CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

INFORMATION NOTE No. 67
on the case-law of the Court
August-September 2004

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

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ARTICLE 2

LIFE

SLIMANI - France (N° 57671/00)
Judgment 27.7.2004 [Section II]

Facts: The applicant's partner, who was a Tunisian national living in France and the father of her children, had been permanently excluded from French territory. Pursuant to that measure, he was placed in the Marseille-Arenc Detention Centre for foreign nationals. He had previously been hospitalised on psychiatric grounds on several occasions and was under heavy medication. In the absence of a 24-hour medical service, medication was distributed by the police officers responsible for surveillance. On the fourth day of his detention, the applicant's partner refused on two occasions to take his medication. He was in a state of extreme agitation. He was not examined by a doctor, since the Detention Centre had no medical facilities or personnel. He was taken ill, collapsed and, despite rapid medical treatment administered by a doctor who was called to the Centre, he died. An investigation was rapidly opened of their own motion by the judicial authorities to "establish the cause of death". Numerous examinations, expert reports and tests were carried out and evidence was taken from eyewitnesses. These investigations revealed that death had been caused by acute pulmonary oedema. In the absence of any elements indicating that the death had been caused by a criminal action, the investigation concluded that no further action was to be taken. The applicant did not have access to the investigation file and was not informed of its outcome, as a deceased's next-of-kin could not have access to proceedings to establish the cause of death.

Law: Articles 2 and 3 taken alone and in conjunction with Article 13 – Before the Court, the applicant called into question the authorities' responsibility in her partner's death and complained about his detention conditions. However, the applicant could have lodged a criminal complaint, alleging murder, with an investigating judge, along with an application to join the proceedings as a civil party. That domestic remedy (see Article 85 of the Code of Criminal Procedure) was accessible, was one which was capable of providing redress in respect of the complaints and offered reasonable prospects of success. Accordingly, the applicant had not satisfied the obligation to exhaust domestic remedies laid down by Article 35(1) of the Convention. The Court concluded (by 5 votes to 2) that it could not consider the merits of the applicant's complaints alleging a substantive violation of Articles 2 and 3 of the Convention.
Given the close affinities between Article 13 and Article 35(1) of the Convention, the Court concluded unanimously that there had not been a violation of Article 13 taken together with Articles 2 or 3 of the Convention.

Procedural requirements of Article 2 – In all cases where a prisoner dies in suspicious circumstances, Article 2 places on the authorities an obligation to carry out an "effective official investigation" of their own motion, as soon as the matter is brought to their attention, for the purpose of establishing the cause of death and identifying and punishing any liable parties. The investigation opened in the instant case to "establish the cause of death" was, in principle, an "official investigation" capable of leading to the identification and punishment of those responsible.
As to the effectiveness of an investigation following the suspicious death of a person in official custody, the deceased's next-of-kin must not be required to take the initiative in lodging a formal complaint or assuming responsibility for investigation proceedings. Article 2 requires that the deceased's next-of-kin be automatically involved with the official

investigation opened by the authorities into the cause of death and the person responsible. The deceased's next-of-kin should not be required to lodge a criminal complaint beforehand. In the instant case, the applicant had been excluded from the investigation and had been obliged to lodge a complaint with an application to join the proceedings as a civil party in order to have access to it. In short, in the instant case, since the applicant had not been able automatically to have access to the inquiry into the cause of her partner's death, the national investigation had not been "effective" for the purposes of Convention.
Conclusion: violation (unanimous).
The Court held, unanimously, that in view of that finding it was not necessary for it to examine whether the procedural requirements of Article 3 had been satisfied.

Article 41 – The Court awarded the applicant a sum for non-pecuniary damage and a sum for costs and expenses.

LIFE
Alleged detention and extrajudicial execution by soldiers in Chechnya and adequacy of investigation into disappearances: *communicated*.

UTSAYEVA and others - Russia (Nº 29133/03)
[Section I]

The eight applicants are the relatives of five men who they allege were detained in June 2002 in their homes in Chechnya. The applicants claim, supported by numerous affidavits from family members and neighbours, that heavily armed soldiers in uniform entered their homes shouting and using force and took their relatives away barefooted and without permitting them to properly dress. They also claim that they themselves were beaten and ill-treated during the operation. The applicants have had no news from their relatives since they were detained and maintain that this gives rise to a strong presumption that they have been extrajudicially executed by Russian soldiers. After the detention of their relatives they actively searched for them and applied to different official bodies and prosecutors requesting an investigation. They received very little substantive information on the steps taken to find their relatives and the case-files were transferred back and forth from the District Prosecutor's Office to military prosecutors. The applicants are uncertain whether the criminal proceedings into the disappearances have been suspended or are ongoing. Following their application to the Court, some of the applicants complain that they have been harassed and beaten at their homes and that a number of their personal items have been confiscated, including a copy of the application to the Court.
Communicated under Articles 2, 3, 5, 6, 8, 13 and 34.

ARTICLE 3

INHUMAN OR DEGRADING TREATMENT
Continued imprisonment on basis of conviction forty years ago : *admissible*.

LEGER - France (N° 19324/02)
Decision 21.9.2004 [Section II]

The applicant was sentenced to life imprisonment in 1966 by an assize court. He had been placed in detention on remand in July 1964. He was found guilty of the abduction and manslaughter of a child. There were mitigating circumstances. The assize court did not accept the classification of murder and the prosecuting authorities did not call for any specific

sentence. The applicant had admitted the offences while in police custody. He retracted his statements ten months later and has consistently protested his innocence ever since. In 1979, on expiry of a probationary period of 15 years' imprisonment, the applicant became eligible for parole. He applied for parole on several occasions but was met with systematic refusals. He also applied unsuccessfully for pardon. In 1999 the Parole Board ruled in favour of his parole. This opinion was based on a report by several experts, who referred to five previous reports drawn up by nine psychiatrists. The judge responsible for the execution of sentences issued a concurring opinion, which was based on the applicant's favourable clinical examination and the fact that his relatives had undertaken to house him and provide him with steady employment. A law of 15 June 2000 reformed the procedure for granting parole to long-term prisoners. On that basis, the Justice Minister decided to dismiss the applicant's request and apply the new procedure to his case. In the context of this new procedure, two opinions were issued in favour of granting the applicant parole. The authorities with jurisdiction for ruling on the question, instituted under the new procedure, finally refused to grant the applicant's request for parole in 2001, noting in particular that he denied having committed the offences on which his 1966 conviction had been based. In 2004 the applicant, aged 67, began his fortieth year of imprisonment. He complained before the Court about the successive dismissals of his requests for parole and submitted that his continued imprisonment was now arbitrary and discriminatory. He added that, without a possibility of early release, his sentence was equivalent to imprisonment on "death row".

Admissible under Articles 3 and 5(1)(a). The Court will examine the compatibility of the applicant's continued detention with the Convention from the date of the relevant domestic decision given at last instance in 2001. However, given its jurisdiction *ratione temporis*, the Court will take into account the length of the applicant's imprisonment since the Convention entered into force in respect of France in 1974.

INHUMAN TREATMENT

Reimprisonment of convicted persons suffering from Wernicke-Korsakoff's syndrome: *communicated*.

HUN - Turkey (N° 5142/04)
EREN - Turkey (N° 8062/04)
EĞİLMEZ - Turkey (N° 21798/04)
KÜÇÜK - Turkey (N° 21784/04)
[Section III]

The applicants, who were born between 1965 and 1972, were sentenced to various terms of imprisonment. They went on hunger strike to protest, *inter alia*, against the so-called "F-type" prisons. Those hunger strikes lasted for so long that the applicants contracted an illness with potentially irreversible after-effects, known as Wernicke-Korsakoff's syndrome, which primarily affects the muscles and nervous system. Domestic legislation provided that, where execution of a custodial sentence incurred a risk that was life-threatening, a prisoner would be granted a stay of execution. The Institute of Forensic Medicine examined the applicants. Based on the medical reports drawn up by the Institute, the prosecution service ordered a temporary stay of execution of the applicants' sentences. Following subsequent examinations, the Institute for Forensic Medicine changed its opinion, considering that the applicants' problems were not of a nature to justify postponement of execution of the sentences. The prosecution service consequently lifted the stays of execution and issued committal warrants against the applicants. The Istanbul Medical Association publicly criticised the Institute's most recent conclusions, claiming that they contradicted the scientific data, which emphasised the seriousness of the illness. It regretted the superficial nature of the medical examinations carried out by the Institute and this public body's lack of operational independence. In

application of Rule 39 of the Rules of Court, the Turkish Government were invited not to re-imprison two of the applicants for the time being.
Communicated under Article 3 (nos. 5142/04, 21798/04 and 21784/04) and Articles 3 and 5 (no. 8062/04). The objections of non-exhaustion of domestic remedies raised by the respondent Government (in respect of three of the applications) were dismissed. The applications are to be dealt with as a matter of priority.
N.B. 13 other similar cases have been communicated as a matter of priority under Article 2 and 3 and under Article 5(1) and (5). Applications of this type were the subject of a fact-finding mission in September 2004 which included a medical examination of the applicants by a committee of experts appointed by the Court.

EXPULSION
Expulsion to Belarus where applicants risk inhuman treatment for having revealed corruption within State organs: *communicated*.

MATSIUKHINA and MATSIUKHIN - Sweden (Nº 31260/04)
Decision 14.9.2004 [Section IV]

The applicants are a married couple who entered Sweden in May 2002 and applied for asylum. The first applicant, the wife, had worked for a youth organisation which was closely connected to the President, and alleges that she discovered that it was engaging in illegal economic activities, including money laundering. She brought the matter to the attention of the highest police authority in Belarus, but maintains that the investigation was soon discontinued. She claims to have subsequently revealed details of the youth organisation's activities in public meetings and as a result to have been been dismissed from her job, received threats and been assaulted. She also claims that she was requested by the authorities not to leave the country and that her passport was thereafter illegally confiscated. The second applicant, her husband, also encountered problems after his wife's denunciation of the organisation's illegal activities and had to close down his business. Their asylum applications were rejected by the Migration Board, which ordered their expulsion from Sweden. Whilst acknowledging the difficult political situation and authoritarian regime in Belarus, the Board considered that the general conditions in the country did not constitute a ground for asylum. Moreover, the applicant had not kept copies of the documents which proved the alleged illegal activities within the State organs, and the medical certificates submitted did not show she had sustained serious injuries.
Communicated under Article 3.

ARTICLE 5

Article 5(1)(a)

LAWFUL DETENTION
Transfer under the Convention on Transfer of Sentenced Persons resulting in longer period of imprisonment: *communicated*.

CSOSZANSKI - Sweden (Nº 22318/02)
Decision 14.9.2004 [Section IV]

The applicant, a Hungarian citizen, was sentenced to 10 years' imprisonment in Sweden, with an order for his expulsion. He started serving his prison sentence in Sweden and the National

Prisons and Probation Authority determined that the date for his release on parole would be in 2007. Subsequently, the Ministry of Justice requested his transfer to his country of origin, Hungary, under the Council of Europe Convention on Transfer of Sentenced Persons. The applicant did not consent to the transfer and appealed against the decision to the Government. He was nevertheless transferred to a Hungarian prison in October 2003. The Hungarian courts imposed a 10 year prison sentence in a strict-regime prison and determined that his release on parole would only be after serving four-fifths of the sentence. The applicant complains that the date of the release on parole decided in Hungary entailed a *de facto* prolongation of his prison sentence (in comparison to the date which had been determined in Sweden).
Communicated under Article 5 and *ex propriu motu* under Articles 6 and 7.

AFTER CONVICTION
Continued detention of person convicted 40 years ago and eligible for parole 25 years ago: *admissible*.

LEGER - France (N° 19324/02)
Decision 21.9.2004 [Section II]
(see Article 3, above).

ARTICLE 6

Article 6(1) [civil]

CIVIL RIGHTS AND OBLIGATIONS
Private prosecution for defamation : *Article 6 applicable*.

KUŚMIEREK - Poland (Nº 10675/02)
Judgment 21.9.2004 [Section IV]

IRENA PIENIĄŻEK - Poland (Nº 62179/00)
Judgment 28.9.2004 [Section IV]

Each of the applicants brought a private prosecution for defamation. They complained about the length of the respective proceedings.

Law (extract): "The Court reiterates firstly that the 'civil' character of the right to enjoy a good reputation follows from its established case-law. Further, the Court notes that, although Article 6 § 1 does not guarantee a right for the individual to institute a criminal prosecution himself, such a right was conferred on the applicant by the Polish legal system in order to allow him to protect his reputation. The Court considers that the existence of a dispute ('*contestation*') concerning a 'civil right' does not necessarily depend on whether or not monetary damages are claimed; what is important is whether the outcome of the proceedings is decisive for the 'civil right' at issue. This was certainly so in the present case as the outcome of the private prosecution depended on an assessment of the merits of the applicant's complaint that the defendants had attacked and harmed his good reputation. It follows that Article 6 § 1 applies to the present case."

ACCESS TO COURT
Exclusion of court review of award made by a property commission: *violation*.

ZWIĄZEK NAUCZYCIELSTWA POLSKIEGO - Poland (Nº 42049/98)
Judgment 21.9.2004 [Section II]

Facts : In 1964 the applicant association acquired the use of property which had been taken over by the State Treasury from a religious association. The decision stipulated that, on termination of the use, the applicant association would be entitled to recover outlays incurred in connection with any construction work. In 1992 the local Property Commission, established under the 1989 Law on Relations between the State and the Catholic Church returned the property to the religious association, which it ordered to pau a certain amount in respect of reimbursement of outlays. The applicant challenged the amount but the Property Commission held that it did not have competence to examine further claims. It added, however, that this did not hinder the applicant from making further claims in accordance with the general provisions of the law. The applicant brought an action against the State Treasury, claiming reimbursement of the outstanding outlays, and the Regional Court made a further award. Both parties appealed and the Court of Appeal referred to the Supreme Court the question whether the 1989 law excluded the possibility of submitting to a civil court claims arising out of a decision of a property commission to return property. The Supreme Court held that a decision by a property commission precluded a civil action against the State Treasury. As a result, the Court of Appeal quashed the Regional Court's judgment.

Law: Article 6(1) – The Property Commission was aware that the amount to be awarded was disputed and there were no grounds on which it could have been reasonably assumed that its decision settled the dispute in a manner acceptable to the applicant or that there were no outstanding claims. Indeed, it expressly stated that the applicant's right to make further claims under the general law was not hindered, so that the applicant was justified in assuming that it could bring a claim against the State Treasury in the civil courts. The Regional Court confirmed this by making an award. The dispute was therefore genuine and serious. The Supreme Court's finding precluded the applicant from bringing such a claim and it had not been shown that a claim could have been brought against the religious association. Consequently, the applicant was left without any procedural means of vindicating its rights. The Court was not persuaded that the aim of protecting the State against financial claims arising out of past expropriations could justify such a significant limitation. The applicant had incurred considerable expenditure over a number of years and to restrict its access to a court in respect of its claims had to be considered disproportionate. It had been misled as to the possibility of pursuing its claims before a court and it could reasonably be assumed that it would otherwise have argued those claims more vigorously before the Property Commission.
Conclusion: violation (unanimously).
The Court concluded unanimously that it was unnecessary to examine the applicant's complaint under Article 13.

Article 41 – The Court awarded the applicant association 10,000 euros in respect of damage and also made an award in respect of costs and expenses.

REASONABLE TIME
Calculation of length of proceedings subject to supervisory review on several occasions.

MARKIN - Russia (Nº 59502/00)
Decision 16.9.2004 [Section I]

The applicant was charged with having cleared an imported car through customs using forged documents; as a result, the car was confiscated. In May 1997, the applicant brought a court

action against this measure which was dismissed by the District Court. Following supervisory review proceedings, a judgment favourable to the applicant was delivered in March 1999. However, in July 1999 this judgment was quashed. The case ended with a decision upholding the quashing in June 2000. However, in a new round of supervisory review proceedings instituted in 2002 the judgment which had granted the applicant's complaint was re-instated. It nevertheless appears that the applicant's car has not been returned to him.

Inadmissible under Article 6(1) (reasonable time): The periods to be considered were only those when the case was actually pending before the courts, and not the whole span between the beginning and the end of the proceedings, as this did not reflect the true length of the determination of the applicant's civil rights by the domestic courts. Thus, the period to be considered was 1 year, 1 month and 6 days, during which the merits of the case had been examined three times and there had been no substantial periods of inactivity: manifestly ill-founded.
Admissible under Article 1 of Protocol No. 1.

Article 6(1) [criminal]

FAIR TRIAL
Alleged incitement by the police to commit an offence: *inadmissible*.

EUROFINACOM - France (N° 58753/00)
Decision 7.9.2004 [Section II]

The applicant company was a company which operated a publicly-accessible message service on a telecommunications network known as Minitel. Suspecting that this service was used by prostitutes to identify and establish contact with potential clients, the prosecution service ordered a preliminary investigation. As part of the investigation, police officers linked up to the message service run by the applicant company. They found offers from prostitutes on the message boards. Acting under pseudonyms, the police officers replied to certain messages, requesting more specific information about the charges for the services being offered. In reply, they received details of the rates charged by each of the prostitutes, again via the server. The suspicions were thus confirmed. Since aiding, abetting and profiting from another's prostitution constituted the offence of benefiting from the earnings of prostitution, Eurofinacom's criminal liability as a legal entity was incurred. Its manager, who was also the company's legal representative, was prosecuted in person on that charge. The judicial authorities assigned a new lawyer to represent the applicant company (its titular representative being himself prosecuted), but the company's shareholders appointed another person. The court held that the judicial authorities' decision on which lawyer to appoint took precedence and confirmed the designee in post; the applicant company was thus represented at first instance by a lawyer who was not of its choosing. The court found the applicant company guilty, basing its decision essentially on statements from various prostitutes, who admitted making frequent use of the Minitel server operated by the applicant company to canvass clients and establish contact with them. The court then referred to the reports submitted by the police offers on the date they had prompted the prostitutes' offers. The court held that, for a telematics service, acting as an intermediary between two persons, one of whom engaged in prostitution and was remunerated by the other, constituted benefiting from the earnings of prostitution. As operator of the Minitel server which enabled communication for the purpose of prostitution, the applicant company was found liable for the offence as a legal entity. It was ordered to pay fines and damages. The applicant company appealed. The representative appointed by the applicant company's shareholders was authorised to represent it before the

court of appeal. This representative chose a new lawyer to defend the applicant company. The criminal conviction was upheld. An appeal on points of law was unsuccessful.

Inadmissible under Article 6(3)(c) – The right of every person to defend himself through legal assistance of his own choosing was not absolute: "relevant and sufficient grounds" related to the interests of justice could authorise the appointment of counsel contrary to the defendant's wishes. The prime consideration was that the defendant enjoyed a "practical and effective" defence. Although the applicant company had been unable to be represented by a lawyer of its choice at first instance, it did not claim that the counsel who was appointed had not duly performed his functions and there was nothing to suggest that designation of that counsel had adversely affected its defence. The applicant company was subsequently represented by the lawyer of its choice before the court of appeal – a sovereign court which examined the case as a whole, i.e. the facts as well as the law – and before the Court of Cassation. In short, in view of the proceedings as a whole, there had been no breach of Article 6.

Inadmissible under Article 6(1) (police officers acting under pseudonyms who, through a telematics server, had contacted prostitutes and elicited an offer of prostitution with a view to demonstrating the existence of the offence of benefiting from the earnings of prostitution) – It was true that the police investigators had to some extent contributed to the commission of the offences in question in that they had connected to the Minitel server and in that those actions had then, at least in part, been used as the basis for the proceedings brought against the applicant company for benefiting from the earnings of prostitution. However, it remained the case that, prior to those actions, the police already had information permitting them to suppose that prostitutes were using the applicant company's server to establish contact with potential clients. In addition, the police officers were acting in the context of a preliminary investigation ordered by the prosecution service and under the latter's supervision. Finally, and this was an essential element, the applicant company's conviction was based mainly on statements from prostitutes who admitted having used the server to meet their clients, and this had carried more weight than the offers of prostitution elicted by the police officers during their investigation. In short, while it was true that the police officers had elicited an offer of prostitution, they had not, strictly speaking, incited to commission of the offence, since the action of benefiting from the earnings of prostitution with which the applicant company was charged was long-standing in nature and therefore already existed, and was imputable not to the prostitutes who had offered their services to the police officers in the course of the investigation but rather to the applicant company: manifestly ill-founded.

Inadmissible under Article 7 – The applicant company complained that, at the time when the alleged offence was committed, domestic law did not expressly make it an offence to use a telecommunications network to commit the offence of living on the earnings of prostitution. This provision having been inserted in the Criminal Code at a later date, the applicant company considered that the court had applied this text retroactively to its case. Article 7 did not outlaw gradual clarification of the rules of criminal liability through judicial interpretation from case to case, "provided that the resultant development was consistent with the essence of the offence and could reasonably be foreseen". Firstly, it was apparent from the wording of the Criminal Code in force at the material time that Parliament had wished to prohibit all forms of intervention between persons engaged in prostitution and their clients. The fact that Parliament had subsequently provided for aggravation of the penalty when the offence was committed "through the use of a telecommunications network" did not mean that no prosecution was possible with regard to a previous situation if the alleged intermediary had used such a technique. Secondly, it was to have been expected that the applicant company, professionally involved in the telecommunications sector, would have made particular efforts to assess the risks entailed by its activity, especially since, in the context of the contract that it had concluded with its telephone operator, it had undertaken to carry out ongoing supervision of the information made available to the public in order to remove, prior to dissemination, any messages likely to be contrary to the laws and regulations in force; the provisions of the

Criminal Code which prohibited the offence of benefiting from the earnings of prostitution were cited *in extenso* in the contract signed by the applicant company under the heading "benefiting from the earnings of prostitution". Accordingly, the applicant company, the manager of which was aware that persons engaging in prostitution used the server to make contact with potential clients, ought to have known at the material time that it was running the risk of being prosecuted for benefiting from the earnings of prostitution: manifestly ill-founded.

Article 6(3)(c)

DEFENCE THROUGH LEGAL ASSISTANCE
Alleged absence of defence lawyer during part of trial and failure of court to appoint replacement : *admissible*.

BALLIU - Albania (N° 74727/01)
Decision 27.5.2004 [Section III]

The applicant, who was charged with murder and participation in an armed gang, was tried on these counts in the District Court and sentenced to life imprisonment. He maintained that his lawyer had not assisted him in several public hearings before the court, including some when the prosecutor had summoned and questioned witnesses against him, as well as when the parties had made their final submissions. The applicant claims to have requested an officially appointed court lawyer, without having received a reply. The Government disputed this version of the facts and maintained that the case had been adjourned on several occasions on account of the absence of the applicant's lawyer without any reasons. The applicant had then been offered an officially appointed lawyer but had refused this possibility. The proceedings had therefore continued in the presence of the applicant but without any defence lawyer. The applicant's appeals on the grounds that he had been denied a fair trial in breach of his right to be assisted by a lawyer and to summon the defence witnesses were rejected by the Court of Appeal and the Supreme Court. He then lodged a complaint to the Constitutional Court, which was declared inadmissible as being "outside its jurisdiction".

Admissible under Article 6: It fell within the Constitutional Court's competence to examine complaints concerning, *inter alia*, an alleged breach of an individual's right to a fair hearing. Thus, the applicant's constitutional complaint could be considered as a remedy to be exhausted, in which case the final decision had not been the one taken by the Supreme Court, as argued by the Government, and the application was within the six month time limit.

LEGAL ASSISTANCE OF HIS OWN CHOOSING
Accused represented at first instance by a lawyer he did not choose : *inadmissible*.

EUROFINACOM - France (N° 58753/00)
Decision 7.9.2004 [Section II]
(see Article 6(1), above).

ARTICLE 7

NULLUMU CRIMEN SINE LEGE
Foreseeability of rules of criminal liability : *inadmissible*.

EUROFINACOM - France (N° 58753/00)
Decision 7.9.2004 [Section II]
(see Article 6(1), above).

NULLUM CRIMEN SINE LEGE
Foreseeability of rules on warnings on cigarette packets : *inadmissible*.

DELBOS and others - France (N° 60819/00)
Decision 16.9.2004 [Section III]

The applicants were production managers or the chief executive of companies belonging to the Philip Morris group. Those companies manufactured several brands of cigarettes and distributed them in France. At the material time, the packets of cigarettes that they sold in France carried the message "Smoking seriously damages health", in accordance with the legislation and regulations adopted in application of Directive 89/622/EEC of the Council of the European Communities on the labelling of tobacco products. However, the message was preceded by the phrase: "In accordance with Law No. 91-32". That law transposed the above-mentioned European Directive into French law and regulated, in the context of the Public Health Code, the arrangements for the inclusion of health warnings on cigarette packets sold in France. Those regulations did not provide for the possibility of mentioning Law No. 91-32 on cigarette packets. The European Directive left it to each State's discretion whether or not to add a mention of this type to the cigarette packets sold in their territory. The French courts considered that by preceding the compulsory health warning "Smoking seriously damages health" with the mention "In accordance with Law No. 91-32", the applicants had amended the text of the compulsory health warning. Any modification to the text of the compulsory legal health warning represented a breach of the Public Health Code. The applicants argued that the provisions of the Public Health were limited to prohibiting omission of the compulsory inscription "Smoking seriously damages health" and that, in punishing the addition of a message, the national courts had infringed the principles of strict interpretation of the criminal law and legal certainty. The applicants were found guilty of a breach of the legislation on the labelling of cigarette packets and ordered to pay fines.

Inadmissible under Article 7 – The Court held that it was apparent from the wording of the relevant domestic law that the legal health message "Smoking seriously damages health" had to appear on all packets on cigarettes in its entirety and without change. Both the omission of this message and changes to its formulation clearly constituted an offence. However, it remained to be determined whether the applicants could have foreseen that the mere addition of the message "In accordance with Law No. 91-32" ought to be equated with a change to the legal message. The *Comité National Contre le Tabagisme* (National Committee against Nicotine Addition) had alerted the applicants to the issue and, the latter having refused to amend the contested packaging, injunction proceedings had been brought against them. Admittedly, the question raised in the instant case had never been decided by the highest national court with jurisdiction in the matter. However, Article 7 did not outlaw the gradual clarification of the rules of criminal liability through judicial interpretation from case to case,

"provided that the resultant development was consistent with the essence of the offence and could reasonably be foreseen".
In the instant case, the Public Health Code clearly indicated the text of the compulsory health message, and France had not exercised the option offered by the European Directive authorising a reference to the law. The French court could reasonably have concluded that the addition of a reference to the law on the cigarette packet was equivalent to an alteration to the compulsory legal health message and thus constituted an offence. Accordingly, the Court considered that the legal interpretation adopted was foreseeable for the purposes of the Convention, particularly on the part of professionals who were in the habit of showing considerable prudence in carrying out their tasks and were thus capable of applying great care in assessing the risks involved: manifestly ill-founded.

ARTICLE 8

PRIVATE LIFE
Refusal of authorities to transfer a funeral urn from one burial place to another: *admissible*.

ELLI POLUHAS DÖDSBO - Sweden (Nº 61564/00)
Decision 31.8.2004 [Section III]

The applicant's husband, who died after having lived with his wife and children in the same city for 25 years, was buried in a family grave in the city cemetery. The applicant subsequently left that city to move closer to her children, and later requested that her husband's urn be moved to her family burial plot in Stockholm, where she intended to be buried herself after her own death. The authorities and the courts refused the request. On the basis of the Funeral Act, the County Administrative Court found against the applicant on grounds that her husband did not have a closer connection to Stockholm than he had to the city where he had been buried, and because there were no special reasons which could justify the disturbance of his peace. Following her death, the applicant was buried at the family burial plot in Stockholm.
Admissible under Article 8.

FAMILY LIFE
Withdrawal of parental rights as automatic consequence of imposition of prison sentence : *violation*.

SABOU and PIRCALAB - Romania (Nº 46572/99)
Judgment 28.9.2004 [Section II]

The first applicant, a journalist, was convicted of criminal defamation and sentenced to ten months' imprisonment and an ancillary penalty provided for by Articles 71 and 64, taken together, of the Criminal Code, namely suspension, *inter alia*, of his parental rights for the duration of his imprisonment.

Extract (Article 8) – "The Court notes at the outset that the ban on exercising parental rights imposed on the first applicant amounted to interference with his right to respect for his family life... The question remains whether the interference pursued a legitimate aim. In that regard, the Court notes that, in the Government's opinion, its purpose was to preserve the safety, morals and education of minors. The Court points out that, in cases of this type, consideration of what lies in the best interest of the child is of crucial importance, that the child's interest must come before all other considerations and that only particularly unworthy behaviour can

justify a person being deprived of his or her parental rights in the child's best interests. The Court notes that the offence for which the applicant was convicted was completely unrelated to questions of parental responsibility and that at no time had any allegation been made concerning a lack of care on his part or ill-treatment of his children. The Court notes that, under Romanian law, the ban on exercising parental rights is applied automatically and without flexibility as an ancillary penalty on any person who serves a prison sentence, without the supervision of the courts and without taking into consideration the type of offence and the child's interests. Accordingly, it represents a moral reprimand aimed at punishing the convicted person rather than a child-protection measure. Having regard to those circumstances, the Court considers that it has not been shown that the withdrawal of the first applicant's parental rights in absolute terms and in application of the law corresponded to any overriding requirement in the children's best interests and, consequently, that it pursued a legitimate aim, namely the protection of the health, morals or education of minors. Consequently, there has been a violation of Article 8 of the Convention as regards the first applicant."

ARTICLE 11

FREEDOM OF ASSOCIATION
Refusal to recognise trade union formed by local authority employees on account of their status as civil servants: *admissible*.

K.D. and V.B. - Turkey (Nº 34503/97)
Decision 23.9.2004 [Section III]

The applicants are a member and chairperson, respectively, of the trade union *Tüm Bel-Sen,* set up in 1990 by municipal employees. The trade union had concluded a collective agreement on working conditions with a municipality. As the municipality had not met its obligations under the agreement, the first applicant, acting as the trade union's representative, brought proceedings in 1993. The decision of the first-instance court having been favourable to the trade union, the municipality appealed to the Court of Cassation. The latter overturned the judgment, and the case was sent back to the first-instance court, which again ruled in favour of the trade union. The Court of Cassation quashed the judgment. It held that the trade union to which the applicants belonged did not have legal personality and that it was accordingly not empowered to conclude a collective agreement, since the law did not expressly authorise State employees to establish trade unions. These events occurred in the period 1972-1997, during which time the legislation was silent on whether state employees could establish trade unions. Before the date of the impugned acts, the law provided that state employees were authorised to set up trade unions. A text had repealed this provision in 1972. Authorisation was renewed in 1997.
Admissible under Article 14, taken together with Article 11.

FREEDOM OF ASSOCIATION
Prohibition on forming an association which defamed a public institution: *inadmissible*.

W.P. and others – Poland (Nº 42264/98)
Decision 2.9.2004 [Section III]
(see Article 17, below).

ARTICLE 13

EFFECTIVE REMEDY
Effective remedy in respect of death in detention.

SLIMANI - France (N° 57671/00)
Judgment 27.7.2004 [Section II]
(see Article 2, above).

ARTICLE 14

DISCRIMINATION (Article 8)
Imposition of employment restrictions on former employees of the KGB: *violation*.

SIDABRAS and DŽIAUTAS - Lithuania (Nº 55480/00 and 59330/00)
Judgment 27.7.2004 [Section II]

Facts: The applicants had occupied posts with the KGB during the Soviet period. After Lithuania's independence in 1990, the first applicant found employment as a tax inspector and the second as a prosecutor. In accordance with an Act laying down employment restrictions for former employees of the KGB, they were dismissed from their jobs in 1999. They both instituted administrative actions against their dismissals. In the case of the first applicant, the courts held that he could not benefit from the exceptions to the employment restrictions. As regards the second applicant, the first instance court found that the exceptions applied to him and that he was to be reinstated in his job, but the appellate court subsequently quashed this judgment. Under the Act, former KGB employees are banned for a period of 10 years from the entry into force of the law from working in the public sector and in certain private sector jobs. The applicants complained that the ban imposed on them, which prevented them from seeking employment in various private sector fields until 2009, was discriminatory.

Law: Article 14 in conjunction with Article 8 – *Applicability*: The applicants had been treated differently from other persons in Lithuania who had not worked for the KGB. As a result of the application of the Act, their possibilities to pursue various professional activities and to develop relationships with the outside world had been adversely affected. Given the wide-ranging scope of the employment restrictions, which had consequential effects on the applicants' "private life", Article 14 was applicable in conjunction with Article 8.

Compliance: By adopting the Act Lithuania wished to avoid a repetition of its past and the Court therefore accepted that the employment restrictions pursued the legitimate aims of the protection of national security, public order, the economic well-being of the country and the rights and freedoms of others. However, as regards the proportionality of the contentious measure, even assuming that the applicants had lacked loyalty to the State (as alleged by the Government), the Court was not convinced that an employee's loyalty to the State was an inherent condition for employment with a private company, as it was for working with a State authority. Thus, the State-imposed restrictions for finding employment with a private company had not been justified from the Convention point of view. Moreover, the Act contained no definition of the specific jobs, functions or tasks which the applicants were barred from holding. The legislative scheme was thus considered to lack the necessary safeguards for avoiding discrimination and for guaranteeing adequate judicial control of the

restrictions. The belated entry into force of the Act, which had resulted in the applicants' being subjected to the professional restrictions 13 and 9 years after they had stopped working with the KGB, was also a factor to be taken into account in assessing the overall proportionality of the measure. In the circumstances, the ban preventing the applicant's from seeking employment in various private sector spheres had constituted a disproportionate measure.
Conclusion: violation (5 votes to 2).

Article 10 – The Court did not find that the applicant's dismissal from their jobs or the employment restrictions imposed on them had been the result of the views they had held during or after their employment with the KGB, but rather concerned the nature of their former employment. Thus, their freedom of expression had not been encroached upon.
Conclusion: no violation (unanimously).

Article 41 – The Court awarded each of the applicants 7,000 euros in respect of damages. It also made an award for costs and expenses.

ARTICLE 17

DESTRUCTION OF RIGHTS AND FREEDOMS
Prohibition on forming associations on account of objectionable objectives: *inadmissible*.

W.P. and others - Poland (Nº 42264/98)
Decision 2.9.2004 [Section III]

The applicants wished to form various associations and submitted the proposed memorandums for such associations to the authorities. One of the associations was of "Persecuted Civil Servants of the Ministry of Internal Affairs", which had as main objective to identify cases of repression within that Ministry. Another was of "Persecuted Police Officers and Teachers", and the third one was of "Polish Victims of Bolshevism and Zionism", which aimed, *inter alia*, at abolishing the privileges of ethnic Jews and stopping the persecution of ethnic Poles. The authorities applied to the courts for a decision to prohibit the formation of such associations. In all three cases the courts prohibited their formation. With regard to the first association, the prohibition was because its objectives had not been fixed in compliance with the relevant law as well as because its name suggested the existence of persecution in the Ministry and thus defamed a public institution. As regards the third one, the courts found that all the objectives in its memorandum, except one, were either unlawful or unrealistic.

Inadmissible under Article 11: (i) The complaint concerning the prohibition on forming the "Association of Polish Victims of Bolshevism and Zionism" was rejected under Article 17, the Court agreeing with the Government that some of the statements in the memorandum of association concerning the persecution of Poles by the Jewish minority and the inequality between them could be seen as reviving anti-Semitism. Moreover, the applicants' racist attitudes had been shown in the anti-Semitic tenor of some of their submissions before the Court. There was sufficient evidence showing that the applicants had sought to use Article 11 to engage in activities which were contrary to the text and spirit of the Convention. Thus, in accordance with the provisions of Article 17, they could not rely on Article 11 to challenge the prohibition of the formation of this association.
(ii) As regards the prohibition on forming the "Association of Persecuted Functionaries of the Ministry of Internal Affairs", the interference with the applicants' freedom of association was "prescribed by law" and pursued the legitimate aim of protecting "national security" and the

"rights and freedoms of others". Taking into account the margin of appreciation which States had in this field and the grounds on which the domestic courts had based their decision, the prohibition could be considered as having been "necessary in a democratic society": manifestly ill-founded.

ARTICLE 35

Article 35(1)

EFFECTIVE DOMESTIC REMEDY (Poland)
Effectiveness of new remedy in respect of length of civil proceedings: *communicated*.

RATAJCZYK - Poland (Nº 11215/02)
Decision 21.9.2004 [Section IV]

In July 1993 the applicant brought a civil action concerning the early termination of a lease. He obtained a judgment awarding him damages in April 1997. However, the judgment was subsequently quashed and the courts eventually decided to discontinue the proceedings in December 2000. The applicant's appeal against this decision was dismissed by the Court of Appeal in April 2001.

Communicated under Article 6 with a question concerning a new remedy available in Poland in respect of the length of proceedings.
[N.B. Two other applications concerning civil proceedings, *Michalak* (Nº 24549/03) and *Krasuski* (Nº 61444/00), as well as one concerning criminal proceedings, *Charazynski* (Nº 15212/03), were also communicated with regard to this new remedy.]

SIX MONTH PERIOD
Notification of final domestic decision to lawyer with whom applicant had lost contact: *inadmissible*.

ÇELIK - Turkey (Nº 52991/99)
Decision 23.9.2004 [Section III]

The applicant was convicted in 1985 by a Martial Law Court for PKK membership. In 1990, the judgment was quashed and the applicant was released. Following the abolition of martial law courts in Turkey, the applicant's case-file was examined in 1998 by an Assize Court, which acquitted him of the charges. In August 1998 the judgment was served on the lawyer whom the applicant had originally appointed at the time of the Martial Law Court proceedings. The judgment became final on 10 September 1998. In the meantime, the applicant had appointed a new lawyer, who in March 1999 requested that the final judgment of the Assize Court be served on him. The domestic courts subsequently awarded the applicant compensation for his unjustified detention on remand. The applicant complains that the criminal proceedings against him were not concluded within a reasonable time.

Inadmissible under Article 6(1) (reasonable time): The six month period began to run on 10 September 1998, when the judgment of the Assize Court had become final, and not on 19 March 1999, when the applicant alleges he became aware of the judgment. The decision had been served on his originally appointed lawyer, and if the applicant had not been in contact with him that was due to his own negligence. Moreover, the Court was not bound by

the fact that the domestic courts had taken 19 March 1999 as the starting date for the statutory time-limit for the compensation procedure: out of time.

SIX MONTH PERIOD
Quashing of a final judgment in supervisory review proceedings: *inadmissible*.

SITOKHOVA - Russia (Nº 55609/00)
Decision 2.9.2004 [Section I]

The applicant, who had been involved in a contract for the acquisition of a house, brought proceedings related to this contract and the District Court granted her claim in a judgment of 13 July 1998 (which became final shortly afterwards). However, the judgment was quashed in supervisory review proceedings by the Presidium of the Supreme Court on 29 January 1999. In a fresh examination of the case the applicant's claim was dismissed. A new application for supervisory review was rejected by the Supreme Court.

Inadmissible under Article 35: Russian law did not provide at the material time for any ordinary appeal against a ruling adopted by way of supervisory review. Such a ruling could subsequently be quashed and the original judgment reinstated by way of new supervisory review proceedings. However, such proceedings could not be set in motion by a party and, if pursued, would not be conducive to an improvement of legal certainty. In the absence of an effective remedy, it was the very act of quashing the first instance judgment on 29 January 1999 that had triggered the start of the six month time limit, and as the application had been lodged with the Court on 18 August 1999 it was out of time.

ARTICLE 1 OF PROTOCOL No. 1

POSSESSIONS
Question whether claim sufficiently established to constitute an asset : *no violation*.

KOPECKÝ - Slovakia (Nº 44912/98)
Judgment 28.9.2004 [Grand Chamber]

Facts: In 1959 the applicant's father was convicted of keeping gold and silver coins contrary to the regulations in force. He was sentenced to one year's imprisonment and the coins were confiscated. The conviction and all consequential decisions were quashed in 1992 in the context of judicial rehabilitation and the applicant subsequently sought restitution of the coins. The District Court established that the coins had been handed over to the Regional Administration of the Ministry of the Interior in 1958 and ordered the Ministry of the Interior to restore them to the applicant. However, on the Ministry's appeal, the Regional Court dismissed the applicant's claim, on the ground that the applicant had failed to satisfy the statutory requirement of showing where the property was deposited when the Extra-Judicial Rehabilitations Act 1991 entered into force. The Supreme Court dismissed the applicant's appeal on points of law on the same ground.

Law: Article 1 of Protocol No. 1 – This provision does not impose any general obligation on States to restore property transferred to them prior to their ratification of the Convention, nor does it impose any restrictions on their freedom to determine the scope of restitution and the conditions under which it takes place. In the present case, the fact that restitution of property under the Extra-Judicial Rehabilitations Act 1991 was subject to conditions did not, therefore, infringe the applicant's rights. That did not mean that the implementation of the relevant

provisions in a particular case could not give rise to an issue under Article 1 of Protocol No. 1 but before considering that it was necessary to determine whether the applicant's claim amounted to a "possession".
The proprietary interest invoked by the applicant was in the nature of a claim and could not be characterised as an "existing possession". It remained to be determined whether the claim constituted an "asset", that is whether it was sufficiently established, and in that context it might be of relevance whether a "legitimate expectation" arose for the applicant. In previous cases examined by the Court, the notion of "legitimate expectation" related either to a reasonably justified reliance on a legal act which had a sound legal basis or to the way in which a claim qualifying as an "asset" would be treated under domestic law. The Court had furthermore distinguished in other cases between a mere hope of restitution of property and a "legitimate expectation", which had to be more concrete and be based on a legal provision or legal act. In these cases, what was in fact at issue was not so much a "legitimate expectation" as the existence of a claim amounting to an "asset". Consequently, the existence of a "genuine dispute" or an "arguable claim" was not a criterion for determining whether there was a "legitimate expectation". On the contrary, where a proprietary interest is in the nature of a claim it may be regarded as an "asset" only where it has a sufficient basis in national law. In the present case, no concrete proprietary interest of the applicant had suffered as a result of his reliance on a specific legal act and therefore he did not have a "legitimate expectation". The remaining question was whether there was nevertheless a sufficient legal basis to warrant the claim being regarded as an "asset". In that respect, the only point in dispute was whether the applicant could be said to have satisfied the requirement of showing where the property was. The domestic courts had found insufficient proof that the Ministry of the Interior still possessed the coins in question and there was no appearance of arbitrariness in the way in which they determined the claim. There was therefore no basis on which the Court could reach a different conclusion. The applicant's claim was a conditional one from the outset and the courts ultimately found that he had not complied with the statutory requirements. The Court was thus not satisfied that it could be said that the claim was sufficiently established to qualify as an "asset". Although the first instance judgment was in his favour, it was subsequently overturned and thus did not invest the applicant with an enforceable right. The applicant did not, therefore, have "possessions" within the meaning of Article 1 of Protocol No. 1, which consequently did not apply.
Conclusion: no violation (13 votes to 4)

ARTICLE 3 OF PROTOCOL No. 1

LEGISLATURE
Denial of the possibility to stand as candidate in presidential elections: *inadmissible*.

BOŠKOSKI - "the Former Yugoslav Republic of Macedonia" (Nº 11676/04)
Decision 2.9.2004 [Section III]

The applicant applied to be listed as an independent candidate for the presidential elections of 2004. The State Electoral Commission (SEC) rejected his application on grounds that he had not continuously resided in the country for at least ten of the fifteen years prior to the elections, as required under the Constitution. The SEC found that whilst some of the periods during which he had fixed his residence in Croatia could be considered as "domestic" under Article 132 of the Constitution, the period between 1991 and 1999 was to be computed as "foreign". Thus, the applicant had only resided in the country for seven years and nine months out of the fifteen required. The applicant challenged the rejection of his candidacy before the Supreme Court, arguing that the said Article 132 had been incorrectly and restrictively applied in the calculation of his length of residence in "the Former Yugoslav Republic of

Macedonia". The Supreme Court dismissed the claim, finding that the SEC had correctly assessed the overall length of domestic residence. The Constitutional Court likewise rejected the applicant's petition as the right to stand for elections was not among the individual rights which could be challenged before this court.

Inadmissible under Article 3 of Protocol No. 1: The application of this provision, which guaranteed the "choice of the legislature", to presidential elections was not excluded as such. However, in "the Former Yugoslav Republic of Macedonia" the office of President of the Republic did not have power to initiate or adopt legislation, nor was it furnished with power of censure over the main institutions responsible for passing legislation. As the President merely enjoyed limited discretion to provisionally suspend the promulgation of statutes, such an office could not be construed as the "legislature" within the meaning of this provision: incompatible *ratione materiae*.

ARTICLE 2 OF PROTOCOL No. 4

Article 2(2) of Protocol No. 4

FREEDOM TO LEAVE A COUNTRY
Refusal to issue a passport to a person who had access to classified information in a previous employment: *admissible*.

BARTIK - Russia (Nº 55565/00)
Decision 16.9.2004 [Section I]

The applicant worked for a State corporation which developed space devices. During his employment at the corporation he signed three successive undertakings concerning non-disclosure of classified information. While the first two agreements curtailed the applicant's ability to travel abroad, no similar restriction was contained in the last undertaking which he signed in 1994. The applicant terminated his employment at the corporation in 1996 and the following year applied for an international passport. The authorities refused the request, arguing that his right to obtain an international passport was restricted under relevant domestic law until 2001. The applicant's appeals, up to the Supreme Court, were unsuccessful. The courts held that the restriction on leaving the Russian Federation was lawful and justified. In 2001, upon expiry of the restriction, the applicant was issued with a passport and he took up residence in the United States of America.
Admissible under Article 2(2) of Protocol No. 4.

ARTICLE 4 OF PROTOCOL No. 4

PROHIBITION OF COLLECTIVE EXPULSION OF ALIENS
Foreigners lawfully within a State forcibly removed by the police with the assistance of special forces: *communicated*.

DRITSAS and others - Italy (N° 2344/02)
[Section I]

The applicants, of Greek nationality, had travelled by ship to Italy with about a thousand compatriots to attend a G8 "counter-summit". The Italian customs police checked the

travellers' passports and authorised them to enter Italian territory. The applicants then left in coaches for the place where the summit was being held. Three of the eighteen hired coaches were forced to turn back by the police. The police officers allegedly ordered the passengers to re-board the ship. When the passengers refused to comply, the police, assisted by special forces, surrounded them for four hours, then obliged them to re-embark by striking them and dragging them along the ground. It was alleged that many people were wounded and sustained pecuniary damage.
Communicated under Articles 3, 5(1), 10, 11, 13, 14, 16, Article 1 of Protocol No. 1 and Article 4 of Protocol No. 4.

Other judgments delivered in August/September

Articles 3 and 6(1)

Krastanov - Bulgaria (Nº 50222/99)
Judgment 30.9.2004 [Section I]

ill-treatment by police and lack of effective investigation, and length of civil proceedings – violation.

Article 5(3) and (4), and Article 6(1)

Kuibishev - Bulgaria (Nº 39271/98)
Judgment 30.9.2004 [Section I]

role of investigator and prosecutor in ordering detention, length of detention on remand, scope of court review of lawfulness of detention and non-communication of prosecutor's submissions – violation; length of criminal proceedings – no violation.

Nikolova - Bulgaria (no. 2) (Nº 40896/98)
Judgment 30.9.2004 [Section I]

length of detention on remand, including house arrest, absence of possibility of court review of house arrest, and length of criminal proceedings – violation.

Zaprianov - Bulgaria (Nº 41171/98)
Judgment 30.9.2004 [Section I]

role of investigator and prosecutor in ordering detention, length of detention on remand and scope of court review of lawfulness of detention – violation; length of criminal proceedings – no violation.

Articles 5(4) and 6(1)

Kotsaridis - Greece (Nº 71498/01)
Judgment 23.9.2004 [Section I]

refusal to allow detainee to appear at hearing concerning prolongation of detention on remand; length of criminal proceedings – violation.

Article 6(1)

Pramov - Bulgaria (Nº 42986/98)
Judgment 30.9.2004 [Section I]

exclusion of court review of dismissal of employee of State railway company – violation.

Loiseau - France (Nº 46809/99)
Judgment 28.9.2004 [Section II]

alleged failure of authorities to comply with court judgment on account of inability to locate file – no violation.

Santambrogio - Italy (Nº 61945/00)
Judgment 21.9.2004 [Section IV]

refusal of legal aid in context of divorce proceedings – no violation.

Nagy and others - Hungary (Nº 61530/00)
Judgment 14.9.2004 [Section II]

Paterová - Czech Republic (Nº 76250/01)
Judgment 14.9.2004 [Section II]

Yemanakova - Russia (Nº 60408/00)
Judgment 23.9.2004 [Section I]

Racheva - Bulgaria (Nº 47877/99)
Judgment 23.9.2004 [Section I]

Kusiak - Poland (Nº 50424/99)
Fojcik - Poland (Nº 57670/00)
Korbel - Poland (Nº 57672/00)
Janas - Poland (Nº 61454/00)
Romanow - Poland (Nº 45299/99)
Judgments 21.9.2004 [Section IV]

Renovit Építőipari Kft - Hungary (Nº 65058/01)
Mátyás - Hungary (Nº 66020/01)
Kellner - Hungary (Nº 73413/01)
Judgment 28.9.2004 [Section II]

Koblański - Poland (Nº 59445/00)
Król - Poland (Nº 65017/01)
Zys-Kowalski and others - Poland (Nº 70213/01)
Jastrzębska - Poland (Nº 72048/01)

Iżykowska - Poland (Nº 7530/02)
Durasik - Poland (Nº 6735/03)
Judgments 28.9.2004 [Section IV]

length of civil proceedings – violation.

Frödinge Grus & Åkeri AB - Sweden (Nº 44830/98)
Judgment 14.9.2004 [Section IV]

Ostrowski - Poland (Nº 63389/00)
Judgment 28.9.2004 [Section IV]

length of civil proceedings – friendly settlement.

Hélène Maignant - France (Nº 54618/00)
Judgment 21.9.2004 [Section II]

length of five sets of administrative proceedings – violation.

Agathos and others - Greece (Nº 19841/02)
Judgment 23.9.2004 [Section I]

Watt - France (Nº 71377/01)
Judgment 28.9.2004 [Section II]

length of administrative proceedings – violation.

Dimitrov - Bulgaria (Nº 47829/99)
Judgment 23.9.2004 [Section I]

length of administrative proceedings relating to restitution of property – violation.

Hellborg - Sweden (Nº 45275/99)
Judgment 14.9.2004 [Section IV]

length of administrative proceedings – friendly settlement.

Tamás Kovács - Hungary (Nº 67660/01)
Judgment 28.9.2004 [Section II]

length of proceedings relating to employment – violation.

Maugee - France (Nº 65902/01)
Judgment 14.9.2004 [Section II]

length of proceedings relating to a military pension – violation.

Marszał - Poland (Nº 63391/00)
Judgment 14.9.2004 [Section IV]

length of civil and criminal proceedings – violation.

Marschner - France (Nº 51360/99)
Judgment 28.9.2004 [Section II]

length of disciplinary proceedings – no violation; length of administrative proceedings and of three sets of criminal proceedings – violation.

Storck - France (Nº 73804/00)
Judgment 14.9.2004 [Section II]

length of proceedings concerning tax penalties – violation.

Subiali - France (Nº 65372/01)
Judgment 14.9.2004 [Section II]

Osmanov and Yuseinov - Bulgaria (Nº 54178/00 and Nº 59901/00)
Judgment 23.9.2004 [Section I]

length of criminal proceedings – violation.

Murat Kiliç - Turkey (Nº 40498/98)
Judgment 30.9.2004 [Section I]

independence and impartiality of State Security Court – violation.

Articles 6(1) and 10

Feridun Yazar and others - Turkey (Nº 42713/98)
Judgment 23.9.2004 [Section III]

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

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

Ţîmbal - Moldova (Nº 22970/02)
Judgment 14.9. 2004 [Section IV]

prolonged non-enforcement of court decision ordering authorities to pay sums – violation.

Mancheva - Bulgaria (Nº 39609/98)
Judgment 30.9.2004 [Section I]

failure of authorities to comply with binding court judgment ordering payment of sums – violation.

Article 1 of Protocol No. 1

Schirmer - Poland (Nº 68880/01)
Judgment 21.9.2004 [Section IV]

refusal to order eviction of tenant, notwithstanding landlord's offer of alternative premises – violation.

Revision

Stoicescu - Romania (Nº 31551/96)
Judgment 21.9.2004 [Section II]

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 Note Nos. 63-65):

HAASE - Germany (N° 11057/02)
Judgment 8.4.2004 [Section III]

TEZCAN UZUNHASANOĞLU - Turkey (Nº 35070/97)
Judgment 20.4.2004 [Section II]

GARCIA DA SILVA - Portugal (Nº 58617/00)
Judgment 27.4.2004 [Section III]

M.B. - Poland (Nº 34091/96)
HILL - United Kingdom (Nº 19365/02)
KRZEWICKI - Poland (Nº 37770/97)
JANIK - Poland (Nº 38564/97)
SABOL and SABOLOVÁ - Slovakia (Nº 54809/00)
POLITIKIN - Poland (Nº 68930/01)
QUILES GONZALEZ - Spain (Nº 71752/01)
Judgments 27.4.2004 [Section IV]

PLON (SOCIETE) - France (N° 58148/00)
DESTREHEM - France (N° 56651/00)
Judgments 18.5.2004 [Section II]

RYCHLICCY - Poland (Nº 51599/99)
Judgment 18.5.2004 [Section IV]

LALOUSI-KOTSOVOS – Greece (Nº 65430/01)
HOURMIDIS – Greece (Nº 12767/02)
TOTEVA - Bulgaria (Nº 42027/98)
Judgments 19.5.2004 [Section I]

CIBIR - Turkey (Nº 49659/99)
Judgment 19.5.2004 [Section III]

KADLEC and others – Czech Republic (Nº 49478/99)
SZAKÁLY - Hungary (Nº 59056/99)
Judgments 25.5.2004 [Section II]

AKÇAKALE - Turkey (Nº 59759/00)
DOMAŃSKA - Poland (Nº 74073/01)
Judgments 25.5.2004 [Section IV]

OGIS-Institut Stanislas, OGEC St. Pie X et Blanche de Castille and others - France
(N° 42219/98 et/and N° 54563/00)
RIZOS and DASKAS - Greece (Nº 65545/01)
BOULOUGOURAS - Greece (N° 66294/01)
METAXAS - Greece (Nº 8415/02)
VIDES AIZSARDZIBAS KLUBS - Latvia (N° 57829/00)
CONNORS – United Kingdom (N° 66746/01)
Judgments 27.5.2004 [Section I]

KAYA and others - Turkey (Nº 36564/97)
İ.I. - Turkey (Nº 38420/97)
H.B. and others - Turkey (Nº 38883/97)
Judgments 27.5.2004 [Section III]

SANTONI – France (N° 36681/97)
Judgment (revision) 1.6.2004 [Section II]

RICHARD-DUBARRY – France (Nº 53929/00)
L. – Netherlands (N° 45582/99)
BUZATU – Romania (Nº 34642/97)
Judgments 1.6.2004 [Section II]

ALTUN - Turkey (Nº 24561/94)
NARINEN – Finland (Nº 45027/98)
URBAŃCZYK - Poland (Nº 33777/96)
Judgments 1.6.2004 [Section IV]

BATI and others – Turkey (N° 33097/96 and N° 57834/00)
YALMAN and others – Turkey (Nº 36110/97)
Judgments 3.6.2004 [Section I]

CLINIQUE MOZART SARL – France (Nº 46098/99)
MUTIMURA – France (Nº 46621/99)
BEAUMER – France (Nº 65323/01)
LECHELLE - France (Nº 65786/01)
SIMON - France (Nº 66053/01)
Judgments 8.6.2004 [Section II]

HILDA HAFSTEINSDÓTTIR – Iceland (N° 40905/98)
Judgment 8.6.2004 [Section IV]

G.W. - United Kingdom (Nº 34155/96)
LE PETIT - United Kingdom (Nº 35574/97)
LUNTRE and others – Moldova
(Nº 2916/02, Nº 21960/02, Nº 21951/02, Nº 21941/02, Nº 21933/02, Nº 20491/02, Nº 2676/02, Nº 23594/02, Nº 21956/02, Nº 21953/02, Nº 21943/02, Nº 21947/02 and/et Nº 21945/02)
PASTELI and others – Moldova (Nº 9898/02, Nº 9863/02, Nº 6255/02 and/et Nº 10425/02)
PIEKARA – Poland (Nº 77741/01)
THOMPSON – United Kingdom (Nº 36256/97)
Judgments 15.6.2004 [Section IV]

WESOŁOWSKI - Poland (Nº 29687/96)
AZIZ - Cyprus (Nº 69949/01)
PINI and BERTANI, and MANERA and ATRIPALDI - Romania (N° 78028/01 and N° 78030/01)
AHMET KOÇ – Turkey (Nº 32580/96)
LEŞKER ACAR – Turkey (Nº 39678/98)
LIBÁNSKÝ - Czech Republic (Nº 48446/99)
BARTL – Czech Republic (Nº 50262/99)
Judgments 22.6.2004 [Section II]

PABLA KY – Finland (Nº 47221/99)
AYDIN and YUNUS – Turkey (Nº 32572/96 and Nº 33366/96)
LESZCZYŃSKA – Poland (Nº 47551/99)
Judgments 22.6.2004 [Section IV]

VERGOS – Greece (Nº 65501/01)
FREIMANN – Croatia (Nº 5266/02)
Judgments 24.6.2004 [Section I]

VON HANNOVER – Germany (N° 59320/00)
FROMMELT – Liechtenstein (Nº 49158/99)
MURAT YILMAZ – Turkey (Nº 48992/99)
DOĞAN and KESER – Turkey (Nº 50193/99 and Nº 50197/99)
Judgments 24.6.2004 [Section III]

ZHOVNER – Ukraine (Nº 56848/00)
PIVEN – Ukraine (Nº 56849/00)
VOYTENKO – Ukraine (Nº 18966/02)
CHAUVY and others – France (N° 64915/01)
Judgments 29.6.2004 [Section II]

ZEYNEP TEKIN - Turkey (N° 41556/98)
Judgment 29.6.2004 [Section IV]

Statistical information[1]

Judgments delivered	September	2004
Grand Chamber e	1	10
Section I	13(14)	129(137)
Section II	16	118(129)
Section III	1	84(104)
Section IV	20	120(150)
former Sections	0	3
Total	**51(52)**	**464(533)**

Judgments delivered in September 2004					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	1	0	0	0	1
Section I	13(14)	0	0	0	13(14)
Section II	15	0	0	1	15
Section III	1	0	0	0	1
Section IV	17	3	0	0	20
former Section II	0	0	0	0	0
Total	**47(48)**	**3**	**0**	**1**	**51(52)**

Judgments delivered in 2004					
	Merits	Friendly settlements	Struck out	Other	Total
Grand Chamber	9	0	0	1	10
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	107(111)	16(20)	2	4	129(137)
Section II	104(115)	7	2	5	118(129)
Section III	79(99)	5	0	0	84(104)
Section IV	103(133)	15	2	0	120(150)
Total	**403(468)**	**43(47)**	**6**	**12**	**464(533)**

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		August	2004
I. Applications declared admissible			
Grand Chamber		0	1
Section I		0	152(160)
Section II		10	83(84)
Section III		0	88(107)
Section IV		14(15)	98(130)
Total		**24(25)**	**422(482)**
II. Applications declared inadmissible			
Grand Chamber		0	1
Section I	- Chamber	0	76(78)
	- Committee	0	3420
Section II	- Chamber	1	53(54)
	- Committee	196	2615
Section III	- Chamber	0	39
	- Committee	247	1868
Section IV	- Chamber	7(8)	59(71)
	- Committee	313	2058
Total		**764(765)**	**10189(10204)**
III. Applications struck off			
Section I	- Chamber	0	41
	- Committee	0	39
Section II	- Chamber	0	31
	- Committee	1	38
Section III	- Chamber	0	94
	- Committee	3	19
Section IV	- Chamber	3	26
	- Committee	2	31
Total		**9**	**319**
Total number of decisions[1]		**797(799)**	**10930(11005)**

1. Not including partial decisions.

Applications communicated	August	2004
Section I	30[2]	343(365)
Section II	21	255(279)
Section III	59[3]	460(461)
Section IV	10	162
Total number of applications communicated	**120**	**1220(1267)**

2. Including 16 communicated by the President in July.
3. Including 39 communicated by the President in July.

Decisions adopted		September	2004
I. Applications declared admissible			
Grand Chamber		0	1
Section I		48(49)	200(209)
Section II		38(41)	121(125)
Section III		43(46)	131(153)
Section IV		22	120(152)
Total		**151(158)**	**573(640)**
II. Applications declared inadmissible			
Grand Chamber		0	1
Section I	- Chamber	15	91(93)
	- Committee	630	4050
Section II	- Chamber	11	64(65)
	- Committee	1132	3747
Section III	- Chamber	10	49
	- Committee	233	2101
Section IV	- Chamber	11	70(82)
	- Committee	890	2948
Total		**2932**	**13121(13136)**
III. Applications struck off			
Section I	- Chamber	21	62
	- Committee	16	55
Section II	- Chamber	5	36
	- Committee	7	45
Section III	- Chamber	20	114
	- Committee	4	23
Section IV	- Chamber	6	32
	- Committee	10	41
Total		**89**	**408**
Total number of decisions[1]		**3172(3179)**	**14102(14184)**

1. Not including partial decisions.

Applications communicated	September	2004
Section I	135(137)	478(502)
Section II	86(90)	341(369)
Section III	311(312)	771(773)
Section IV	32	194
Total number of applications communicated	**564(571)**	**1784(1838)**

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