissible			
Grand Chamber		0	1
Section I		17	217(226)
Section II		28(30)	149(155)
Section III		16(17)	147(170)
Section IV		14(17)	135(167)
Total		**75(81)**	**649(719)**
II. Applications declared inadmissible			
Grand Chamber		0	1
Section I	- Chamber	15	106(108)
	- Committee	905	4955
Section II	- Chamber	8	72(73)
	- Committee	661	4408
Section III	- Chamber	6	55
	- Committee	959	3060
Section IV	- Chamber	13	83(95)
	- Committee	587	3535
Total		**3154**	**16275(16290)**
III. Applications struck off			
Section I	- Chamber	10	72
	- Committee	8	63
Section II	- Chamber	10	46
	- Committee	12	57
Section III	- Chamber	22	136
	- Committee	14	37
Section IV	- Chamber	2	34
	- Committee	7	48
Total		**85**	**493**
Total number of decisions[1]		**3314(3320)**	**17417(17502)**

1. Not including partial decisions.

Applications communicated	October	2004
Section I	72	550(574)
Section II	46	387(415)
Section III	49	820(822)
Section IV	46	240
Total number of applications communicated	**213**	**1997(2051)**

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