European Court
of Human Rights

Annual Report 2004

Registry of the European Court
of Human Rights
Strasbourg, 2005

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FOREWORD

The year 2004 has seen the Court deliver a further impressive series of judgments and decisions covering an area the variety of which, in terms of the subjects and countries involved, is yet another confirmation of the central role played by the Convention as a constitutional instrument of European public order[1].

In addition, 2004 will undoubtedly remain associated with the adoption of Protocol No. 14 to the Convention and its accompanying recommendations, which together form a package of interdependent measures designed to help tackle the problem of the Court's excessive workload from different angles. The aim of this reform is to allow the Court to devote more attention to meritorious applications, in particular those disclosing serious human rights violations, by increasing its filtering capacity and improving the implementation of the Convention at national level. The Protocol will in particular allow for a less cumbersome handling of clearly inadmissible cases and manifestly well-founded ones.

At the same time, the drafters of Protocol No. 14 sought to ensure that the reform would not affect what are rightly considered the principal and unique features of the Convention system: the judicial character of European supervision and the right of individual application, meaning that any person claiming to be the victim of a breach of the rights and freedoms protected by the Convention may refer the matter to the Court. As the explanatory report to Protocol No. 14 correctly states, the Convention's control system is unique and we should remain aware of that: the Parties agree to subject themselves to international judicial supervision of their obligation to secure to everyone within their jurisdiction the rights and freedoms set out in the Convention; this control is exercisTw -28.22 -1the, which gives judgments on individual applications brought under Article 34 of the Convention and, albeit quite rarely, on State applications brought under Article 33; the Court's judgments are binding on respondent Parties and their execution is supervisTw -28.22 -1mmittee of ion

As a logical consequence of such developments, however, there has been a huge increase in the Court's caseload, so much so that today the system's effectiveness remains seriously jeopardised, despite the remarkable progress the Court has achieved in its output. Between 1999 (the first full year of activity of the new Court) and 2004, while the Court's budget increased by approximately 54% and the complement of Registry staff by approximately 80%, productivity in terms of terminated cases rose by some 470%, thanks largely to a streamlining of working methods and internal organisation. Nevertheless, even increases such as these proved insufficient to keep pace with the constant rise in the number of cases and the resultant growing backlog.

The Court is actively preparing for the entry into force of Protocol No. 14 and is determined to make the best use of the tools it provides. The latest forecasts nonetheless show that the potentially substantial increases in judicial productivity which may ultimately be achieved by Protocol No. 14, in particular if governments faithfully implement the recommendations adopted in May 2004, will not on their own be sufficient to close the gap between the level of incoming cases and the Court's output capacity.

Further measures, going beyond a constant search for improvements in working methods and internal organisation, are therefore likely to be necessary if the human rights protection system set up by the Convention is to remain effective in the long term. In addition to a prompt ratification of Protocol No. 14, governments therefore need to start reflecting on the long-term options available for further action capable of ensuring a stable, practicable system providing the highest possible effective protection, while preserving the basic philosophy underlying the Convention. Fundamentally, governments are faced with a choice about the nature of the international protection machinery which must be provided to individuals in 21st-century Europe.

The Third Summit of the Council of Europe, one of the main aims of which is to set the contours for human rights protection in the Europe of tomorrow, could provide an excellent opportunity to tackle this long-term issue by launching an in-depth discussion of the future of the Convention and its Court in the 21st century. Such a discussion should also take into account the new challenges resulting from the pan-European dimension which the system has now acquired, including the fact that the number of potential applicants has risen to approximately 800 million people, that the Convention has now become an integral part of the domestic legal order of all Contracting Parties, that the Court is in the process of adopting a firmer approach to the execution of its judgments[1] *– an approach which might in turn be reinforced by future Article 46 § 4 of the Convention*[2] *–*

1. See, for instance, *Maestri v. Italy* ([GC], no. 39748/98, judgment of 17 February 2004, to be reported in ECHR 2004-I), *Assanidze v. Georgia* ([GC], no. 71503/01, judgment of 8 April 2004, to be reported in ECHR 2004-II), *Ilaşcu and Others v. Moldova and Russia* ([GC], no. 48787/99, judgment of 8 July 2004, to be reported in ECHR 2004-VII), and *Broniowski v. Poland* ([GC], no. 31443/96, judgment of 22 June 2004, to be reported in ECHR 2004-V).

2. Article 46 § 4 of the Convention as amended by Protocol No. 14 provides: "If the Committee of Ministers considers that a High Contracting Party refuses to abide by a final judgment in a case to which it is a party, it may, after serving formal notice on that Party and by decision adopted by a majority vote of two thirds of the representatives entitled to sit on the Committee, refer to the Court the question whether that Party has failed to fulfil its obligation under paragraph 1."

and, last but not least, the fact that the European Union has adopted its Charter of Fundamental Rights and is preparing to accede to the Convention[1].

Luzius Wildhaber
President
of the European Court of Human Rights

1. I wish to extend my thanks to Mr Stanley Naismith, former Head of the Publications and Information Division and currently Deputy Section Registrar, and to his team for the care they have taken in preparing this Annual Report.

I. HISTORICAL BACKGROUND, ORGANISATION AND PROCEDURE

HISTORICAL BACKGROUND, ORGANISATION AND PROCEDURE

Historical background

A. The European Convention on Human Rights of 1950

1. The Convention for the Protection of Human Rights and Fundamental Freedoms was drawn up within the Council of Europe. It was opened for signature in Rome on 4 November 1950 and came into force in September 1953. Taking as their starting-point the 1948 Universal Declaration of Human Rights, the framers of the Convention sought to pursue the aims of the Council of Europe through the maintenance and further realisation of human rights and fundamental freedoms. The Convention was to represent the first steps for the collective enforcement of certain of the rights set out in the Universal Declaration.

2. In addition to laying down a catalogue of civil and political rights and freedoms, the Convention set up a mechanism for the enforcement of the obligations entered into by Contracting States. Three institutions were entrusted with this responsibility: the European Commission of Human Rights (set up in 1954), the European Court of Human Rights (set up in 1959) and the Committee of Ministers of the Council of Europe, the latter organ being composed of the Ministers for Foreign Affairs of the member States or their representatives.

3. Under the Convention in its original version, complaints could be brought against Contracting States either by other Contracting States or by individual applicants (individuals, groups of individuals or non-governmental organisations). Recognition of the right of individual application was, however, optional and it could therefore be exercised only against those States which had accepted it (Protocol No. 11 to the Convention was subsequently to make its acceptance compulsory – see paragraph 6 below).

The complaints were first the subject of a preliminary examination by the Commission, which determined their admissibility. Where an application was declared admissible, the Commission placed itself at the parties' disposal with a view to reaching a friendly settlement. If no settlement was forthcoming, it drew up a report establishing the facts and expressing an opinion on the merits of the case. The report was transmitted to the Committee of Ministers.

4. Where the respondent State had accepted the compulsory jurisdiction of the Court, the Commission and/or any Contracting State concerned had a period of three months following the transmission of the report to the Committee of Ministers within which to bring the case before the Court for a final, binding adjudication. Individuals were not entitled to bring their cases before the Court.

If a case was not referred to the Court, the Committee of Ministers decided whether there had been a violation of the Convention and, where appropriate, awarded "just satisfaction" to the victim. The Committee of Ministers also had responsibility for supervising the execution of the Court's judgments.

B. Subsequent developments

5. Since the Convention's entry into force, fourteen Protocols have been adopted. Protocols Nos. 1, 4, 6, 7, 12 and 13 added further rights and liberties to those guaranteed by the Convention, while Protocol No. 2 conferred on the Court the power to give advisory opinions. Protocol No. 9 enabled individual applicants to bring their cases before the Court subject to ratification by the respondent State and acceptance by a screening panel. Protocol No. 11 restructured the enforcement machinery (see below). The remaining Protocols concerned the organisation of and procedure before the Convention institutions.

6. From 1980 onwards, the steady growth in the number of cases brought before the Convention institutions made it increasingly difficult to keep the length of proceedings within acceptable limits. The problem was aggravated by the accession of new Contracting States from 1990. The number of applications registered annually with the Commission increased from 404 in 1981 to 4,750 in 1997. By that year, the number of unregistered or provisional files opened each year in the Commission had risen to over 12,000. The Court's statistics reflected a similar story, with the number of cases referred annually rising from 7 in 1981 to 119 in 1997.

The increasing caseload prompted a lengthy debate on the necessity for a reform of the Convention supervisory machinery, resulting in the adoption of Protocol No. 11 to the Convention. The aim was to simplify the structure with a view to shortening the length of proceedings while strengthening the judicial character of the system by making it fully compulsory and abolishing the Committee of Ministers' adjudicative role.

Protocol No. 11, which came into force on 1 November 1998, replaced the existing part-time Court and Commission by a single, full-time Court. For a transitional period of one year (until 31 October 1999) the Commission continued to deal with the cases it had previously declared admissible.

7. However, in the years following the entry into force of Protocol No. 11 there was growing concern about the Court's capacity to deal with the increasing volume of cases. As a result a new reform process was launched, culminating in the opening for signature of Protocol No. 14 to the Convention on 13 May 2004 (see paragraphs 32-34 below).

The European Court of Human Rights

A. Organisation of the Court

8. The European Court of Human Rights set up under the Convention as amended by Protocol No. 11 is composed of a number of judges equal to that of the Contracting States (currently forty-five). There is no restriction on the number of judges of the same nationality. Judges are elected by the Parliamentary Assembly of the Council of Europe for a term of six years. The terms of office of one-half of the judges elected at the first election expired after three years, so as to ensure that the terms of office of one-half of the judges are renewed every three years.

Judges sit on the Court in their individual capacity and do not represent any State. They cannot engage in any activity which is incompatible with their independence or impartiality

or with the demands of full-time office. Their terms of office expire when they reach the age of 70.

The Plenary Court elects its President, two Vice-Presidents and two Presidents of Sections for a period of three years.

9. Under the Rules of Court, the Court is divided into four Sections, whose composition, fixed for three years, is geographically and gender balanced and takes account of the different legal systems of the Contracting States. Two of the Sections are presided over by the Vice-Presidents of the Court; the other two Sections are presided over by the Section Presidents. Section Presidents are assisted and where necessary replaced by Section Vice-Presidents, elected by the Sections.

10. Committees of three judges are set up within each Section for twelve-month periods.

11. Chambers of seven members are constituted within each Section on the basis of rotation, with the Section President and the judge elected in respect of the State concerned sitting in each case. Where the latter is not a member of the Section, he or she sits as an *ex officio* member of the Chamber. The members of the Section who are not full members of the Chamber sit as substitute members.

12. The Grand Chamber of the Court is composed of seventeen judges who include, as *ex officio* members, the President, the Vice-Presidents and the Section Presidents.

B. Procedure before the Court

1. General

13. Any Contracting State (State application) or individual claiming to be a victim of a violation of the Convention (individual application) may lodge directly with the Court in Strasbourg an application alleging a breach by a Contracting State of one of the Convention rights. A notice for the guidance of applicants and forms for making applications may be obtained from the Registry.

14. The procedure before the European Court of Human Rights is adversarial and public. Hearings, which are held only in a minority of cases, are public, unless the Chamber/Grand Chamber decides otherwise on account of exceptional circumstances. Memorials and other documents filed with the Court's Registry by the parties are, in principle, accessible to the public.

15. Individual applicants may submit applications themselves, but legal representation is recommended, and even required for hearings or once an application has been declared admissible. The Council of Europe has set up a legal-aid scheme for applicants who do not have sufficient means.

16. The official languages of the Court are English and French, but applications may be submitted in one of the official languages of the Contracting States. Once the application has been declared admissible, one of the Court's official languages must be used, unless the

President of the Chamber/Grand Chamber authorises the continued use of the language of the application.

2. Admissibility procedure

17. Each individual application is assigned to a Section, whose President designates a rapporteur. After a preliminary examination of the case, the rapporteur decides whether it should be dealt with by a three-member Committee or by a Chamber.

18. A Committee may decide, by unanimous vote, to declare inadmissible or strike out an application where it can do so without further examination.

19. Individual applications which are not declared inadmissible by Committees, or which are referred directly to a Chamber by the rapporteur, and State applications are examined by a Chamber. Chambers determine both admissibility and merits, in separate decisions or, where appropriate, together.

20. Chambers may at any time relinquish jurisdiction in favour of the Grand Chamber where a case raises a serious question of interpretation of the Convention or where there is a risk of departing from existing case-law, unless one of the parties objects to such relinquishment within one month of notification of the intention to relinquish. In the event of relinquishment the procedure followed is the same as that set out below for Chambers.

21. The first stage of the procedure is generally written, although the Chamber may decide to hold a public hearing, in which case issues arising in relation to the merits will normally also be addressed.

22. Decisions on admissibility, which are taken by majority vote, must contain reasons and be made public.

3. Procedure on the merits

23. Once the Chamber has decided to admit the application, it may invite the parties to submit further evidence and written observations, including any claims for "just satisfaction" by the applicant. If no hearing has taken place at the admissibility stage, it may decide to hold a hearing on the merits of the case.

24. The President of the Chamber may, in the interests of the proper administration of justice, invite or grant leave to any Contracting State which is not a party to the proceedings, or any person concerned who is not the applicant, to submit written comments, and, in exceptional circumstances, to make representations at the hearing. A Contracting State whose national is an applicant in the case is entitled to intervene as of right.

25. During the procedure on the merits, negotiations aimed at securing a friendly settlement may be conducted through the Registrar. The negotiations are confidential.

4. Judgments

26. Chambers decide by a majority vote. Any judge who has taken part in the consideration of the case is entitled to append to the judgment a separate opinion, either concurring or dissenting, or a bare statement of dissent.

27. Within three months of delivery of the judgment of a Chamber, any party may request that the case be referred to the Grand Chamber if it raises a serious question of interpretation or application of the Convention or its Protocols or a serious issue of general importance. Such requests are examined by a Grand Chamber panel of five judges, composed of the President of the Court, the Section Presidents – with the exception of the Section President who presides over the Section to which the Chamber that gave judgment belongs – and another judge selected by rotation from judges who were not members of the original Chamber.

28. A Chamber's judgment becomes final on expiry of the three-month period or earlier if the parties announce that they have no intention of requesting a referral or after a decision of the panel rejecting a request for referral.

29. If the panel accepts the request, the Grand Chamber renders its decision on the case in the form of a judgment. The Grand Chamber decides by a majority vote and its judgments are final.

30. All final judgments of the Court are binding on the respondent States concerned.

31. Responsibility for supervising the execution of judgments lies with the Committee of Ministers of the Council of Europe. The Committee of Ministers verifies whether States in respect of which a violation of the Convention is found have taken adequate remedial measures to comply with the specific or general obligations arising out of the Court's judgments.

5. Protocol No. 14

32. Protocol No. 14 must be ratified by all the Contracting States before coming into force. The main innovations as regards the procedure before the Court are as follows:

(a) A single-judge formation (new Article 26 of the Convention) is introduced with competence to declare applications inadmissible on the same basis as a three-judge Committee at present (new Article 27). The single-judge formation will be assisted by non-judicial rapporteurs (new Article 24 § 1), who will fulfil in respect of plainly inadmissible cases the function currently carried out by judge rapporteurs. The single judge may never be the judge elected in respect of the respondent State (Article 26 § 3).

(b) Three-judge Committees acquire a new power. In addition to their existing competence to declare cases inadmissible and strike them out, they will be able to declare cases admissible and render judgment in them if the underlying question in the case is already the subject of well-established case-law of the Court (Article 28 § 1 (b), as amended).

(c) A new admissibility criterion is inserted in Article 35. Under Article 35 § 3 (b), the Court will be empowered to declare inadmissible any individual application where the

II. *IN MEMORIAM*

Gaukur Jörundsson, elected as judge of the European Court of Human Rights in respect of Iceland, died at the age of 69, after a long illness, on 22 September 2004, shortly before the end of his term of office.

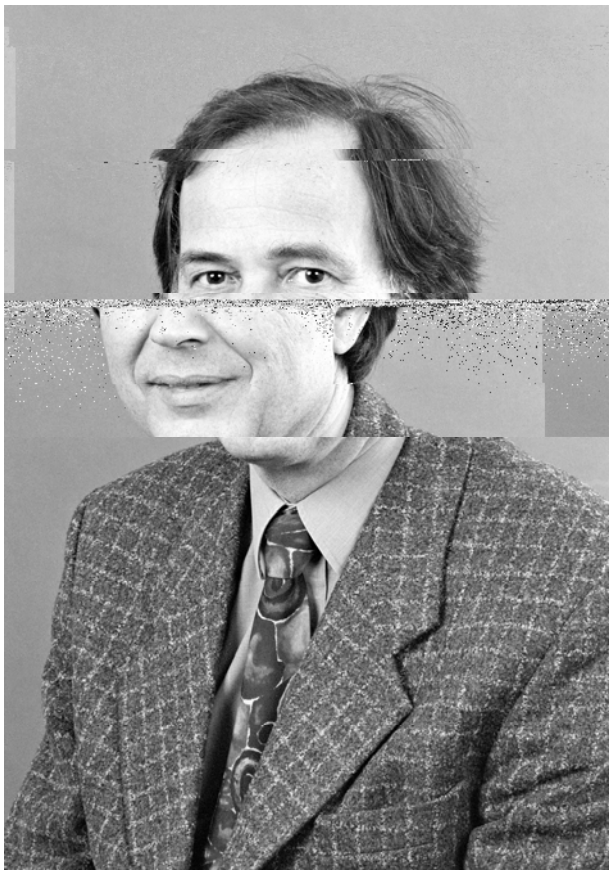
Gaukur Jörundsson had held high-ranking posts in various academic, judicial and administrative capacities in his homeland. In particular, he had been a law professor at the University of Iceland, Registrar and later judge of the Supreme Court, and lastly, for more than ten years, ombudsman. He was highly regarded and respected in Iceland, where he was a leading figure.

His commitment to human rights and their protection was of long standing. He was a (repeatedly re-elected) member of the European Commission of Human Rights from 1974 to 1998, until the entry into force of Protocol No. 11 to the Convention, and thereafter (from 1 November 1998), a judge of the European Court of Human Rights. He was initially a member of the Court's First Section and then of its Second Section. Gaukur Jörundsson was very well liked by all his colleagues and the Registry staff. He was a wise, competent and measured judge, whose opinions commanded attention. With his great professional qualities he combined remarkable human qualities: benevolence, kindness, courage (which he displayed when assailed by illness) and tolerance – all tinged with a great love of life and a strong sense of humour.

His death saddened all those who knew him, and is a great loss for his country and for the cause of justice and human rights.

Jean-Paul Costa

(Text published with the kind permission of the Revue trimestrielle des droits de l'homme*, Nemesis et Bruylant, Brussels)*



Strangely enough, I have no clear recollection of Wolfgang's arrival at the Secretariat of the Commission. He joined the Secretariat in the mid-1970s, at a time when the Convention's protection system was about to undergo extensive change. The reason for this surprising lapse of memory on my part is a simple one. I was always under the impression that Wolfgang had never been anything other than an integral part of the team.

He brought with him a remarkable dynamism, which for many years he placed at the service of the Commission. From 1998, this dynamism was at the service of the new Court, in which he played a pivotal role, particularly in terms of setting up the procedure before the Grand Chamber.

If one had to summarise in a single word his contribution to the work of the two bodies which he served with such enthusiasm and devotion, it would, quite simply, be "rectitude", both moral and intellectual. A rectitude that was characterised by conviviality and a disconcerting seriousness: his texts were an inexhaustible source of ideas. His desire to explain and explore questions sometimes won through against the reserve with which others reined him in, even if, in the final analysis, their proposals resulted in a text which, while legally correct, was less clear and, on occasions, rather dry. The same passion drove him to place himself at the service of the convictions that he wished to see shared throughout the world: a law which would unite, over and above differences. So many trips, so much hard work! Many lawyers from the new Europe are deeply indebted to him for having introduced them, with considerable skill, to the mysteries and distinctive features of a unique and complex system of judicial protection.

In addition, Wolfgang always showed a deep interest in judicial analysis, as evidenced by his tireless work for journals and institutions, for which he was an invaluable and inspired associate.

With Wolfgang, it was always easy to exchange ideas, but so much more besides: so many questions about how to protect human rights in everyday life, given the constraints under which we work!

In fact, he was a true lawyer, in that he was profoundly and sincerely human.

Michele de Salvia

III. COMPOSITION OF THE COURT

COMPOSITION OF THE COURT

Before 1 November 2004 the Court was composed as follows (in order of precedence)[1]:

Mr Luzius Wildhaber, *President*	(Swiss)
Mr Christos L. Rozakis, *Vice-President*	(Greek)
Mr Jean-Paul Costa, *Vice-President*	(French)
Mr Georg Ress, *Section President*	(German)
Sir Nicolas Bratza, *Section President*	(British)
Mr Giovanni Bonello	(Maltese)
Mr Lucius Caflisch	(Swiss)[2]
Mr Loukis Loucaides	(Cypriot)
Mr Ireneu Cabral Barreto	(Portuguese)
Mr Rıza Türmen	(Turkish)
Mrs Françoise Tulkens	(Belgian)
Mrs Viera Strážnická	(Slovakian)
Mr Corneliu Bîrsan	(Romanian)
Mr Peer Lorenzen	(Danish)
Mr Karel Jungwiert	(Czech)
Mr Volodymyr Butkevych	(Ukrainian)
Mr Josep Casadevall	(Andorran)
Mr Boštjan Zupančič	(Slovenian)
Mrs Nina Vajić	(Croatian)
Mr John Hedigan	(Irish)
Mrs Wilhelmina Thomassen	(Netherlands)
Mr Matti Pellonpää	(Finnish)
Mrs Margarita Tsatsa-Nikolovska	(citizen of the former Yugoslav Republic of Macedonia)
Mrs Hanne Sophie Greve	(Norwegian)
Mr András B. Baka	(Hungarian)
Mr Rait Maruste	(Estonian)
Mr Kristaq Traja	(Albanian)
Mrs Snejana Botoucharova	(Bulgarian)
Mr Mindia Ugrekhelidze	(Georgian)
Mr Anatoly Kovler	(Russian)
Mr Vladimiro Zagrebelsky	(Italian)
Mrs Antonella Mularoni	(San Marinese)
Mrs Elisabeth Steiner	(Austrian)
Mr Stanislav Pavlovschi	(Moldovan)
Mr Lech Garlicki	(Polish)
Mr Javier Borrego Borrego	(Spanish)
Mrs Elisabet Fura-Sandström	(Swedish)
Mrs Alvina Gyulumyan	(Armenian)
Mr Khanlar Hajiyev	(Azerbaijani)
Mrs Ljiljana Mijović	(citizen of Bosnia and Herzegovina)
Mr Dean Spielmann	(Luxembourger)

1. The seats of judges in respect of Latvia and Serbia and Montenegro were vacant.
2. Elected in respect of Liechtenstein.

Mr	Paul Mahoney, *Registrar*	(British)
Mr	Erik Fribergh, *Deputy Registrar*	(Swedish)

Judges elect[1]

Mrs	Renate Jaeger	(German)
Mr	Egbert Myjer	(Netherlands)
Mr	Sverre Erik Jebens	(Norwegian)
Mr	David Thór Björgvinsson	(Icelandic)
Mrs	Danutė Jočienė	(Lithuanian)
Mr	Ján Šikuta	(Slovakian)

1. Due to take up office on 1 November 2004.

From 1 November 2004[1]:

Mr	Luzius Wildhaber, *President*	(Swiss)
Mr	Christos L. Rozakis, *Vice-President*	(Greek)
Mr	Jean-Paul Costa, *Vice-President*	(French)
Sir	Nicolas Bratza, *Section President*	(British)
Mr	Boštjan Zupančič, *Section President*	(Slovenian)
Mr	Giovanni Bonello	(Maltese)
Mr	Lucius Caflisch	(Swiss)[2]
Mr	Loukis Loucaides	(Cypriot)
Mr	Ireneu Cabral Barreto	(Portuguese)
Mr	Rıza Türmen	(Turkish)
Mrs	Françoise Tulkens	(Belgian)
Mr	Corneliu Bîrsan	(Romanian)
Mr	Peer Lorenzen	(Danish)
Mr	Karel Jungwiert	(Czech)
Mr	Volodymyr Butkevych	(Ukrainian)
Mr	Josep Casadevall	(Andorran)
Mrs	Nina Vajić	(Croatian)
Mr	John Hedigan	(Irish)
Mr	Matti Pellonpää	(Finnish)
Mrs	Margarita Tsatsa-Nikolovska	(citizen of the former Yugoslav Republic of Macedonia)
Mr	András B. Baka	(Hungarian)
Mr	Rait Maruste	(Estonian)
Mr	Kristaq Traja	(Albanian)
Mrs	Snejana Botoucharova	(Bulgarian)
Mr	Mindia Ugrekhelidze	(Georgian)
Mr	Anatoly Kovler	(Russian)
Mr	Vladimiro Zagrebelsky	(Italian)
Mrs	Antonella Mularoni	(San Marinese)
Mrs	Elisabeth Steiner	(Austrian)
Mr	Stanislav Pavlovschi	(Moldovan)
Mr	Lech Garlicki	(Polish)
Mr	Javier Borrego Borrego	(Spanish)
Mrs	Elisabet Fura-Sandström	(Swedish)
Mrs	Alvina Gyulumyan	(Armenian)
Mr	Khanlar Hajiyev	(Azerbaijani)
Mrs	Ljiljana Mijović	(citizen of Bosnia and Herzegovina)
Mr	Dean Spielmann	(Luxembourger)
Mrs	Renate Jaeger	(German)
Mr	Egbert Myjer	(Netherlands)
Mr	Sverre Erik Jebens	(Norwegian)
Mr	David Thór Björgvinsson	(Icelandic)
Mrs	Danutė Jočienė	(Lithuanian)
Mr	Ján Šikuta	(Slovakian)

1. The seats of judges in respect of Latvia and Serbia and Montenegro were vacant.
2. Elected in respect of Liechtenstein.

Mr	Paul Mahoney, *Registrar*	(British)
Mr	Erik Fribergh, *Deputy Registrar*	(Swedish)

IV. COMPOSITION OF THE SECTIONS

COMPOSITION OF THE SECTIONS

(in order of precedence)

Before 1 November 2004

	Section I	**Section II**	**Section III**	**Section IV**
President	Mr C.L. Rozakis	Mr J.-P. Costa	Mr G. Ress	Sir Nicolas Bratza
Vice-President	Mr P. Lorenzen	Mr A.B. Baka	Mr I. Cabral Barreto	Mr M. Pellonpää
	Mr G. Bonello	Mr L. Wildhaber	Mr L. Caflisch[3]	Mrs V. Strážnická
	Mrs F. Tulkens	Mr Gaukur Jörundsson[2]	Mr P. Kūris[4]	Mr J. Casadevall
	Mrs N. Vajić	Mr L. Loucaides	Mr R. Türmen	Mr R. Maruste
	Mr E. Levits[1]	Mr C. Bîrsan	Mr B. Zupančič	Mr S. Pavlovschi
	Mrs S. Botoucharova	Mr K. Jungwiert	Mr J. Hedigan	Mr L. Garlicki
	Mr A. Kovler	Mr V. Butkevych	Mrs M. Tsatsa-Nikolovska	Mr J. Borrego Borrego
	Mr V. Zagrebelsky	Mrs W. Thomassen	Mrs H.S. Greve	Mrs E. Fura-Sandström
	Mrs E. Steiner	Mr M. Ugrekhelidze	Mr K. Traja	Mrs L. Mijović[5]
	Mr K. Hajiyev	Mrs A. Mularoni	Mrs A. Gyulumyan	Mr D. Spielmann[6]
Section Registrar	Mr S. Nielsen	Mrs S. Dollé	Mr V. Berger	Mr M. O'Boyle
Deputy Section Registrar	Mr S. Quesada	Mr T.L. Early	Mr M. Villiger	Mrs F. Elens-Passos

1. Left the Court in April 2004. 2. Died in office in September 2004. 3. Judge elected in respect of Liechtenstein. 4. Until 30 April 2004. 5. Ljiljana Mijović was elected in January 2004 and took up office in May 2004. 6. Dean Spielmann was elected in June 2004 and took up office in October 2004. He replaced Marc Fischbach, who resigned in January 2004.

After 1 November 2004

	Section I	**Section II**[1]	**Section III**	**Section IV**
President	Mr C.L. Rozakis	Mr J.-P. Costa	Mr B. Zupančič	Sir Nicolas Bratza
Vice-President	Mr L. Loucaides	Mr A.B. Baka	Mr J. Hedigan	Mr J. Casadevall
	Mrs F. Tulkens	Mr I. Cabral Barreto	Mr L. Caflisch	Mr L. Wildhaber
	Mr P. Lorenzen	Mr R. Türmen	Mr C. Bîrsan	M. G. Bonello
	Mrs N. Vajić	Mr K. Jungwiert	Mrs M. Tsatsa-Nikolovska	Mr M. Pellonpää
	Mrs S. Botoucharova	Mr V. Butkevych	Mr V. Zagrebelsky	Mr R. Maruste
	Mr A. Kovler	Mr M. Ugrekhelidze	Mrs A. Gyulumyan	Mr K. Traja
	Mrs E. Steiner	Mrs A. Mularoni	Mrs R. Jaeger	Mr S. Pavlovschi
	Mr K. Hajiyev	Mrs E. Fura-Sandström	Mr E. Myjer	Mr L. Garlicki
	Mr D. Spielmann	Mrs D. Jočienė	Mr David Thór Björgvinsson	Mr J. Borrego Borrego
	Mr S.E. Jebens			Mrs L. Mijović
				Mr J. Šikuta
Section Registrar	Mr S. Nielsen	Mrs S. Dollé	Mr V. Berger	Mr M. O'Boyle
Deputy Section Registrar	Mr S. Quesada	Mr T.L. Early[2]	Mr M. Villiger	Mrs F. Elens-Passos

1. The judge elected in respect of Serbia and Montenegro will sit in the new Second Section.
2. Replaced, following his appointment as Deputy Grand Chamber Registrar, by Stanley Naismith as from December 2004.

V. SPEECH GIVEN BY
Mr LUZIUS WILDHABER,
PRESIDENT OF THE EUROPEAN COURT
OF HUMAN RIGHTS,
ON THE OCCASION OF THE OPENING
OF THE JUDICIAL YEAR,
21 JANUARY 2005

SPEECH GIVEN BY Mr LUZIUS WILDHABER, PRESIDENT OF THE EUROPEAN COURT OF HUMAN RIGHTS, ON THE OCCASION OF THE OPENING OF THE JUDICIAL YEAR, 21 JANUARY 2005

Presidents, Secretary General, Excellencies, dear friends and colleagues, ladies and gentlemen,

It gives me great pleasure to welcome you here today to our traditional ceremony to mark the opening of the judicial year. The numerous guests who honour us with their presence this evening include thirty-two Presidents and nineteen judges from Supreme and Constitutional Courts. In particular, I should like to welcome our distinguished guest of honour, Mr Valery Zorkin, President of the Constitutional Court of the Russian Federation, and the three rapporteurs from this afternoon's seminar, Mr Guy Canivet, President of the French Court of Cassation, Mr Valerio Onida, President of the Italian Constitutional Court, and Mr Francis Jacobs, Advocate General at the Court of Justice of the European Communities, whom I thank most warmly for their thought-provoking contributions.

Looking back, it has once again been a year rich in events of importance for the Court. Some of them have been sad events; we lost two respected and well-loved colleagues last year, Judge Gaukur Jörundsson, and Wolfgang Strasser, who was Deputy to the Registrar responsible for the Grand Chamber. Our thoughts go to their families. On a happier note, fourteen of the Court's judges were re-elected, and we welcomed our new colleagues Judges Mijović, Spielmann, Jaeger, Myjer, Jebens, David Thór Björgvinsson, Jočienė and Šikuta.

Of the moments which stand out, I would mention the opening for signature in May of Protocol No. 14 to the European Convention on Human Rights, the delivery by the Court of its first so-called "pilot" judgment and the adoption of the Constitutional Treaty by the Intergovernmental Conference of the European Union.

Aware, however, that a court's activities are primarily reflected in its case-law, I should like to begin by making some brief comments about a few of the key judgments delivered in 2004. You will realise immediately that they all concern the issue of effective execution of the Court's judgments. Indeed, this is one of the themes that dominated the Court's case-law last year. But it has also to be seen in a wider context, that of the need to restore the balance between national and international jurisdiction in implementing the Convention.

The first of those judgments was delivered in the case of *Maestri v. Italy*[1]. Until recently, the Court always hesitated to stipulate the measures to be taken by a State in order to redress the effects of a violation. Indeed, in line with the Convention's subsidiary character, every respondent State remains free to choose the means by which it will discharge its obligation to execute the Court's judgments, provided that such means are compatible with the conclusions set out in them.

1. [GC], no. 39748/98, judgment of 17 February 2004, to be reported in ECHR 2004-I.

In *Maestri*, however, the Court was more robust. The case concerned a career judge whom the Court had held to be the victim of a violation of Article 11 as a result of a disciplinary sanction imposed because he belonged to a Masonic lodge. The Grand Chamber of the Court underlined that, in ratifying the Convention, the Contracting States undertook to ensure that their domestic legislation was compatible with it. Consequently, it was for the respondent State to remove any obstacles in its domestic legal system that might prevent the applicant's situation from being adequately redressed. It was therefore for the Italian government to take appropriate measures to redress the effects of any past or future damage to the applicant's career as a result of the disciplinary sanction against him which the Court had found to be in breach of the Convention.

A second judgment warrants mention in this context, especially since in addition it helps to clarify the concept of "jurisdiction", which defines the Convention's scope. Until now, each time the Court was required to rule on the concept of "jurisdiction", it had considered the concepts of imputability and responsibility as going together, since the State's responsibility under the Convention could only arise if the alleged violation could also be imputed to it. In *Assanidze v. Georgia*[1], the problem was posed differently. The applicant, a well-known opposition politician, had been acquitted by the Georgian Supreme Court on all the charges against him, but continued nonetheless to be detained by the authorities of the Ajarian Autonomous Republic. The Georgian central authorities had taken all procedural measures possible under domestic law in order to obtain enforcement of the judgment acquitting the applicant, had also had recourse to various political means to settle the dispute, and had on numerous occasions repeated their request to the Ajarian authorities for the applicant's release, but without success. The Court concluded that, within the domestic system, the applicant's continued imprisonment was directly imputable to the Ajarian authorities. The Georgian Government considered that on this basis it could not be held responsible for the situation.

The Court, however, took a different view. It emphasised that, under the Convention, it was solely the international responsibility of the State that was in issue, irrespective of the national authority to which the breach of the Convention could be imputed at the domestic level. The Court concluded that the applicant's continued imprisonment was within the "jurisdiction" of Georgia and that the responsibility of the Georgian State alone was engaged under the Convention. Consequently, having found that the applicant was being detained arbitrarily contrary to Article 5 § 1 of the Convention, the Court held – and stated for the first time in the operative provisions of a judgment – that the respondent State had to secure the applicant's release at the earliest possible date. The very day after the judgment was delivered, the applicant was released from prison in Ajaria, which is a striking demonstration both of the effectiveness of the human rights protection afforded by the Convention and of the very practical importance of the execution of the Court's judgments.

In a joint judgment against Russia and Moldova, the Court took a similar approach, albeit in a markedly different context. Again in the operative provisions of the judgment, it urged the two respondent States to take all necessary measures to put an end to detention that the Court had described as arbitrary and to secure the immediate release of those applicants who were still imprisoned.

1. [GC], no. 71503/01, judgment of 8 April 2004, to be reported in ECHR 2004-II.

One last judgment must be mentioned here, namely the Court's first so-called "pilot" judgment. Delivered in the case of *Broniowski v. Poland*[1], it followed on from the Committee of Ministers' resolution on judgments revealing an underlying systemic problem, adopted recently as part of the Protocol No. 14 package. Human rights violations arising from a systemic problem in the States Parties to the Convention account for a considerable proportion of the Court's workload. In all these cases, despite their similarity, the Court is obliged on each occasion to repeat the same message, something that could be avoided if the State concerned were to rectify the problem as soon as it was identified by the Court. For that reason, in its resolution the Committee of Ministers invited the Court to identify, in its judgments finding a violation of the Convention, what it considered to be an underlying systemic problem and the source of that problem, in particular when it was likely to give rise to numerous applications.

This is what the Court did in *Broniowski*. The case concerned a scheme for compensation in kind for the loss sustained by property owners whose properties had had to be abandoned after the Second World War and who had thereby acquired "a right to credit" against the State. However, the latter had been unable to honour all those obligations due to a shortfall in the amount of land available. It is estimated that 80,000 people are affected.

The Court was unanimous in concluding that, by failing to honour its obligation to the applicant, the respondent State had violated Article 1 of Protocol No. 1. Above all, however, it also found, for the first time in the history of its case-law, a so-called "systemic" violation, arising from the fact that the violation in question resulted from a large-scale problem originating in the malfunctioning of Polish legislation and administrative practice which had affected, and still had the potential to affect, large numbers of people, a situation that could give rise to numerous well-founded applications.

Consequently, the Court indirectly extended the benefits of its finding to all those persons by holding that the respondent State was, through appropriate legal measures and administrative practices, to secure the implementation of the property right in question in respect of the applicants or to provide them with equivalent redress in lieu. Finally – and this is a very important element – the Court announced that, pending the implementation of such general measures, which were to be adopted within a reasonable time, it would adjourn examination of applications resulting from the same general problem.

Faced with a structural situation, the Court is in effect saying to the respondent State and to the Committee of Ministers that they too must play their role and assume their responsibilities. This is surely also in the interests of the individual applicants who may secure redress more rapidly through the general measures to be introduced by the respondent State than if the Court were to attempt to process and adjudicate each application in turn. In sharing out the burden of Convention enforcement, this approach is entirely consistent with the aim of restoring balance in the relationship between international and domestic protection of fundamental rights; the failure of States to provide adequate remedies at national level is a significant, though not the sole, source of the current overloading of the Court's docket.

In the eyes of many, the Court in Strasbourg has come to represent the last resort for every imaginable complaint. However, as developments over the past fifteen years have

1. [GC], no. 31433/96, judgment of 22 June 2004, to be reported in ECHR 2004-V.

amply borne out, the Court cannot live up to this expectation. The package of resolutions and recommendations from the Committee of Ministers accompanying Protocol No. 14 contains a timely reminder to the member States of their essential contribution to the proper functioning of the system. The Convention system has always been intended to be a subsidiary one. The primary level of protection has to be the domestic one. Only where that first level of protection has failed to operate effectively does the European supervision by the Court come into play.

An encouraging development to point out is therefore all those judgments in which domestic courts – and in particular Constitutional and Supreme Courts – have demonstrated their determination to apply the Convention standards directly and to integrate the Convention case-law into their respective legal systems. By way of example, let me refer here to the British House of Lords, which on the basis of a comprehensive and penetrating analysis of the Strasbourg case-law recently declared that foreigners suspected of being terrorists could not be detained under the Anti-Terrorism, Crime and Security Act 2001 indefinitely without trial; to the Belgian Court of Cassation, which last year reaffirmed the supra-constitutional rank of the Convention in the Belgian legal system; to the critical part played by the Ukrainian Supreme Court in securing to the Ukrainian people their right to free elections; and let us not overlook the remarkable decision of the Plenary of the Russian Supreme Court of 10 October 2003, which insists that the judgments of the European Court "are binding on all authorities of the Russian Federation, including the courts", and the important developments in the case-law of the Russian Constitutional Court to which I believe President Zorkin will draw our attention.

Let me now turn to some institutional aspects which marked the Court's life in 2004. Indeed, the adoption of Protocol No. 14 provides an appropriate opportunity for a brief stocktaking of what has been achieved by the new Court set up in November 1998 by Protocol No. 11. This Protocol marked a huge leap forward in terms of principle, in fully judicialising the international control machinery: it merged the former Court and the Commission and made the new Court a permanent institution, it made the right of individual petition mandatory, and it abolished the adjudicative role of the Committee of Ministers, all elements which today are considered cornerstones of the Strasbourg system, taken for granted by everybody, but which came into being only six years ago.

But Protocol No. 11 has also been a success in practice in that the single, permanent Court in Strasbourg has shown itself able to cope with a much heavier caseload than its two predecessors, while maintaining the authority and quality of the case-law in the substantial cases. I do not intend to bore you with a long list of statistics, so I will confine myself to giving you just three figures covering the last five years: in that period the number of applications lodged has increased by 99% – a frightening figure in itself – but the number of applications finally disposed of has risen by nearly five times that figure, that is by 470%, and this against a background of budgetary growth of more modest proportions, amounting to 72%.

In 2004 the Court terminated 21,100 cases, by delivering 20,348 decisions and 718 judgments, an output which represents an increase of 18% on the 2003 output and which was achieved under difficult circumstances, and with means which all in all appear quite modest when compared with those of other international courts. This output is the result of a collective and sustained effort by a highly dedicated Court assisted by an equally motivated and competent Registry, to which I would like to pay tribute here. Unfortunately, however, all productivity gains achieved over the years have been eaten up by the constant rise in the number of incoming cases. The desire of more and more European citizens to seek justice on an international level as regards their enjoyment of their basic human rights has outstripped the benefits of the structural innovations introduced by Protocol No. 11.

This brings me now to Protocol No. 14, which was opened for signature last May after several years of intensive reflection and negotiation on how to adapt the Convention's procedural framework so as to help the Court cope with an ever-increasing caseload.

The main changes which the Protocol will bring about are well-known: the single-judge formation for clearly inadmissible applications, the extended competence of the Committees of three judges instead of seven-judge Chambers for routine admissible applications, the joint examination of admissibility and merits of applications and "significant disadvantage" as a new admissibility criterion. Besides these changes, which will definitely help to speed up the processing of applications, innovations like the judges' single term of office, the new role for the Commissioner for Human Rights, and the "infringement proceedings" for a State's failure to fulfil its obligations to execute a judgment finding a violation represent additional elements strengthening the Strasbourg system.

Another major signal sent out by Protocol No. 14 is to be found in the new provision permitting the European Union to accede to the Strasbourg system. Along with the corresponding provision of the European Union Constitutional Treaty, it puts an end to several decades of discussions and hesitations over whether such a move was desirable and whether the nature of the Strasbourg review was compatible with the very essence of Community law. Even though the details of such an accession remain to be worked out, the answer now given in parallel and almost simultaneously by the Convention and the European Union Constitutional Treaty is clear: not only is accession by the European Union desirable, it has become a necessity if action by European Union authorities is to enjoy the same degree of human rights acceptability with the citizen as action by national authorities. It can only be for the good of European unity if there is an integrated overall framework for the development and implementation of human rights standards in Europe, whatever the legal source of the measure affecting the citizen. I would therefore urge both the Council of Europe and the European Union to explore together as soon as possible the steps which could be taken as from now with a view to enabling negotiations on accession to be finalised as soon as Protocol No. 14 and the Constitutional Treaty have come into force. I hope that the Third Summit of Council of Europe member States will also send a clear signal to this effect.

In May 2003 the Committee of Ministers reaffirmed its determination "to guarantee the central role that both the Convention and the European Court of Human Rights must continue to play in the protection of human rights and fundamental freedoms on this continent". It is my belief that Protocol No. 14 represents a major contribution towards achieving that goal, and this is why I would urge all Contracting States to ratify it as soon as possible.

The Court, for its part, will do its utmost to use to the full all the instruments contained in Protocol No. 14, just as it did with Protocol No. 11. In an effort to anticipate formal entry into force, the Court has even begun adapting some of its procedures to reflect the scheme foreseen in the Protocol. Preparations with a view to adjusting our structure and working methods in time for the entry into force of Protocol No. 14 are under way.

Yet, as I have repeatedly said, Protocol No. 14 is unlikely to be the end of the story, as it might well not be sufficient to get the caseload problem under control. For there is one thing which, despite all its potential and all our efforts, Protocol No. 14 will not do, and the Court has always been very clear about this: it will not itself reduce the volume of cases coming to Strasbourg; it will not turn off the tap; it will not even slow down the flow.

On the other hand, ceaselessly raising judicial productivity has its limits, if only physical ones; nor can it be a dictate to which the Court should continue to yield at all costs, as this would amount not only to an interference with the Court's independence in organising its judicial work, but would also be wrong in principle. Indeed, the main aim of the Convention is not to have as many applications as possible declared inadmissible, but rather to secure effective protection of human rights in the member States. Driving up the statistics of terminated cases every year can only be achieved by concentrating on the easier, more numerous inadmissible applications, which will inevitably be at the expense of the more complex, meritorious ones.

To keep its priorities right, the Court recently decided, in line with the objectives pursued by Protocol No. 14, to devote more attention to adjudicating on the meritorious cases, the ones where the applicant will often have a serious claim of being the victim of a human rights violation. This may well result in the future in what could at first sight appear as a stagnating or even lower overall productivity. In reality, however, the figures, if compared category by category, should then indicate that the Court is progressively reverting to its core business, to the substantial cases, cases which actually contribute to enhancing the protection of human rights throughout the Council of Europe member States and even beyond.

Ladies and gentlemen, it is time for me to conclude. My personal philosophy concerning judges and courts is that they should only speak in public of their own role, their judgments and their contributions to society with, if I may put it that way, a sort of British understatement and/or perhaps Swiss sobriety. However, abandoning for once both understatement and sobriety, I would like to emphasise that the independent international protection machinery of the European Convention on Human Rights, embodied since 1998 in the single European Court of Human Rights, has proved to be an incredibly successful institution, known and respected across the whole world. The Council of Europe, which created and nurtured it, can be proud of this Court and its achievements and should be seeking not only to preserve, but also to strengthen it. Undoubtedly the Council of Europe's Third Summit of Heads of State in Poland in May will constitute a precious opportunity to

do this. It is no secret that I often feel obliged to call attention to workload and even backlog problems, but let me insist that the Court is overburdened because it has become so widely known over the years and such high expectations are placed on it by more and more European citizens, not because it has failed in its mission or in adapting its working methods. This Court is, without a shadow of doubt, the most productive of all international tribunals.

Most importantly, however, let us not forget that the European Court of Human Rights corresponds to a necessity for the democratic life of our European countries. The fact that the European Union Constitutional Treaty provides not only for a Charter of Fundamental Rights, but also for the accession of the European Union to the Strasbourg Convention system powerfully demonstrates how important it has become today for the credibility of action by public authorities to allow external judicial control over their compliance with human rights standards. In other words, there is simply no alternative to preserving the efficiency of the Strasbourg control machinery, while of course adapting it to the changes in modern European society. So, as we begin the preparations for making Protocol No. 14 a success, we should in parallel keep thinking about the long-term future of this unique institution. The European Convention on Human Rights is an essential part of our common heritage, an outstanding testimony to European ethical and legal culture, and we have every reason to be proud of it.

Before I pass the floor to our guest of honour for tonight, we would like to express our gratitude to the new Secretary General of the Council of Europe, who has had what you might call a baptism of fire in his first budget negotiations. He stood firm in his support for the Court and we are grateful to him for that. We also thank all those ambassadors who reaffirmed their commitment to preserving the effectiveness of the Convention system in the course of those discussions. As I have said on many other occasions, additional resources cannot and should not be the only answer to the caseload problems facing the Court, but to exclude all budgetary growth for a system which is itself growing in every sense is not an option.

Let me now turn to our guest of honour, Mr Valery Zorkin, President of the Russian Constitutional Court. Dear President, it is a privilege and honour to have you here tonight. You have an enormously important role in modern Russia and modern Europe. So please tell us all about it.

VI. SPEECH GIVEN BY Mr VALERY D. ZORKIN, PRESIDENT OF THE CONSTITUTIONAL COURT OF THE RUSSIAN FEDERATION, ON THE OCCASION OF THE OPENING OF THE JUDICIAL YEAR, 21 JANUARY 2005

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The Constitutional Court of the Russian Federation is a national judicial body for the protection of human and citizens' rights and freedoms by means of constitutional proceedings in accordance with the generally recognised principles and norms of international law and in conformity with the Constitution.

The founding in 1991 of the Constitutional Court of Russia, a specific judicial institution of constitutional control, was one of the particular events marking adherence of the new Russia to the values of European law. It did not come into being easily. The range of opinions in the heated parliamentary, scientific and public debates on the status of the constitutional control body and the adoption of legislation regarding it was broad: proposals included establishing a subsidiary advisory body attached to Parliament; assigning a constitutional and control function to courts of general jurisdiction; or setting up a system of judicial control of constitutionality on the American model. Ultimately, the European model of constitutional jurisdiction and proceedings was chosen**,** in view of the affinity between the developing legal system of Russia and the Continental (Roman-Germanic) law family.

The powers of the Constitutional Court, as a judicial body of constitutional control exercising its judicial power independently by means of constitutional proceedings as defined in the current Law on the Constitutional Court of the Russian Federation of 1994, are aimed at guaranteeing the legal superiority and direct application of the Constitution on the entire territory of the Russian Federation and protecting the foundations of the constitutional regime and fundamental human and citizens' rights and freedoms.

In the exercise of its powers, the Constitutional Court of the Russian Federation is governed solely by the Constitution; when taking up office, judges of the Constitutional Court take an oath to obey only the Constitution. According to its Article 15 § 1, it is the Constitution that has supreme legal force; laws and other normative acts adopted in the Federation may not contravene the Constitution. At the same time, Article 17 § 1 recognises and guarantees human and citizens' rights and freedoms in the Russian Federation according to the generally recognised principles and norms of international law and in conformity with the Constitution. These principles and norms, as well as the international treaties of the Russian Federation, form an integral part of its legal order, and an international treaty shall prevail over domestic law in case of conflict (Article 15 § 4).

Accordingly, the provisions of the Constitution that envisage specific human and citizens' rights and freedoms must be interpreted by the Constitutional Court in terms of the generally recognised principles and norms of international law.

The Russian Constitution provides for machinery allowing the introduction of new principles and norms, as well as international treaties, as they arise into the domestic legal order, and the adaptation of existing ones as they develop.

Thus, the Convention for the Protection of Human Rights and Fundamental Freedoms, which came into force in respect of Russia on 5 May 1998, is now incorporated into the Russian legal order.

It was stated in the declaration made at the time of ratification of the Convention that Russia "recognises *ipso facto* and without a special agreement that the jurisdiction of the European Court of Human Rights is obligatory regarding the questions of interpretation and application of the Convention and its Protocols in cases of an alleged violation of these treaties' provisions by the Russian Federation, when an alleged violation is committed after entry into force of these treaties with respect to the Russian Federation". Being one of the High Contracting Parties to the Convention, Russia is bound to execute final judgments of the European Court in any case to which it is a party.

Similarly, Russia adheres to self-imposed restrictions, and abides by human rights and the principles of the rule of law and democracy.

Therefore, rights and freedoms provided for in the European Convention on Human Rights, since it is an international treaty, and the judgments and decisions of the European Court of Human Rights, in so far as they express generally recognised principles and norms of international law, form an integral part of the Russian legal order.

The regulation of human rights and freedoms in Russia is governed first of all by the Constitution, and by laws proceeding from the Constitution. However, such regulation must not contravene the Convention. The task of Russian courts, including the Constitutional Court, is to guarantee human rights, whether freedom of the press, the right of property, personal integrity, human rights in the field of criminal procedure or any other right. The Constitutional Court protects the fundamental rights guaranteed by the Constitution, which are essentially the same as those listed in the Convention, the observance of which is overseen by the European Court of Human Rights. Both the Constitution and the Convention proceed from the fact that generally recognised fundamental human rights and freedoms in a modern State governed by the rule of law are inalienable and belong to everyone from birth.

Hence the Convention occupies a particular place in relation to traditional rules of international law and international treaties. It is defined as "a constitutional instrument of the European legal order" both by the European Court and prevailing legal doctrine. The Convention is uniquely positioned on the Russian legal scene. Under Article 15 § 4 of the Constitution, the Convention as an international treaty is incorporated into the Russian legal order and prevails over federal laws. At the same time, it is fair to say that under Articles 15 and 17 of the Constitution the Convention functions as a constitutional instrument of recognition and protection of human and citizens' rights and freedoms.

The list of rights guaranteed by the Constitution corresponds to those in the Convention for the Protection of Human Rights and Fundamental Freedoms, and seems to be considerably broader as regards social and economic rights. The exception is the prohibition of slavery, which is provided for in Article 4 § 1 of the Convention but not in

the Constitution. Furthermore, under Article 20 § 2 of the Constitution "capital punishment pending its abolition may be established by the federal law as an exceptional punishment for especially serious crimes against life and the accused should be granted the right to have his case considered by a court of jury".

Russia has signed but not ratified Protocol No. 6 to the Convention and has not signed Protocol No. 13, and has thus not undertaken to prohibit the death penalty in all circumstances. However, under a decision of the Constitutional Court the death penalty may not be imposed at present.

It should be underlined that the two reservations made by Russia at the time of ratification of the Convention regarding temporary application of extrajudicial arrest, detention and holding in custody under the Code of Criminal Procedure in force at the time and under the Disciplinary Regulations of the Armed Forces have been *de facto* withdrawn by a judgment of the Constitutional Court. The legislator was obliged to follow that move by introducing amendments to the two relevant acts.

The role of the Constitutional Court in ensuring interconnection between domestic and international law

The practice of the Constitutional Court shows a tendency, predetermined by the Constitution, towards the increased role of judicial power in reinforcing interaction between the domestic and international legal systems, ensuring a more active integration of Russia into the international legal field, including the European legal landscape.

First and foremost, it is the power of the Constitutional Court to review the constitutionality of international treaties not yet in force in the Russian Federation that serves the purpose of reconciling domestic and international law (Article 125 § 2 (d) of the Constitution). Finding such a treaty to be constitutional clears the way for completion of the procedure of its entry into force as regards the Russian Federation through Parliament and for its incorporation into the Russian legal system as an integral part thereof. Otherwise, the international treaty or its particular provisions may not be implemented or applied. This is to avoid conflicts between domestic law and the international obligations of Russia. Another power of the Constitutional Court is to settle disputes between State organs of the Russian Federation and its constituent entities as to competence in connection with the conclusion of international treaties of the Federation.

However, the role of the Constitutional Court in ensuring interconnection between the domestic and international legal systems is not confined to its participation in the introduction of international legal norms into the domestic legal order by means of parliamentary procedure.

The international legal element emerges in a variety of other cases examined by the Constitutional Court where international treaties themselves do not constitute the subject matter. When finding that a particular law or other normative act or their specific provisions are consistent or inconsistent with the Constitution, the Constitutional Court often states that the provisions in issue are in conformity with or, on the contrary, are in contravention of, the generally recognised principles and norms of international law as they are expressed in the European Convention.

From the very outset, the Constitutional Court has leaned heavily on the generally recognised principles and norms of international law, applying them as a standard for the exercise of the human and citizens' rights and freedoms enshrined in the Constitution at the domestic level. The Constitutional Court does not call upon international legal argumentation merely to reinforce its own legal positions, but uses it to interpret the meaning of the constitutional text and to reveal the constitutional sense of the legal provisions under review.

By using international legal arguments to frame legal positions of a general nature which are binding on courts and other State bodies and officials, the Constitutional Court establishes in practice a constitutional rule to the effect that international legal principles and norms belong to the Russian legal order. References to international law add value to the decisions of the Constitutional Court, which at the same time demonstrates that it considers international law to be an essential criterion to which legislation and the courts' practice must correspond. Decisions of the Constitutional Court containing a legal position and interpretation of the constitutional meaning of a law will often provide directions for the proper application of international law, by the legislator when improving legislation, the courts when trying cases, and citizens when asserting their rights.

Thus in December 2003 confiscation, which until then had served as an additional measure of punishment, was struck out of criminal legislation by the federal legislator. That measure significantly restricted the ability of the Russian Federation to fulfil its international obligations under a number of conventions to which it was already a party (the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 8 November 1990; the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 20 December 1988; the International Convention for the Suppression of the Financing of Terrorism of 9 December 1999; the United Nations Convention against Transnational Organised Crime of 15 November 2000), or which were being proposed for ratification (the Criminal Law Convention on Corruption adopted within the Council of Europe on 27 January 1999 and the United Nations Convention against Corruption of 9 December 2003).

In its decision no. 251-O of 8 July 2004, the Constitutional Court noted that at present the confiscation of property in the field of criminal justice is governed by a provision enshrined in Article 81 (3.1) of the Code of Criminal Procedure of the Russian Federation (confiscation of property admitted as material evidence in a criminal case). Being inherently a provision of criminal procedure – an independent branch of Russian law – it has its own legal purpose, namely the regulation of material evidence in criminal proceedings. Ensuring the fulfilment of international legal obligations undertaken by the Russian Federation in the field of criminal procedure, it does not and must not take the place of criminal-law provisions which and only which impose confiscation as a criminal sanction and, correspondingly, does not impede the settlement of confiscation matters in the field of criminal legislation having regard to the provisions of the above-mentioned conventions.

Proceeding from this stated legal position, the settlement of confiscation matters in the field of criminal legislation calls not merely for the reinstatement of Article 52 of the Criminal Code, but for the introduction of a new version of penal confiscation that would correspond to the requirements of the above-mentioned conventions.

Here is a further example. When reviewing Article 1070 of the Civil Code of the Russian Federation, under which damage caused in the course of court proceedings shall be compensated only if the fault of the judge is established by a court sentence that has acquired legal force, the Constitutional Court ruled that this provision did not contravene the Constitution since, according to this provision in its constitutional sense, the State is sued for damage caused in the course of civil proceedings as a result of unlawful acts when deciding a case on the merits. In its constitutional sense and combined with Articles 6 and 41 of the Convention, this provision may not serve as an excuse for the State not to compensate damage caused in the course of civil proceedings in other circumstances (that is, when the case is not decided on the merits) as a result of illegal acts or omissions of a court (judge), including violation of the reasonable time requirement, if the guilt of the judge is established not by a court sentence, but by another applicable court decision.

It is noteworthy that the reference to the Convention is made not only in the reasoning part of this decision but in the operative part as well.

Significance of the judgments and decisions of the European Court of Human Rights for the practice of the Constitutional Court of Russia

Under Article 32 of the Convention for the Protection of Human Rights and Fundamental Freedoms, the European Court of Human Rights is entitled to decide all matters concerning the interpretation and application of the provisions of the Convention and its Protocols. Therefore, the Russian Federation considers itself bound by the legal positions of the European Court as stated in its judgments and decisions when interpreting the provisions of the Convention and its Protocols and the case-law of the European Court.

The growing implementation of the European Court's case-law may serve as proof of the integration of the Russian legal system into the international judicial community.

Russia having officially recognised the jurisdiction of the European Court as regards the interpretation and application of the Convention and its Protocols to be binding, it follows that in their activities Russian courts must take its case-law into account.

While basing its findings on the provisions of the Constitution, the Constitutional Court of the Russian Federation refers at the same time to the European Convention in search of additional arguments to support its legal positions. Using the provisions of the Convention itself and subsequently judgments and decisions of the European Court of Human Rights in its reasoning was regular practice for the Constitutional Court even before Russia became a party to the Convention. Applying legal positions of the European Court as reasons in support of its own decisions, the Constitutional Court tends to coordinate its position with that of the European Court by rendering decisions which do not simply correspond to, but are guided by, European Court practice. So far, there has been no instance of criticism by the European Court in its judgments and decisions of the practice of the Constitutional Court of the Russian Federation.

Reference by the Constitutional Court to the provisions of the Convention can in some cases result in confirmation of such interpretation of its text as leads to a better protection of a right or a freedom.

While it confirms the constitutionality of a legal provision, removes an outdated one or reveals the constitutional meaning of a norm on the basis of the interpretation of the corresponding Articles of the Constitution, the Constitutional Court refers at the same time to the provisions of the Convention and their interpretation by the European Court as additional reasons. Thereby, the Constitutional Court directs the normative process towards achieving harmony with the modern interpretation of the rights and freedoms enshrined in the Convention and its Protocols.

During the last nine years the Constitutional Court has referred in ninety decisions to the Convention and judgments and decisions of the European Court of Human Rights, which it considers to be a source of law. In particular, it has referred to the positions of the European Court regarding the right of an accused to be given legal assistance as applying to the pre-judicial inquiry, and regarding criteria determining the limits of freedom of expression and information during election campaigns. The Constitutional Court has also used the findings of the European Court in its judgment of 7 May 2002 in *Burdov v. Russia*. Examining the constitutionality of legislative provisions on the social protection of citizens who had been exposed to radioactive emissions as a result of the Chernobyl disaster and on compensation of injury to health caused as a result of this disaster, the Constitutional Court referred to the provision of the aforementioned judgment of the European Court according to which the State cannot cite lack of funds as an excuse for not honouring a judgment debt.

In its decisions, the Constitutional Court has repeatedly underlined the significance of the constitutional right, in accordance with the international treaties of Russia, to appeal to international bodies of human rights protection, where all existing domestic remedies have been exhausted. The Constitutional Court would note that constitutional proceedings do not belong to those domestic remedies the exhaustion of which is required before appealing to such bodies. Citing the practice of the European Court, the Constitutional Court considers that the existence of an appellate judgment constitutes sufficient evidence that all domestic remedies have been exhausted. It is the Constitutional Court's opinion, based on the practice of the European Court, that supervisory review is not an obligatory requirement for exercising the right to appeal to these international bodies.

As is well known, under the Convention decisions of the European Court involve an undertaking by Contracting States to take "effective measures to prevent new violations of the Convention similar to those found by the Court's decisions".

In judgment no. 4-P of 2 February 1996, delivered before Russia ratified the Convention, the Constitutional Court stated that decisions of international bodies could lead to a re-examination of specific cases by the superior courts of the Russian Federation. This clears the way for superior courts to use their second-trial power with a view to revising judgments and decisions rendered previously, including those given by superior domestic courts. This legal position has been incorporated into the current Russian legislation on criminal procedure and arbitration proceedings.

Where rights and freedoms protected by the Convention have been violated by the law applied in a particular case, that is if the matter concerns a flaw in the law, then the legislator or the Constitutional Court, acting within the bounds of its jurisdiction, may decide its fate.

Thus, the Constitutional Court relies on the Convention and its interpretation by the European Court of Human Rights as it renders decisions and develops legal positions when reviewing laws and other normative acts.

The European Court of Human Rights' jurisdiction is subsidiary in nature, and mutual relations between the European Court and superior courts of European States are not to be considered as a one-way road. That is why the Constitutional Court of the Russian Federation turns to the European Court's case-law, as well as to the lessons drawn from the ongoing legal dialogue between the European Court and other European Constitutional Courts and the experiences of the latter. As a national judicial body of constitutional control, the Constitutional Court of the Russian Federation may prompt the development of the Russian legal system, its law-making and its law-enforcement practice towards conformity with a modern interpretation of the rights and freedoms enshrined in the Convention for the Protection of Human Rights and Fundamental Freedoms. In this way, the Constitutional Court plays an important role in the making and strengthening of Russian law as an integral part of the common European law landscape based on the Convention.

VII. VISITS

VISITS

12 January 2004	The Hon. Paul de Jersey QC, Chief Justice, Supreme Court of Queensland
28 January 2004	Mr Tassos Papadopoulos, President of the Republic of Cyprus
30 January 2004	Ms Eileen Carroll, Minister for International Cooperation, Canada
10 February 2004	Constitutional Court of Benin
16 February 2004	Mr Fatmir Xhafa, Minister of Justice, Albania
15 March 2004	Mr Cristian Diaconescu, Minister of Justice, Romania
16 March 2004	Judges of the Supreme Court of Ukraine
18 March 2004	Mr Vladimir Lukin, National Ombudsman of the Russian Federation
18 March 2004	Joint Committee on Human Rights, United Kingdom
2 April 2004	Court of Justice of the European Communities
20 April 2004	Delegation of parliamentarians, Australia
26 April 2004	Mr Abdelwahed Radi, President of the Chamber of Representatives, Morocco
27 April 2004	Mr Ivo Sanader, Prime Minister of Croatia
27 April 2004	Mr Nurtay Abikayev, Speaker of the Senate, Kazakhstan
27 April 2004	Mr Stéphane Valéri, President of the National Council, Monaco
29 April 2004	Mr Heydar Aliyev, President of Azerbaijan
5 May 2004	H.R.H. Crown Princess Victoria of Sweden
7 May 2004	Mr Theodor Meron, President of the International Criminal Tribunal for the former Yugoslavia
11 June 2004	School of Politcal Studies, Tbilisi, Georgia
15 June 2004	H.R.H. Prince Philippe and H.R.H. Princess Mathilde of Belgium
23 June 2004	Mr Robert Kocharian, President of Armenia

VIII. ACTIVITIES OF THE GRAND CHAMBER AND SECTIONS

ACTIVITIES OF THE GRAND CHAMBER AND SECTIONS

1. Grand Chamber

In 2004 the number of cases pending before the Grand Chamber remained stable. At the beginning of the year, there were 22 cases (concerning 27 applications) plus a request for an advisory opinion, and at the end of the year there were 21 cases (concerning 31 applications).

14 new cases (concerning 21 applications) were referred to the Grand Chamber – 7 by relinquishment of jurisdiction by a Chamber in favour of the Grand Chamber in accordance with Article 30 of the Convention, and 7 by a decision of the panel of the Grand Chamber to accept a referral request under Article 43.

The Grand Chamber held 9 oral hearings.

The Grand Chamber adopted one admissibility decision (*Senator Lines GmbH v. fifteen member States of the European Union*, no. 56672/00) and delivered 15 judgments (concerning 16 applications – 7 in relinquishment cases and 8 in referral request cases).

The Grand Chamber also adopted a decision on the first ever request by the Committee of Ministers for an advisory opinion.

2. First Section

In 2004 the Section held 37 Chamber meetings. Oral hearings were held in 6 cases. The Section delivered 198 judgments, of which 156 concerned the merits, 33 concerned a friendly settlement and 3 concerned the striking out of the case. The remainder concerned revision or just satisfaction. The Section applied Article 29 § 3 of the Convention (combined examination of admissibility and merits) in 328 cases.

Of the applications examined by a Chamber

(a) 262 were declared admissible;
(b) 122 were declared inadmissible;
(c) 85 were struck out of the list; and
(d) 647 were communicated to the State concerned for observations, out of which 538 were communicated by the President.

In addition, the Section held 63 Committee meetings. 6,034 applications were declared inadmissible and 68 applications were struck out of the list. The total number of applications rejected by a Committee represented almost 96.7% of the inadmissibility and striking-out decisions adopted by the Section during the year.

At the end of the year 11,276 applications were pending before the Section.

3. Second Section

In 2004 the Section held 39 Chamber meetings (32 in the framework of the former Section and 7 in the framework of the new Section). Oral hearings were scheduled in 2 cases, one of which was cancelled as the parties were about to reach a friendly settlement. The first phase of a fact-finding mission to Georgia and Russia, scheduled in 2003, took place in February 2004 in Tbilisi (Georgia). However, the delegation was obliged by circumstances to cancel the corresponding mission to Russia. The Section delivered 195 judgments, of which 177 concerned the merits, 11 concerned a friendly settlement, 2 concerned the striking out of the case and 5 dealt with just satisfaction or revision. The Section applied Article 29 § 3 of the Convention (combined examination of admissibility and merits) in 406 cases, and 103 judgments were delivered under this procedure.

Of the applications examined by a Chamber

(a) 201 were declared admissible;
(b) 95 were declared inadmissible;
(c) 52 were struck out of the list; and
(d) 555 were communicated to the State concerned for observations, out of which 429 were communicated by the President.

In addition, the Section held 91 Committee meetings. 5,401 applications were declared inadmissible and 63 applications were struck out of the list. The total number of applications rejected by a Committee represented 97.38% of the inadmissibility and striking-out decisions adopted by the Section during the year.

At the end of the year 14,627 applications were pending before the Section.

4. Third Section

In 2004 the Section held 37 Chamber meetings. 5 oral hearings were held concerning 21 applications. The Section delivered 140 judgments, of which 131 concerned the merits and 9 concerned the striking out of the case (8 following a friendly settlement). The Section applied Article 29 § 3 of the Convention (combined examination of admissibility and merits) in 738 cases, and 79 judgments were delivered under this procedure.

Of the applications examined by a Chamber

(a) 189 were declared admissible;
(b) 81 were declared inadmissible;
(c) 142 were struck out of the list; and
(d) 891 were communicated to the State concerned for observations, out of which 766 were communicated by the President.

In addition, the Section held 44 Committee meetings. 3,656 applications were declared inadmissible and 45 applications were struck out of the list. The total number of applications rejected by a Committee represented 94.32% of the inadmissibility and striking-out decisions adopted by the Section during the year.

At the end of the year 10,956 applications were pending before the Section.

5. Fourth Section

In 2004 the Section held 35 Chamber meetings. Oral hearings were held in 5 cases and delegates took evidence in one case, *N. v. Finland*, no. 38885/02. The Section delivered 167 judgments, of which 148 concerned the merits, 16 concerned a friendly settlement, 2 concerned the striking out of the case and one concerned just satisfaction. Article 29 § 3 of the Convention (combined examination of admissibility and merits) was applied in 93 cases, and 85 judgments were delivered under this procedure.

Of the applications examined by a Chamber

(a) 189 were declared admissible;
(b) 111 were declared inadmissible;
(c) 35 were struck out of the list; and
(d) 301 were communicated to the State concerned for observations, out of which 141 were communicated by the President.

In addition, the Section held 61 Committee meetings. 4,301 applications were declared inadmissible and 57 applications were struck out of the list. The total number of applications rejected by a Committee represented 97% of the inadmissibility and striking-out decisions adopted by the Section during the year.

At the end of the year 10,898 applications were pending before the Section.

IX. PUBLICATION OF THE COURT'S CASE-LAW

PUBLICATION OF THE COURT'S CASE-LAW

A. Reports of Judgments and Decisions

The official collection of selected judgments and decisions of the Court, *Reports of Judgments and Decisions* (cited as ECHR), is published by Carl Heymanns Verlag KG, Luxemburger Straße 449, D-50939 Köln (Tel: (+49) 221/94373-0; Fax: (+49) 221/94373-901; Internet address: http://www.heymanns.com). The publisher offers special terms to anyone purchasing a complete set of the judgments and decisions and also arranges for their distribution, in association with the following agents for certain countries:

Belgium: Etablissements Emile Bruylant, 67 rue de la Régence, B-1000 Bruxelles

Luxembourg: Librairie Promoculture, 14 rue Duscher (place de Paris), B.P. 1142, L-1011 Luxembourg-Gare

The Netherlands: B.V. Juridische Boekhandel & Antiquariaat A. Jongbloed & Zoon, Noordeinde 39, NL-2514 GC 's-Gravenhage

The published texts are accompanied by headnotes and summaries and a separate volume containing indexes is issued for each year. The following judgments and decisions delivered in 2004 have been accepted for publication. Grand Chamber cases are indicated by [GC]. Where a Chamber judgment is not final or a request for referral to the Grand Chamber is pending, the decision to publish the Chamber judgment is provisional.

ECHR 2004-I

Judgments

Voggenreiter v. Germany, no. 47169/99 (extracts)
Haas v. the Netherlands, no. 36983/97
Depiets v. France, no. 53971/00
Perez v. France [GC], no. 47287/99
Maestri v. Italy [GC], no. 39748/98
Gorzelik and Others v. Poland [GC], no. 44158/98

Decisions

Guigue and SGEN-CFDT v. France (dec.), no. 59821/00
Sardinas Albo v. Italy (dec.), no. 56271/00 (extracts)

ECHR 2004-II

Judgments

İpek v. Turkey, no. 25760/94 (extracts)
Glass v. the United Kingdom, no. 61827/00
Radio France and Others v. France, no. 53984/00
Assanidze v. Georgia [GC], no. 71503/01

Decisions

Martinie v. France (dec.), no. 58675/00 (extracts)
Berdzenishvili v. Russia (dec.), no. 31697/03 (extracts)
Steck-Risch and Others v. Liechtenstein (dec.), no. 63151/00
Sardin v. Russia (dec.), no. 69582/01

ECHR 2004-III

Judgments

Tahsin Acar v. Turkey [GC], no. 26307/95
Haase v. Germany, no. 11057/02 (extracts)
Amihalachioaie v. Moldova, no. 60115/00
Gorraiz Lizarraga and Others v. Spain, no. 62543/00
Azinas v. Cyprus [GC], no. 56679/00
Prodan v. Moldova, no. 49806/99 (extracts)

ECHR 2004-IV

Judgments

Editions Plon v. France, no. 58148/00
Somogyi v. Italy, no. 67972/01
Gusinskiy v. Russia, no. 70276/01
Lebbink v. the Netherlands, no. 45582/99
Batı and Others v. Turkey, nos. 33097/96 and 57834/00 (extracts)
S.C. v. the United Kingdom, no. 60958/00

Decisions

Senator Lines GmbH v. Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden and the United Kingdom (dec.) [GC], no. 56672/00
Shannon v. the United Kingdom (dec.), no. 67537/01

ECHR 2004-V

Judgments

Broniowski v. Poland [GC], no. 31443/96
Pabla Ky v. Finland, no. 47221/99
Aziz v. Cyprus, no. 69949/01
Pini and Others v. Romania, nos. 78028/01 and 78030/01 (extracts)

Decisions

Moreira Barbosa v. Portugal (dec.), no. 65681/01 (extracts)
Des Fours Walderode v. the Czech Republic (dec.), no. 40057/98
Cornelis v. the Netherlands (dec.), no. 994/03 (extracts)

ECHR 2004-VI

Judgments

Von Hannover v. Germany, no. 59320/00
Doğan and Others v. Turkey, nos. 8803/02 to 8811/02, 8813/02 and 8815/02 to 8819/02 (extracts)
Chauvy and Others v. France, no. 64915/01
Vito Sante Santoro v. Italy, no. 36681/97

Decisions

Decision on the competence of the Court to give an advisory opinion [GC]
Cataldo v. Italy (dec.), no. 45656/99
Çiftçi v. Turkey (dec.), no. 71860/01
Harabin v. Slovakia (dec.), no. 62584/00
Boškoski v. the former Yugoslav Republic of Macedonia (dec.), no. 11676/04

ECHR 2004-VII

Judgment

Ilaşcu and Others v. Moldova and Russia [GC], no. 48787/99

Decisions

W.P. and Others v. Poland (dec.), no. 42264/98 (extracts)
Eurofinacom v. France (dec.), no. 58753/00 (extracts)

ECHR 2004-VIII

Judgments

Vo v. France [GC], no. 53924/00
Vachev v. Bulgaria, no. 42987/98 (extracts)
Beneficio Cappella Paolini v. San Marino, no. 40786/98 (extracts)
Pla and Puncernau v. Andorra, no. 69498/01
Bäck v. Finland, no. 37598/97
K. v. Italy, no. 38805/97
Nikitin v. Russia, no. 50178/99
Sidabras and Džiautas v. Lithuania, nos. 55480/00 and 59330/00

ECHR 2004-IX

Judgments

Slimani v. France, no. 57671/00 (extracts)
San Leonard Band Club v. Malta, no. 77562/01
Związek Nauczycielstwa Polskiego v. Poland, no. 42049/98
Kopecký v. Slovakia [GC], no. 44912/98
H.L. v. the United Kingdom, no. 45508/99
Kjartan Ásmundsson v. Iceland, no. 60669/00

Decision

Delbos and Others v. France (dec.), no. 60819/00

ECHR 2004-X

Judgments

Melnychenko v. Ukraine, no. 17707/02
Edwards and Lewis v. the United Kingdom [GC], nos. 39647/98 and 40461/98
Marpa Zeeland B.V. and Metal Welding B.V. v. the Netherlands, no. 46300/99 (extracts)
Taşkın and Others v. Turkey, no. 46117/99
Ünal Tekeli v. Turkey, no. 29865/96 (extracts)
Karhuvaara and Iltalehti v. Finland, no. 53678/00
Moreno Gómez v. Spain, no. 4143/02

Decision

Hatip Çelik v. Turkey (dec.), no. 52991/99

ECHR 2004-XI

Judgments

Prokopovich v. Russia, no. 58255/00 (extracts)
Cumpănă and Mazăre v. Romania [GC], no. 33348/96
Pedersen and Baadsgaard v. Denmark [GC], no. 49017/99
Makaratzis v. Greece [GC], no. 50385/99

Decisions

Schneider v. Germany (dec.), no. 44842/98
Falk v. the Netherlands (dec.), no. 66273/01
Norwood v. the United Kingdom (dec.), no. 23131/03

ECHR 2004-XII

Judgments

Öneryıldız v. Turkey [GC], no. 48939/99
Mykhaylenky and Others v. Ukraine, nos. 35091/02, 35196/02, 35201/02, 35204/02, 35945/02, 35949/02, 35953/02, 36800/02, 38296/02 and 42814/02

Decisions

Pütün v. Turkey (dec.), no. 31734/96 (extracts)
Roseira Bento v. Portugal (dec.), no. 29288/02 (extracts)
Swedish Transport Workers' Union v. Sweden (dec.), no. 53507/99 (extracts)
Mentzen v. Latvia (dec.), no. 71074/01

B. The Court's Internet site

The Court's website (http://www.echr.coe.int) provides general information about the Court, including its composition, organisation and procedure, details of pending cases and oral hearings, as well as the text of press releases. In addition, the site gives access to the Court's case-law database, containing the full text of all judgments and of admissibility decisions, other than those adopted by Committees of three judges, since 1986 (plus certain earlier ones), as well as resolutions of the Committee of Ministers in so far as they relate to the European Convention on Human Rights. The database is accessible via an advanced search screen and a powerful search engine enables the user to carry out searches in the text and/or in separate data fields. A user manual and a help function are provided.

In 2004 the Court's site had 57 million hits in the course of 1.4 million user sessions.

The Court also launched the HUDOC CD-ROM (http://www.echr.coe.int/HUDOCCD/Default.htm).

X. SHORT SURVEY OF CASES EXAMINED BY THE COURT IN 2004

SHORT SURVEY OF CASES EXAMINED BY THE COURT IN 2004

In 2004 the Court delivered 718 judgments[1], 15 of which were delivered by the Grand Chamber. The total number of judgments delivered in 2004 showed a modest increase in comparison to the previous year (703). This was the first annual increase since 2001. Moreover, an analysis of the type of judgments involved reveals a significant increase in the number of more complex judgments: whereas the number of judgments allocated an importance level of 1 or 2 in the Court's case-law database in 2003 was 185, the corresponding figure for 2004 was 244, an increase of almost one-third. Consequently, quite apart from the numerical increase, the judgments of the Court reflected substantial growth in terms of productivity.

Four States – Turkey, Poland, France and Italy – accounted for over 50% of all judgments[2]. Judgments were delivered in respect of all Contracting States except Armenia, Azerbaijan, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Norway, Slovenia and Switzerland. The Court delivered its first judgments in respect of Albania and Georgia.

The number of applications lodged with the Court continued its inexorable upward momentum, to an estimated 44,128 (compared to 38,810 in the previous year, an increase of 13.7%), while the number of applications declared admissible rose from 753 to 841 (an increase of 11.75%).

As in previous years, a large percentage of the judgments delivered by the Court concerned exclusively or primarily the excessive length of court proceedings. The number of these judgments was virtually identical to that for the previous year (increasing from 235 to 248), as was the figure shown as a percentage of all judgments (increasing from 33.43% to 34.49%). Furthermore, the same two States – Poland and France – accounted for a large proportion of these judgments (67 and 33 respectively). While for the second year in succession there were very few cases concerning the length of court proceedings in Italy, as a direct consequence of the introduction of a remedy at the national level[3], a new wave of such cases threatened following the Court's finding in *Scordino*[4] in March 2003 that the amount of compensation awarded by the domestic courts was not sufficiently high to deprive the applicant of his status as a victim. In that connection, in a group of judgments delivered in November 2004, the Court set out a number of criteria for the calculation of just satisfaction[5], which would enable the Italian courts to align their approach to that of the Court in determining the appropriate level of compensation. However, the Government's request for referral of these cases to the Grand Chamber has been accepted.

As far as the other principal groups of judgments in 2004 are concerned, the main increase related to those dealing with the independence and impartiality of national security courts in Turkey, including those in which the only other issue was freedom of expression[6]. However, it should be noted in this connection that the participation of military judges in national security courts ended in June 1999[7] and that the national security courts themselves were abolished in 2004[8]. Other important increases related to cases concerning

cases concerning the annulment of final and binding judgments in Romania more or less disappeared[11].

One of the most striking developments during 2004 was the increasing tendency on the part of the Court to indicate to governments the measures which it would be appropriate to adopt in order to provide just satisfaction to the victim of a violation. The Court had given such indications in the past: for example, in a case concerning the unlawful occupation of property as an "indirect expropriation", the Court had considered that "the most appropriate form of redress … would be by way of restitution of the land by the State, coupled with compensation for the pecuniary damage sustained, such as the loss of enjoyment, and compensation for non-pecuniary damage"[12], while in a series of cases concerning the annulment of final and binding judgments ordering the return of previously nationalised property it had indicated that "the return of the property in issue … would put the applicant as far as possible in the situation equivalent to the one in which he would have been if there had not been a breach"[13]. In *Brumărescu*, the Court had even indicated in the operative part of its judgment that the State "[was] to return to the applicant … the house in issue and the land on which it [was] situated" but with the alternative of payment of a specific amount of compensation in the event of restitution not taking place. The Court has also stated in many of its judgments concerning the lack of independence and impartiality of national security courts in Turkey that where it finds that an applicant was convicted by a tribunal which was not independent and impartial "in principle, the most appropriate form of relief would be to ensure that the applicant is granted in due course a retrial by an independent and impartial tribunal"[14]. Similarly, in two judgments in 2004 concerning conviction *in absentia* in Italy of accused persons who had not been properly notified of the proceedings, the Court indicated that the most appropriate redress would be to provide a retrial or to reopen the proceedings, speedily and in compliance with the requirements of Article 6[15].

In *Assanidze v. Georgia*[16], however, the Grand Chamber took this approach a step further. Having concluded that there had been violations of Articles 5 and 6 of the Convention on account of the failure of the authorities of the Ajarian Autonomous Republic to release the applicant despite his acquittal by the Georgian Supreme Court, the Court held in the operative part of the judgment that "the respondent State must secure the applicant's release at the earliest possible date". While reiterating that it was primarily for the State to choose the means of discharging its obligation to execute a judgment, the Court took the view that "by its very nature, the violation found in the instant case [did] not leave any real choice as to the measures required to remedy it".

A further major development took place with the delivery of the Grand Chamber's judgment in *Broniowski v. Poland*[17]. The case concerned successive undertakings by the Polish authorities to provide compensation, in the form of discounted entitlement to property, in respect of land "beyond the Bug river" which had ceased to be Polish territory after the Second World War. The transfer of most State-owned land to local authorities under the Local Self-Government Act of 1990 and the further reduction of the available property designated for compensation as a result of legislative measures between 1993 and 2001 made it virtually impossible for the State to fulfil these undertakings and the Constitutional Court held in 2002 that the "right to credit", affecting tens of thousands of people, had been rendered illusory. The European Court not only found that there had been a violation of Article 1 of Protocol No. 1 but also concluded that "the violation ha[d] originated in a systemic problem connected with the malfunctioning of domestic legislation and practice caused by the failure to set up an effective mechanism to implement the 'right

to credit' of Bug River claimants". The Court defined a systemic problem as a situation "where the facts of the case disclose the existence, within the [national] legal order, of a shortcoming as a consequence of which a whole class of individuals have been or are still denied [their Convention rights]" and "where the deficiencies in national law and practice identified ... may give rise to numerous subsequent well-founded applications".

On that basis, the Court went on to say that, in executing the judgment, "general measures should either remove any hindrance to the implementation of the right of the numerous persons affected by the situation found to have been in breach of the Convention or provide equivalent redress in lieu". In the operative part of its judgment, the Court stated that "the respondent State must, through appropriate legal measures and administrative practices, secure the implementation of the property right in question in respect of the remaining Bug River claimants or provide them with equivalent redress in lieu, in accordance with the principles of protection of property rights under Article 1 of Protocol No. 1". The Court thus significantly extended its role in indicating appropriate measures from individual measures – as in *Assanidze*, mentioned above – to general measures required to remedy a systemic problem.

This method of adopting a "pilot" judgment in which a systemic problem is identified has an important practical consequence for the work of the Court, which will in such circumstances adjourn consideration of other applications arising out of the same problem, pending adoption of the necessary remedial measures. In line with the general aim of reducing the Court's workload, in particular with regard to large numbers of similar cases, by ensuring greater protection of human rights at the national level, the Court pointed out that the "measures adopted must be such as to remedy the systemic defect underlying [its] finding of a violation so as not to overburden the Convention system with large numbers of applications deriving from the same cause". In October 2004 the Court indicated to the parties in a further Polish case that it considered it to be a pilot case for the purposes of ruling on whether successive rent-control schemes were compatible with Article 1 of Protocol No. 1[18]. Moreover, the Court subsequently found in one of the judgments concerning conviction *in absentia* in Italy that the violation had originated in a structural problem and held that the State had to secure the rights of the applicant and of others in the same situation[19].

Finally, in this connection, mention may also be made of *Ünal Tekeli v. Turkey*[20], in which the Court found a violation of Article 14 of the Convention taken in conjunction with Article 8 on account of the refusal of the domestic courts to allow the applicant to use only her maiden name after marriage. In its consideration of the question of just satisfaction, the Court observed that "it [was] for the Turkish State to implement in due course such measures as it consider[ed] appropriate to fulfil its obligations to secure to each married partner, including the applicant, the right to keep their own surname or to have an equal say in the choice of their family name in compliance with this judgment". It then added: "While there is no doubt that the applicant has suffered distress and anxiety in the past, it is the inability of married women under Turkish law to keep their maiden name which lies at the heart of the complaints in the instant case. The Court does not therefore find it appropriate to make an award to the applicant, seeing that in the circumstances of the present case the finding of a violation, with the consequences which will ensue for the future, may be regarded as constituting just satisfaction." This indication was not, however, repeated in the operative part of the judgment.

Deficiencies in domestic practice, which the Court identified as part of the problem in *Broniowski*, cited above, can be identified as an important feature in several recent judgments in which the Court has recognised that, while the legal system provides a sufficient framework to ensure the effective protection of rights, there has in practice been a failure – deliberate or otherwise – of certain authorities to implement the law and regulations properly. Thus, in *Öneryıldız v. Turkey*[21], which concerned deaths resulting from an explosion at a rubbish tip, although the domestic law provided for the prosecution of the responsible officials, the prosecutor limited the charges to negligence in the performance of their duties, with the result that there was no examination of responsibility for the deaths, and the fines ultimately imposed were very modest. In *Taşkın and Others v. Turkey*[22], permits to operate a gold mine were renewed by the authorities without going through the correct procedure, circumventing a court judgment, while similarly in *Moreno Gómez v. Spain*[23], despite recognition of a serious problem of noise pollution, the authorities not only tolerated the situation but actually granted new permits for discotheques and bars in the vicinity. Finally, in *Prokopovich v. Russia*[24], the Court found a violation of Article 8 of the Convention where the partner of a deceased tenant had been evicted without the proper procedures being respected.

In several important judgments the Court examined the notion of the jurisdiction of States. In *Assanidze*, to which reference has already been made, the question arose as to whether Georgia could be held responsible for a situation which was in fact attributable to the authorities of an autonomous region. These authorities had refused to comply with a judgment of the Georgian Supreme Court. The European Court observed that the Ajarian Autonomous Republic formed an integral part of Georgia and, taking into account that there existed no secessionist movement and that no other State exercised control over Ajarian territory, that there was a presumption that Georgia remained responsible, which presumption was confirmed. The acts in question therefore came within the jurisdiction of Georgia.

The situation was considered to be different in *Ilaşcu and Others v. Moldova and Russia*[25], in which the Grand Chamber was called upon to determine whether Moldova and/or Russia exercised "jurisdiction" over the separatist "Moldavian Republic of Transdniestria", where Russian troops had remained following Moldova's declaration of independence in 1991. As far as Moldova was concerned, the principle established by the Court was that the aforementioned presumption that "jurisdiction" was exercised throughout a State's territory could be limited in exceptional circumstances, in particular when the State was prevented from exercising its authority over part of its territory, but that the State remained under a positive obligation to take appropriate steps to ensure respect for human rights within its territory. Consequently, while the Moldovan government, which was the only legitimate one under international law, did not exercise authority over part of its territory, it remained under a positive obligation to take the measures within its power to protect the applicants' rights, in particular by securing their release from detention. Thus, the State did not cease to have "jurisdiction". However, since the scope of that jurisdiction was reduced by the factual situation, the State's undertaking under Article 1 of the Convention had to be considered only in the light of its positive obligations. This implied an obligation to take measures both to re-establish control over Transdniestria and to ensure respect for the individual applicants' rights. The Court accepted that there was little the Moldovan authorities could do against a regime sustained by a power such as the Russian Federation and also acknowledged the efforts which had been made on the diplomatic level, as well as the measures which had been taken to try and secure the applicants'

release. However, it found that after May 2001, when one of the applicants was released, these efforts had been weaker and concluded that Moldova's responsibility could be engaged on account of its failure to discharge its positive obligations after that date.

As to the jurisdiction of the Russian Federation, the Court reiterated the principle that in exceptional circumstances the acts of a State which take place or produce effects outside its territory may amount to the exercise of "jurisdiction". Furthermore, where a State exercises overall control in an area outside its territory, its responsibility extends to acts of the local administration which survives by virtue of its support. The Court noted that the Russian Federation had supported the separatist authorities by its political declarations, that its military personnel had participated in the fighting and that it had continued to provide military, political and economic support after a ceasefire agreement. Moreover, the applicants had been arrested with the participation of Russian troops and three of them were detained on the premises of those troops. The applicants had thus come within the jurisdiction of the Russian Federation. Although the Convention was not applicable in respect of the Russian Federation at that time, the Court considered that the events had to be regarded as including not only the acts in which agents of the Russian Federation had participated but also the transfer of the applicants into the hands of the separatist regime, in full knowledge of the illegality and unconstitutionality of that regime. After ratification of the Convention, the Russian army had maintained an important military presence on Moldovan territory and the Russian authorities had provided significant financial support, so that the "Moldavian Republic of Transdniestria" had remained under the effective authority, or at the very least the decisive influence, of the Russian Federation, and there was a continuous link of responsibility for the applicants' fate. The applicants therefore came within the jurisdiction of the Russian Federation, whose responsibility was engaged.

Jurisdiction was also a central issue in *Issa and Others v. Turkey*[26], which concerned the murder and mutilation of a group of shepherds in northern Iraq in 1995. The applicants claimed that Turkish troops carrying out a military operation were responsible. However, while it was undisputed that a large number of Turkish troops had been involved in an incursion during a six-week period at the material time, it did not appear to the Court that Turkey had "exercised effective overall control of the entire area of northern Iraq". The crucial question was therefore whether Turkish troops had been in the area of the incident, and in that respect the Court could not find that fact established to the required standard of proof. It concluded that the deceased had not come within the jurisdiction of the respondent State.

"Core" rights (Articles 2 and 3)

The right to life was raised in three Grand Chamber judgments, each of which dealt with very different aspects of that right. In *Vo v. France*[27], the applicant, who had had to undergo a therapeutic abortion as a result of medical negligence, had lodged a criminal complaint concerning both the damage she herself had suffered (an offence which later benefited from an amnesty) and the homicide of her unborn child. The Court of Cassation had held, however, that causing the death by medical negligence of a human foetus *in utero* which was not yet viable did not constitute the offence of involuntary homicide, since under French law the foetus was not a person entitled to the protection of the criminal law. The Grand Chamber did not rule on the question whether the unborn child was protected by Article 2 of the Convention but, noting that the interests of the foetus and the mother overlapped, it concluded that the availability of a civil action for damages against the

authorities on account of medical negligence was sufficient to satisfy the State's positive obligations, even assuming that Article 2 did apply.

In the important case of *Öneryıldız*, which has already been mentioned, the Grand Chamber extended to the field of dangerous activities the notion of the State's obligation to take appropriate action to protect life against a real and imminent threat of which the authorities are or should be aware. The Court found that the State's positive obligation "must be construed as applying in the context of any activity, whether public or not, in which the right to life may be at stake, and *a fortiori* in the case of industrial activities, which by their very nature are dangerous, such as the operation of waste-collection sites". The particular case concerned an explosion which had taken place at a rubbish tip beside which a shanty town had built up over the years. The resultant landslide had destroyed the applicant's home and killed several members of his family. The Court found that the authorities were aware of the potential risk to the inhabitants of the shanty town and that they had failed to take adequate measures to avoid that risk. It considered that there were measures which could have been taken and which would not have been prohibitively expensive and added that it would not have been sufficient simply to inform the inhabitants of the risk. With regard to the unlawful nature of the shanty town, the Court observed that there had been a policy of tolerating the buildings. It concluded that there had been a substantive violation of Article 2. It also held that there had been a procedural violation of that provision. Although both administrative and criminal investigations had been conducted and had led to the identification of those responsible (two mayors), the Court was not satisfied that the criminal proceedings had established responsibility for the deaths which had occurred, since they had related only to the offence of negligence in carrying out official duties. In the Court's view, the trial court had not given sufficient emphasis to the seriousness of the consequences for the right to life.

The third Grand Chamber judgment, in *Makaratzis v. Greece*[28], concerned a car chase through the streets of Athens involving a large number of police officers, some of whom were off duty. The applicant had broken through several road blocks and collided with other vehicles, injuring two drivers, before eventually stopping at a petrol station, where the police continued to fire at him, causing a number of injuries. Seven police officers against whom criminal proceedings had been brought were acquitted on the ground that it was not possible to establish that they had fired the shots which had injured the applicant, given that many other shots had been fired from unidentified weapons. The Court found firstly that Article 2 was applicable, since the applicant had been the victim of conduct which had put his life at risk and it had only been by good fortune that he had not been killed. While acknowledging that the police could reasonably have considered that there was a need to resort to the use of weapons, so that recourse to some lethal force could be said to have been justified, the Court nevertheless concluded that there had been a violation of Article 2. The operation had involved a large number of police officers in a chaotic and largely uncontrolled chase in which there had been an absence of clear chains of command. The degeneration of the situation could largely be attributed to the fact that at the time neither the individual police officers nor the chase, seen as a collective police operation, had benefited from an appropriate structure in domestic law or practice setting out clear guidelines and criteria governing the use of force. Again, the Court also found that there had been a procedural violation, since the investigation had been incomplete and inadequate, in particular on account of the authorities' inability to identify all the police officers involved.

The absence of adequate planning and control of an arrest operation was also a relevant consideration in the finding of a substantive violation of the right to life in *Nachova and Others v. Bulgaria*[29], which was subsequently referred to the Grand Chamber. The case concerned the fatal shooting by military police of two Roma who had escaped from detention after being absent without leave from compulsory military service. The Chamber took into account the fact that the officers had been able to observe that the conscripts were unarmed and were not showing any signs of threatening behaviour in concluding that the use of firearms was not "absolutely necessary" within the meaning of Article 2 § 2. The Chamber also found that there had been a procedural violation of Article 2. However, the most significant development in the case was its finding that there had been a double violation of Article 14 of the Convention, in that the authorities had not offered any satisfactory explanation showing that the events had not been the result of a prohibited discriminatory attitude on the part of State agents and in that there had been insufficient investigation of that possibility[30].

The procedural aspect of Article 2 was also in issue in *Slimani v. France*[31]. The applicant's partner had died in a detention centre while awaiting deportation. Although the Court found that the applicant had failed to exhaust domestic remedies with regard to her substantive complaints under Articles 2 and 3, it held that there had been a procedural violation in so far as she had not had automatic access to the inquiry into the cause of death. It was insufficient, in the Court's view, that the applicant could have lodged a criminal complaint and joined those proceedings. Thus, whenever there was a suspicious death in custody, the deceased's next-of-kin should not be obliged to take the initiative in lodging a formal complaint or assuming responsibility for investigation proceedings; rather, Article 2 required that the next-of-kin be automatically involved with the official investigation opened by the authorities into the cause of death.

As in previous years, a number of judgments related to disappearances and killings by unknown perpetrators in Turkey. In one of these, a substantive violation of the right to life was found[32], but in the majority the breach related only to the inadequacy of the investigation conducted by the authorities[33]. The events in issue in these cases dated back to the 1990s, and in particular to 1994-95. In several other cases, the issue related rather to deaths resulting from military action such as the shelling of villages[34]. One of these cases, concerning events in 1993, raised a number of different issues under Article 2[35]. The Court accepted that the opening of intensive fire on a village by the security forces represented a "tactical reaction to the initial shots fired at them from the village" and could not be regarded as entailing a disproportionate degree of force. It took into account the background of armed conflict in the area and the fact that there had been only one civilian casualty. However, the Court found violations in respect of certain other aspects of the incident. Firstly, with regard to the civilian casualty, a child, while the Court found the mother's claim that the security forces had failed to secure appropriate medical treatment and that the child might have survived if the security forces had taken the necessary initiatives to be unsubstantiated by any medical evidence and largely speculative, it nevertheless held that "the callous disregard displayed by the security forces as to the possible presence of civilian casualties amounted to a breach of the Turkish authorities' obligation to protect life". A procedural violation was also found, on account of the inadequacy of the investigation which was carried out. Secondly, the Court found substantive and procedural violations of Article 2 in respect of the death of one of the villagers from undetected pneumonia after a number of men had been forced to march through the snow barefoot and without adequate clothing. However, it found no violation in

respect of the death of a child and the injury of his sister when a grenade which the boy had found had exploded. The Court was unable, on the evidence before it, to determine the origin of the grenade and consequently could not find that the Turkish authorities had fallen short of their positive obligation to protect life.

Under Article 3 of the Convention, there were a number of more or less standard cases concerning ill-treatment[36] and conditions of detention[37]. In several judgments, the Court concluded that the treatment to which the applicants had been subjected amounted to torture[38]. The problem of keeping in detention individuals who were in poor health, elderly or very frail, which had previously been addressed in *Mouisel v. France*[39] and *Hénaf v. France*[40], as well as in several admissibility decisions[41], arose in several cases in 2004. *Farbtuhs v. Latvia*[42] concerned an 83-year-old paraplegic convicted of crimes against humanity and genocide who had remained in prison for over a year after the prison authorities had acknowledged that they had neither the equipment nor the staff to provide appropriate care. Despite medical reports recommending release, the domestic courts had refused to order it. The European Court held that there had been a violation of Article 3. In the other cases, however, it found that there had been no violation[43]. Thus, in *Matencio v. France*[44], it held that the continued detention of a handicapped person did not reach the level of severity required to bring the matter within the scope of Article 3. In *Gelfmann v. France*[45], medical opinions differed as to whether the applicant, suffering from Aids (contracted prior to his imprisonment), should be released. The Court found that the care and treatment with which he was being provided were of a similar standard to that available outside prison and concluded that neither his state of health nor the distress which he claimed to suffer reached the level of severity required to constitute inhuman or degrading treatment. It noted that the French authorities could intervene if the applicant's health deteriorated.

Mention may also be made in this context of around one hundred applications against Turkey concerning the situation of hunger strikers who have developed the Wernicke-Korsakoff syndrome. Five of these have been declared admissible[46] and over eighty have been communicated to the respondent Government for observations. According to the Government, almost 700 detainees have been diagnosed with the syndrome and over 200 have been released on the ground of their poor health, whereas in other cases the state of health has not been found to be sufficiently serious to warrant release.

Finally in this connection, it may be noted that an application concerning the continued detention of a person on the basis of a conviction forty years earlier was declared admissible[47], while an application concerning the mandatory life sentence for murder in the United Kingdom was communicated to the Government for observations[48].

There were few judgments concerning expulsion but, in two which concerned deportation of Tamils from the Netherlands to Sri Lanka[49], the Court held that the deportation would not violate Article 3, in the absence of substantiation of a real and direct risk to the applicants in their country of origin. In that respect, the Court, while recognising that the situation in Sri Lanka was not yet stable, referred to the commitment of the main parties to the conflict to the peace process and the "very real progress that has been made which has led to a substantial relaxation of the previously precarious situation".

The Court is frequently required to examine situations in which deportees allege that they will be at risk of ill-treatment or even death if returned to their country of origin and requests for its intervention under Rule 39 of the Rules of Court to stay deportation are regularly submitted. Applicants often invoke not only the original grounds on which they sought asylum but also their poor psychiatric health and the adverse effect which expulsion will have on their mental state. The large majority of these requests are refused by the Presidents of the respective Sections of the Court. In principle, it is insufficient to show that the general situation in the country of destination is dangerous; an applicant must establish that he runs a direct and personal risk, for example by showing that he has previously been subjected to ill-treatment and that he is actively being sought by the authorities. In addition, there is normally less likelihood of an interim measure being applied if the deportation is to another Contracting State. Many applications concerning expulsion are declared inadmissible. Examples in 2004 include deportation to Iran of a purported political activist[50] and of a homosexual[51]. Conversely, the Court declared admissible an application concerning the deportation to Eritrea of an individual who had deserted from military service and had criticised the army[52].

There has been an increase recently in the number of cases in which applicants have submitted that they will not receive sufficient medical care in the country of destination. This issue was first raised in *D. v. the United Kingdom*[53], in which the Court held that the deportation of a man terminally ill with Aids to St Kitts, where he would have no medical or social support, would constitute a violation of Article 3[54]. In several recent cases, however, the Court declared the applications inadmissible. In *Ndangoya v. Sweden*[55] and *Amegnigan v. the Netherlands*[56], also concerning applicants with Aids, it took into account the fact that in neither case was the applicant's illness at an advanced stage, as well as the fact that the applicants were not without prospects of medical care and family support in their countries of origin, Tanzania and Togo respectively. It further observed that the fact that the applicants' circumstances in their countries of origin would be less favourable than those they enjoyed in Sweden and the Netherlands could not be regarded as decisive from the point of view of Articles 2 and 3. Similarly, the Court declared inadmissible applications concerning the alleged lack of adequate psychiatric care in Romania[57] and the deportation to Bosnia and Herzegovina of a family suffering from post-traumatic stress disorder[58].

Procedural safeguards (Articles 5, 6, 7 and 13 of the Convention and Article 4 of Protocol No. 7)

Reference has already been made to the violation of Article 5 in *Assanidze*, arising out of the refusal of the Ajarian authorities to release the applicant despite his acquittal by the Supreme Court of Georgia. In *Ilaşcu and Others*, which has also been mentioned, the Court found a violation of Article 5 in respect of the continued detention of the applicants on the basis of their conviction by the "Supreme Court of the Moldavian Republic of Transdniestria". Although the Court did not have jurisdiction *ratione temporis* to examine the conformity of the proceedings before that court with Article 6 of the Convention, in finding a violation of Article 5 it took into account that it "was set up by an entity which [was] illegal under international law and ha[d] not been recognised by the international community", that it belonged to a system "which [could] hardly be said to function on a constitutional and legal basis reflecting a judicial tradition compatible with the Convention", as evidenced by "the patently arbitrary nature of the circumstances in which the applicants [had been] tried and convicted".

In *Gusinskiy v. Russia*[59], the Court found not only a violation of Article 5 of the Convention but also a violation of Article 18, which provides that the restrictions permitted under the Convention "shall not be applied for any purpose other than those for which they have been prescribed". An agreement which had been signed by an acting minister linked the dropping of certain charges against the applicant to the sale of his media company to a State-controlled company. The Court pointed out that "it [was] not the purpose of such public-law matters as criminal proceedings and detention on remand to be used as part of commercial bargaining strategies" and found that the proposal for the agreement while the applicant was in detention strongly suggested that the prosecution was being used to intimidate him. Thus, although the detention was for the purpose of bringing the applicant before a competent court under Article 5 § 1 (c), it was also applied for other reasons.

The Court has in a number of cases in the past stressed the importance of reliable custody records as a safeguard against arbitrary detention and in *Ahmet Özkan and Others v. Turkey*[60] it reiterated this in the following terms: "a failure to keep adequate custody records entails a negation of the guarantees contained in Article 5 ... [and] a failure to record accurate holding data concerning the date, time and location of detainees, as well as the grounds for their detention and the name of the person effecting it, must be seen as incompatible with the very purpose of Article 5 …"

Several individual cases raised interesting issues under Article 5 § 1 (e). In *R.L. and M.-J.D. v. France*[61], a Paris restaurateur had been taken to a police station and placed in a psychiatric unit overnight following a series of disputes with the owners of a neighbouring restaurant. The Court, noting that the applicant's continued detention was explained only by the fact that the doctor was not empowered to release him, found that it had no medical justification and concluded that there had been a violation of Article 5 § 1. In *Hilda Hafsteinsdóttir v. Iceland*[62], the applicant had on six occasions been kept in the cells at a police station overnight, as she had been in an intoxicated state. The Court found that there had been a violation of Article 5 § 1 on the ground that the legal basis for the detention was insufficiently precise and accessible[63]. Finally, in the case of *H.L. v. the United Kingdom*[64], the Court found a violation in respect of the confinement as an "informal patient" of a person with a mental disorder who was "compliant" but incapable of either giving or refusing consent. The Court was struck in particular by the lack of procedural safeguards applicable to this type of confinement, which it furthermore qualified as a "deprivation of liberty".

The Court's case-law concerning the grounds which justify keeping an accused person in pre-trial detention is well established. Firstly, the domestic courts must, in their decisions prolonging such detention, give relevant and sufficient reasons. The grounds most commonly relied on in that respect are the risk of absconding, the possibility of reoffending and the danger of the accused interfering with the evidence, for example by intimidating witnesses. However, even when such grounds justify detention for an initial period, the Court has emphasised that their relevance diminishes with the passage of time, so that at a certain stage they can no longer be relied on to keep the accused in detention. Moreover, because of the importance of the right to liberty – and, indeed, of the presumption of innocence – the authorities are under an obligation to act with special diligence when the accused is in detention. On the basis of these criteria, the Court has found a violation of Article 5 § 3 in a large number of cases, many of which have involved detention lasting for several years. In *Belchev v. Bulgaria*[65], however, the Court went a step further in

concluding that there had been a violation although the detention had lasted only four and a half months. The Court recognised that the period was much shorter than those normally examined previously, but stressed: "Article 5 § 3 cannot be seen as authorising pre-trial detention unconditionally provided that it lasts no longer than a certain minimum period. Justification for any period of detention, no matter how short, must be convincingly demonstrated by the authorities."

There were relatively few judgments concerning procedural rights under Article 5 § 4, one exception being *Frommelt v. Liechtenstein*[66], concerning the lack of a hearing in connection with the prolongation of detention on remand. Mention should be made in this connection of *Reinprecht v. Austria*[67], in which the applicant complained that the lack of a public hearing in connection with the prolongation of his detention on remand violated Article 6 of the Convention. The Court declared the application admissible and will have the opportunity to clarify in its judgment the extent to which Article 6 applies to matters relating to deprivation of liberty. For many years, it was considered that the right to liberty was not a "civil right" bringing Article 6 into play and that Article 5 § 4 was the *lex specialis*, but some confusion was created by the Court's apparently unequivocal statement in *Aerts v. Belgium*[68] that "the right to liberty, which was thus at stake, is a civil right".

In several judgments concerning Article 5, the issues raised were essentially the same as ones which had previously been addressed by the Court, such as the absence of a proper review of the lawfulness of detention[69] or the length of time taken to conduct such a review[70].

One of the most noticeable and worrying developments in 2004 was the clear increase in the number of cases concerning the failure or delay by State authorities in complying with final and binding court decisions. Significant numbers of judgments of this kind concerned Moldova[71] and Ukraine[72], while the Court's first judgment against Albania also dealt with this issue[73] and other judgments concerned Russia[74], Romania[75], Bulgaria[76], Greece[77] and Turkey[78]. Although the actual number of judgments may seem relatively small, they covered over sixty individual applications, more than half of which were against Moldova[79], and an analysis of the applications pending before the Court in which this issue is raised makes it clear that the problem is one which affects several different States[80]. Since *Hornsby v. Greece*[81], the Court has insisted on the right to enforcement of court decisions as an integral element of the general right to a court implicit in Article 6 of the Convention and has rejected the argument that a lack of funds can absolve the State from its obligation to ensure that court judgments are executed within a reasonable time[82]. In one case, the Court found a violation despite the fact that the enforcement of the domestic courts' decision had actually been suspended pending funds becoming available[83]. Moreover, non-enforcement may have implications for other Convention rights. Thus, where a financial award is involved, the Court has regularly found that a failure or prolonged delay in complying with a binding court decision also entailed a violation of Article 1 of Protocol No. 1.

Reference may also be made in this connection to *Pini and Others v. Romania*[84], which concerned the non-enforcement of decisions allowing Italian couples to adopt Romanian children. The Court recognised that it was the vigorous opposition of the private institution where the children had been placed which had in effect thwarted all attempts by bailiffs to enforce the court decisions and acknowledged that resort to the use of force would have been very delicate. Nevertheless, it found that the State had not taken sufficient action to

ensure that the decisions were respected, in particular by failing to impose any sanction on those responsible for the institute. The Court consequently held that there had been a violation of Article 6 of the Convention although, interestingly, it concluded that there had not been a violation of Article 8 on account of the non-enforcement.

In *Assanidze*[85], the Court extended its case-law on non-enforcement to the criminal context, concluding that the fact that the applicant had remained in prison more than three years after a final and enforceable judicial decision ordering his release had been given had deprived the provisions of Article 6 of all useful effect. Echoing its approach in civil cases, it stressed that it would be "inconceivable that paragraph 1 of Article 6, taken together with paragraph 3, should require a Contracting State to take positive measures with regard to anyone accused of a criminal offence and describe in detail procedural guarantees afforded to litigants – proceedings that are fair, public and expeditious – without at the same time protecting the implementation of a decision to acquit delivered at the end of those proceedings".

One of the principal aspects of the right to a court is the right of access to a court for the determination of, on the one hand, civil rights and obligations, and on the other hand, criminal charges. This notion, first developed in *Golder v. the United Kingdom*[86], has given rise to a considerable number of judgments concerning a wide variety of situations, and its importance is reflected in several judgments delivered in 2004. In the last few years, there has been a series of cases dealing with different types of immunity from jurisdiction, and in *De Jorio v. Italy*[87], the Court confirmed the approach which it had taken in two earlier Italian cases[88], finding that while parliamentary immunity pursued a legitimate aim[89], the application of such immunity to statements made by a member of parliament outside the exercise of his functions constituted a disproportionate limitation on the right of access to a court.

Another problem which the Court has previously examined is that of legislative action which affects the outcome of pending court proceedings. In one case in 2004 the Court found that the retroactive reduction of the amount of reimbursement of contributions paid by bodies administering private schools had not violated Article 6 of the Convention[90]. It considered that the legislature had intervened to correct a technical flaw in the law with the purpose of filling a legal vacuum and re-establishing parity; the applicants, who had not legitimately been able to claim full reimbursement of the contributions but had sought to obtain a windfall by taking advantage of a loophole in the regulations, were aware or ought to have been aware that the State would seek to remedy the legal shortcoming. The legislature's intervention had therefore been entirely foreseeable and had been clearly and compellingly justified in the general interest.

The Court similarly found that there had been no violation in *Gorraiz Lizarraga and Others v. Spain*[91]. The applicants had successfully secured the temporary suspension of work on a dam which would have resulted in their village being flooded, but a law on natural sites was then enacted with the effect, according to the applicants, of allowing the construction work to resume. The Supreme Court cancelled the construction project in part, but the Constitutional Court subsequently held that the new law was not unconstitutional and that enforcement of the Supreme Court's judgment had consequently become impossible. The European Court considered that the law, which was of general application, had not been passed for the purpose of circumventing the principle of the rule of law and in particular had not been intended to remove the courts' power to rule on the lawfulness of

the proposed dam. As the applicants had been able to have the compliance of certain of the law's provisions with the Constitution examined on the merits, the principle of a fair trial had been satisfied. A further important aspect of this case was the acceptance by the Court that both the applicant association, which had been party to the proceedings at the national level, and the individual applicants, who had not, could claim to be victims of the alleged violation of Article 6. This marked a departure from previous case-law, according to which applicants who had not been parties to the domestic proceedings could not claim to be victims in respect of any alleged unfairness of those proceedings. In adopting this new approach, the Court referred to the fact that the applicant association had been created with the specific purpose of defending the interests of its members, namely the consequences of the construction of the dam on their homes and way of life. The Court underlined in this respect the importance in modern society of the role of associations in defending the rights of groups of individuals.

In contrast to these judgments, the Court held that there had been a violation on account of legislative intervention in *Scordino v. Italy (no. 1)*[92], which is now pending before the Grand Chamber. Moreover, two French cases raising this issue were declared admissible, and the Chamber dealing with them subsequently relinquished jurisdiction in favour of the Grand Chamber[93].

A number of judgments dealt with the exclusion of the jurisdiction of the courts, with regard to certain civil disputes in Ukraine[94], administrative decisions of a procedural nature in the Czech Republic[95], decisions of a property commission in Poland[96] and the dismissal of employees of the State railway company in Bulgaria[97]. A violation of Article 6 was found in all of these cases, as well as in a further case in which the applicant had been unable to have the merits of a civil claim determined because both the civil courts and the administrative courts had declined jurisdiction[98].

A further aspect of the right to a court is legal certainty, and in particular the right not to have a final and binding judgment annulled. This question has been examined in numerous judgments against Romania concerning the *recurs în anulare* exercised by the Procurator General by virtue of Article 330 of the Code of Civil Procedure[99], starting with *Brumărescu* in 1999[100]. A similar type of procedure, generally termed "supervisory review" in its English translation, exists in many countries belonging to the former Soviet bloc. The Court, which had previously found violations in both Ukrainian and Russian cases[101], confirmed its approach in further Ukrainian cases[102]. Noting that at the material time there had been no time-limit on submission of a request for supervisory review, it considered that the Supreme Court, by allowing the request, had nullified an entire judicial process which had ended in a final and binding decision. The Court added in one of these cases that, since the issue was one of legal certainty, it was irrelevant that the review had been instituted by a judge rather than a prosecutor.

By way of contrast, the Court found no violation of Article 6 in a case concerning the reopening of criminal proceedings which had ended in the applicant's acquittal[103]. It observed that "the requirements of legal certainty are not absolute" but had to be read "in conjunction with, for example, Article 4 § 2 of Protocol No. 7 which expressly permits a State to reopen a case due to the emergence of new facts, or where a fundamental defect is detected in the previous proceedings, which could affect the outcome of the case". It referred moreover to the fact that, in the context of the execution of the Court's judgments, the Committee of Ministers of the Council of Europe regarded the possibility of re-

examination or reopening of cases as a guarantee of restitution. Consequently, the mere possibility of reopening a criminal case was not prima facie incompatible with the Convention and it was necessary to assess in each case whether a fair balance had been struck. In the circumstances of the particular case, in which the request for supervisory review had in fact been dismissed, a fair balance had been struck. The Court further found that there had been no violation of Article 4 of Protocol No. 7, which guarantees the right not to be tried or punished twice.

As far as general issues of fairness of proceedings are concerned, there were no particular themes of note in 2004, although two small groups of cases raised matters of relevance to both civil and criminal proceedings. The first group related to the participation of judges at different stages of the same proceedings. In *Pitkänen v. Finland*[104], the applicant complained that there had been a different presiding judge at each of the hearings in the civil proceedings in which he was involved. The Court reiterated that in criminal proceedings the possibility for an accused to be confronted with witnesses in the presence of the judge who ultimately decided the case was an important element, so that, when a change in the composition of the court occurred after an important witness has been heard, there should normally be a rehearing of that witness[105]. However, it then pointed out that the requirements of a fair hearing were not necessarily the same in the civil context and concluded that "the fact that the various presiding judges had at their disposal the recordings and transcriptions of the previous hearings where [the witnesses] had been heard sufficed to compensate for the lack of immediacy in the proceedings"[106].

The second group concerned the problem of courts refusing to hear witnesses proposed by the accused in criminal proceedings or by a party in civil proceedings. As a general principle, it is for the domestic courts to assess the necessity of hearing a particular witness, and in a number of cases the Court has found that the failure to hear witnesses requested by an accused did not constitute a violation of Article 6 §§ 1 and 3 (d)[107]. It reaffirmed this approach in two further judgments in 2004[108]. Nevertheless, in exceptional circumstances such a refusal may constitute a violation[109], and in *Tamminen v. Finland*[110] the Court held that there had been a violation of Article 6 § 1 on account of the refusal to hear a witness in civil proceedings.

A number of cases raised the issue of judges' impartiality. In *Pabla Ky v. Finland*[111], the applicant company complained that there had been a failure to respect the principle of the separation of powers, in that an expert member of the court of appeal in the proceedings in which it was involved was at the material time also a member of parliament. Noting that there was no indication that the judge's membership of a particular political party had had any connection with any of the parties or with the substance of the case or that he had exercised any prior legislative, executive or advisory function in respect of the subject matter or legal issues involved, the Court concluded that the mere fact that the judge was simultaneously a member of the legislature was not sufficient to cast doubt on his impartiality. In *AB Kurt Kellermann v. Sweden*[112], the Court similarly had regard to the lack of connection of lay assessors to the subject matter of the dispute in concluding that there had been no violation of Article 6 of the Convention. Distinguishing the case from *Langborger v. Sweden*[113], the Court found that the lay assessors in the labour court and the organisations which had nominated them could not objectively have had interests contrary to those of the applicant company.

The Court also distinguished earlier case-law in a further Finnish case concerning the impartiality of a judge who had acted in previous civil proceedings involving the applicants as the legal representative of the opposing party[114]. The Court considered that *Wettstein v. Switzerland*[115] was distinguishable and concluded that there had been no violation of Article 6, "having regard in particular to the remoteness in time and subject matter of the first set of proceedings in relation to the second set and to the fact that [the judge's] functions as counsel and judge did not overlap in time". A rather different situation arose in *San Leonard Band Club v. Malta*[116], which concerned the examination of a request for a retrial by the same judges who had dealt with the merits of the case. The Court concluded that there had been a violation of Article 6, since the same judges had been called upon to decide whether or not they themselves had committed an error of legal interpretation or application in their previous decision. The Court distinguished *Thomann v. Switzerland*[117], in which new information had been available to the judges, who were undertaking a fresh consideration of the whole matter and were not called upon to evaluate and determine their own alleged mistakes. In *Depiets v. France*[118], the matter in issue was the objective impartiality of Court of Cassation judges who had successively examined an appeal on points of law against committal for trial and an appeal on points of law against conviction. In concluding that there had been no violation of Article 6, the European Court took into account that the judges had not been called upon to examine the merits of the criminal charge against the applicant but had had to address different points of law in each of the appeals[119].

One case which provoked a considerable amount of reaction in the legal profession was *Kyprianou v. Cyprus*[120], concerning contempt of court. The case is now pending before the Grand Chamber. The applicant, a lawyer who was representing the accused in a murder trial, was involved in a heated exchange with the bench, in the course of which he asserted that while he had been conducting a cross-examination the judges had been talking to each other and sending notes[121]. The judges considered his allegation and his tone to be in contempt of court and, after adjourning to consider the matter and then giving the applicant an opportunity to speak before being sentenced, they imposed a sentence of five days' imprisonment. The Supreme Court agreed that the applicant's conduct had amounted to contempt and saw no reason to intervene in the sentence. In its Chamber judgment, the European Court found that there had been violations of Article 6 in several respects: the court had not been impartial, it had breached the presumption of innocence and the applicant had not been provided with sufficient information about the charge against him. The applicability of Article 6 in its criminal aspect was not in dispute[122].

There were a number of judgments, in particular concerning the United Kingdom, raising new aspects of matters which the Court had examined previously. These included cases concerning the non-disclosure of material by the prosecuting authorities[123], the ability of a minor to participate effectively in a criminal trial[124], the use in a criminal trial of evidence previously given to a receiver in bankruptcy on pain of a sanction[125] and the independence and impartiality of courts-martial[126]. Mention has already been made of the continuing high number of cases concerning the independence and impartiality of the former national security courts in Turkey. An interesting development in that respect was the extension of the Court's case-law to proceedings before a national security court which had no specific security element. In *Canevi and Others v. Turkey*[127], the applicants had been prosecuted for drug offences. The Court nevertheless took the view that the same considerations which applied to offences involving a security aspect extended to normal criminal offences, so that the presence of a military judge tainted the national security court

with a doubt as to its objective impartiality, since the accused could legitimately fear that the court would allow considerations alien to the subject matter of the case to influence its decision.

A few miscellaneous cases also merit a mention. In the Grand Chamber case of *Perez v. France*[128], the Court took the opportunity to "end the uncertainty surrounding the applicability of Article 6 § 1 to civil-party proceedings, particularly since a number of other High Contracting Parties to the Convention have similar systems"[129]. It concluded that such proceedings came within the scope of Article 6 except in limited cases of civil proceedings brought for purely punitive purposes[130]. In *Del Latte v. the Netherlands*[131], the Court applied the case-law which it had recently developed in two Norwegian cases concerning the reasons for refusing compensation for pre-trial detention following acquittal[132]. As in those cases, the Court found that there had been a violation of the presumption of innocence[133]. In *Makhfi v. France*[134], it held that the continuation of a trial throughout the night had constituted a breach of Article 6 §§ 1 and 3 (b) and (c). It emphasised the importance of not only the accused but also defence lawyers, judges and jurors being sufficiently alert to follow the proceedings and, where appropriate, participate effectively.

With regard to cases concerning the length of court proceedings, reference has already been made to continuing high numbers of cases, in particular against Poland[135] and France. In that connection, it may also be noted that in judgments relating to several States the Court concluded that there were no effective remedies at domestic level for complaints about the excessive length of court proceedings: Bulgaria[136], the Czech Republic[137], Finland[138], Greece[139], Ireland[140], Poland[141], Russia[142], Slovakia[143] and Ukraine[144]. In view of the high proportion of applications in which the problem of the excessive length of court proceedings is raised, the creation of effective remedies at the national level is one of the most important contributions which governments can make in the context of the Court's huge workload and growing backlog.

Civil and political rights (Articles 8, 9, 10, 11, 12 and 14 of the Convention, Article 3 of Protocol No. 1 and Articles 2, 3 and 4 of Protocol No. 4)

Several novel issues arose in judgments dealing with the right to respect for private life. With regard to the right to physical integrity, mention may be made of a judgment concerning the administration of a drug to a severely handicapped child by hospital staff against the wishes of his mother[145], as well as of a decision concerning the forcible administration of emetics to a suspected drug trafficker[146].

As far as respect for private life in the more classic sense is concerned, *Von Hannover v. Germany* raised important issues with regard to the balance between freedom of the press and the right to protection against invasions of privacy[147]. The applicant, Princess Caroline of Monaco, had been only partly successful in the German courts with her application for an injunction to prevent tabloid magazines publishing photographs, taken without her knowledge and showing her going about her daily business, alone or in company, outside her home. The German courts had accepted that "figures of contemporary society" were entitled to respect for their private life even outside their home, but only if they had retired to a "secluded place" where it was objectively clear to everyone that they wanted to be alone and where they behaved in a manner in which they would not behave in a public place. The applicant had been successful with regard to photographs showing her with her male friend at the far end of a restaurant courtyard but unsuccessful with regard to the

publication of photographs showing her in a "non-isolated place". In finding a violation of Article 8, the Court placed emphasis on the fact that the photographs and accompanying commentaries had been published for the purposes of satisfying the curiosity of a particular readership as to the details of the private life of the princess, who was not a public figure and did not fulfil any official function on behalf of Monaco, so that the publication had not contributed to any debate of general interest to society, in the proper sense of that notion. It thus held that the State had failed in its positive obligation to ensure the effective protection of the applicant's private life.

Environmental issues were at stake in several cases in 2004, including two judgments in which violations were found, largely on the basis of the failure of the authorities to comply with domestic laws and regulations or with court decisions. In *Taşkın and Others*[148], the authorities had failed to comply with a court decision annulling a permit to operate a gold mine using a particular technique, on the ground of the adverse effect on the environment, and had subsequently granted a new permit; in *Moreno Gómez*[149], the authorities had repeatedly failed to respect regulations relating to the control of noise, granting permits for discotheques and bars despite being aware that the area was zoned as "noise saturated". In this respect, it may be noted that applications concerning noise nuisance from light aircraft[150] and the refusal to relocate a Gypsy site subject to high levels of noise and pollution[151] were declared inadmissible.

The problem of enforcement of court decisions, which often raises issues of the right to a court under Article 6, has also arisen with increasing frequency in the context of Article 8[152], especially in the context of the adequacy of the measures taken by the authorities to enforce rights of access to children. It has already been noted that in *Pini and Others*[153], while the Court found a violation of Article 6, it held that there had been no violation under Article 8. Taking into account the interests of the children and in particular the opposition which they had expressed to their adoption, the Court considered that there had been no absolute obligation on the authorities to ensure that the children left the country against their will and to ignore the pending legal proceedings in which the lawfulness and merits of the initial adoption orders had been challenged. Other cases in which the enforcement of access rights was in issue were *Kosmopoulou v. Greece*[154], in which the Court found a violation, and *Voleský v. the Czech Republic*[155], in which it did not.

Further cases involving the right to respect for family life included two concerning the rights of fathers of illegitimate children: *Görgülü v. Germany*[156] (refusal to grant custody of a child given up by the mother for adoption) and *Lebbink v. the Netherlands*[157] (refusal to grant access rights), in both of which the Court held that there had been a violation of Article 8[158]. In another case against the Netherlands[159], the applicant had unsuccessfully attempted to obtain recognition as heir of his putative natural father. However, as he had never been formally recognised as the child of the deceased, the Court reached the following conclusion: "In reality, the courts were faced, not with an issue of 'family life' within the meaning of Article 8 or with an issue of 'private life' seen in terms of personal identity, but with a question of evidence going to the issue of whether legal family ties between the applicant and the deceased should be recognised. The fact that the courts were reluctant to rule on the elements adduced by the applicant cannot be considered in the circumstances as raising an issue which falls within the scope of Article 8. In particular, an applicant cannot derive from Article 8 a right to be recognised as the heir of a deceased person for inheritance purposes."

Public care of children, which has been addressed by the Court in many previous cases, was in issue in several more judgments[160], among which one of particular interest is *Sabou and Pîrcălab v. Romania*[161], in which the Court held that the withdrawal of parental rights as an automatic consequence of the imposition of a prison sentence constituted a violation of Article 8.

Another case which has been referred to the Grand Chamber is *Blečić v. Croatia*[162]. The applicant's specially protected tenancy had been terminated on the ground of her unjustified absence for more than six months and a family of displaced persons had moved into the flat. She had in fact gone to visit her daughter in Italy, and her absence had coincided with a period of intensive armed conflict in the region. In its Chamber judgment, the Court nevertheless found that there had been no violation, either of Article 8 of the Convention or of Article 1 of Protocol No. 1. *Prokopovich*[163] also concerned eviction, in this instance of the partner of a tenant who had died. The Court held that there had been a violation of Article 8. It accepted that the flat in question was the applicant's "home" and found that, as the proper procedure had not been followed, the interference with her right to respect for her home had not been "in accordance with the law".

Freedom of thought, conscience and religion was in issue in only a handful of judgments, the most significant of which was *Leyla Şahin v. Turkey*[164], another case which has been referred to the Grand Chamber. It concerns restrictions on the wearing of the Muslim headscarf in Turkish universities and thus raises issues which are of contemporary interest in other countries, notably France, which has adopted legislation regulating the wearing of religious symbols in State schools. In concluding that there had been no violation of Article 9, the Chamber accepted that the "notion of secularism appears … to be consistent with the values underpinning the Convention" and that "upholding that principle may be regarded as necessary for the protection of the democratic system in Turkey"[165].

The case of *Supreme Holy Council of the Muslim Community v. Bulgaria*[166] related to the same factual background as the earlier case of *Hasan and Chaush v. Bulgaria*[167], decided in 2000, namely a dispute between two rival leaderships of the Muslim community. The cases were brought by or on behalf of the two individuals who had successively been recognised by the State authorities. While in *Hasan and Chaush* the Court had concluded that the interference had not been "prescribed by law", it held in the more recent case that "the relevant law and practice and the authorities' actions in October 1997 had the effect of compelling the divided community to have a single leadership against the will of one of the two rival leaderships". The interference in the affairs of a religious community had therefore constituted a violation of Article 9.

Other cases of note under Article 9 include two applications declared admissible by the Court, one in which it joined to the merits the question of the applicability of that provision to conscientious objection[168] and one concerning an attack on a meeting of Jehovah's Witnesses in Georgia[169].

Issues under Article 10 have often arisen out of defamation cases and 2004 was no exception. Indeed, two of the Grand Chamber judgments involved balancing freedom of expression with the right to protection of reputation. *Cumpănă and Mazăre v. Romania*[170] was particularly interesting in that respect. It involved the criminal conviction of a journalist and an editor for defaming two public figures by imputing wrong-doing to them,

in words and in a cartoon. On the substance of the question of the justification for the interference with the right to freedom of expression, the Court found that the domestic courts had given relevant and sufficient reasons for the convictions, which corresponded to a "pressing social need", since the applicants had made serious allegations of activity amounting to a criminal offence, for which they had been unable to provide any sufficient factual basis in the court proceedings. However, it nevertheless found that there had been a violation of Article 10, on account of the severity of the penalties imposed, namely seven months' imprisonment, temporary prohibition on the exercise of certain civic rights and a prohibition on working as journalists for one year, in addition to payment of damages to the plaintiffs. Although the applicants had not served their sentences, having been pardoned by the President, and had continued to work as journalists, the Court made it clear that both these penalties were quite inappropriate in pursuing the legitimate aim of protecting the reputation of others, given the chilling effect which they would have on the role of the press.

In its judgment of the same day in *Pedersen and Baadsgaard v. Denmark*[171], the Grand Chamber found that there had been no violation of Article 10. The applicants had produced a television programme in which they had implied that a chief superintendent had suppressed evidence in a murder investigation. As in the Romanian case, the Court considered that the allegation had been made without a sufficient factual basis. However, since the fines imposed and the order to pay compensation were not excessive, they had not had the same chilling effect as the penalties in the Romanian case and the convictions were consequently proportionate.

In two cases against Finland, both concerning criminal convictions for defamation, the Court concluded that the reasons given by the domestic courts were not sufficient to justify the interference with freedom of expression. One concerned defamation of a surgeon by a journalist[172], while the other raised the rather more novel issue of the balance between journalistic freedom and the right to private life of a third party[173]. In this latter case, the applicants had published articles about the trial and conviction for disorderly behaviour, drunkenness and assault on a police officer of the husband of a member of parliament, and the domestic courts had imposed heavy fines and ordered payment of damages for infringement of privacy with particularly aggravating circumstances. The Court observed that the severity of the fines and damages, viewed against the limited interference with the MP's private life, disclosed a striking disproportion between the protection of private life and freedom of expression. It clearly emerges from these recent cases that the imposition of excessively punitive measures to censure the exercise of freedom of expression is likely to be regarded as disproportionate in the balancing exercise under Article 10[174].

Other judgments concerning defamation included cases relating to the conviction of journalists for defaming a prosecutor[175], a judge[176] and civil servants[177], in each of which violations were found. Similarly, the Court held that Article 10 had been violated where an award of damages had been made against an environmental association for defaming a mayor in a resolution which it had published in a newspaper[178], where an administrative fine had been imposed on a lawyer because of his criticism of a decision of the Constitutional Court in an interview with a journalist[179] and where a publisher/editor had been convicted for publishing a series of articles criticising a Supreme Court judge[180]. In two cases against France, however, the Court held that there had been no violation of Article 10. In *Radio France and Others v. France*[181], a radio journalist and an editor had been convicted in respect of news bulletins which had inaccurately reported the contents of

a press article as attributing to a former senior civil servant a role in the deportation of Jews during the Second World War. In *Chauvy and Others v. France*[182], an author, a publishing company and the director of the company had been convicted of defaming members of the French Resistance.

In a third French case, *Editions Plon v. France*[183], the Court had to consider whether injunctions which had been issued in respect of the dissemination of a book, *Le Grand Secret*, shortly after the death of President Mitterrand, had constituted unjustified interferences with the right to freedom of expression. The book described how the late President had been suffering from cancer since the beginning of his first term of office and gave an account of his doctor's difficulties in concealing the illness from the public. The Court accepted that the initial interim injunction could be regarded as justified, taking into account the strong emotions felt by politicians and the public in the period immediately after the President's death, as well as the damage to his reputation and the intensification of his family's suffering. However, as far as the subsequent decision to maintain the prohibition indefinitely was concerned, the Court took the view that the weight of these considerations diminished as time passed, so that the public interest in discussion about the President's two terms of office increasingly prevailed over the protection of his rights with regard to medical confidentiality. Taking into account the fact that 40,000 copies of the book had already been sold and that it had been disseminated via the Internet, the Court concluded that the permanent ban was not proportionate to the "legitimate aim" pursued.

There were three judgments dealing with the rights of associations or political parties. In *Gorzelik and Others v. Poland*[184], the Grand Chamber held that the refusal to register an association as an organisation of the Silesian "national minority" did not violate Article 11, taking into account in particular the fact that recognition as such would have conferred electoral privileges on the association. The Court stated: "[I]t was not the applicants' freedom of association *per se* that was restricted by the State. The authorities did not prevent them from forming an association to express and promote distinctive features of a minority but from creating a legal entity which, through registration under the Law on Associations and the description it gave itself in … its memorandum of association, would inevitably become entitled to a special status under the 1993 Elections Act." In *Vatan v. Russia*[185], the Court allowed the Government's preliminary objection and declined to examine the merits of the case, considering that the applicant association could not claim to be a victim of the suspension of the activities of a regional organisation which it claimed was one of its branches. Finally, the Court found that there had been a violation of Article 11 in *Presidential Party of Mordovia v. Russia*[186], on the ground that the refusal to renew registration of the applicant association as a political party had not been "prescribed by law".

With regard to the individual's freedom of association, a further Grand Chamber judgment concerned the imposition of a disciplinary sanction on a judge on account of his membership of the Freemasons[187]. The Court held that there had been a violation on the ground that the interference had not been "prescribed by law": "the wording of the directive of 22 March 1990 was not sufficiently clear to enable the applicant, who, being a judge, was nonetheless informed and well-versed in the law, to realise – even in the light of the preceding debate and of developments since 1982 – that his membership of a Masonic lodge could lead to sanctions being imposed on him."

Several cases of interest arose under Article 14 of the Convention, which prohibits discrimination in the enjoyment of the rights and freedoms set forth in the Convention on the grounds listed in the provision. In that connection, an important development took place in 2004, with the tenth ratification of Protocol No. 12 to the Convention, which sets out a general prohibition on discrimination and came into force on 1 April 2005.

The discrimination aspects in *Nachova and Others*[188] have already been referred to in the context of Article 2. The other judgments in which questions of discrimination arose related to more mundane but nonetheless important matters. In *Pla and Puncernau v. Andorra*[189], the interpretation of a 1939 will by the domestic courts was in issue. The testator had provided that her heir was to pass on his inheritance to a "child or grandchild from a legitimate and canonical marriage". The heir subsequently bequeathed the property he had inherited to one of the applicants, his adopted son, but certain of his relatives contested the applicant's right to benefit from the original will. The first-instance court dismissed their action, holding that if the testator had wished to exclude adopted children, she would have done so expressly. However, the court of appeal took the opposite view. The European Court, in finding, by five votes to two, that there had been a violation of Article 14 of the Convention taken in conjunction with Article 8, considered that a reading of the will did not warrant the conclusion that the testator had wished to exclude adopted grandchildren from the succession and, since she had not done so, the logical conclusion was that she had not intended to do so. It was of the opinion that the court of appeal's interpretation of the will had been contrary to the general legal principle that where a statement was unambiguous there was no need to examine the intention. The Court could see no objective and reasonable justification for making a distinction between natural and adopted children and added that, even supposing that the testamentary clause had required interpretation, such interpretation could not be made exclusively in the light of the social conditions prevailing in 1939 but had to take account of the profound social, economic and legal changes that had occurred in the intervening period.

Succession rights also formed the background to *Merger and Cros v. France*[190], which concerned the annulment of both testamentary provisions in favour of and gifts made to a child of an adulterous relationship. The Court followed its previous case-law from *Mazurek v. France*[191] in concluding that there had been a violation of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1 as far as the inheritance rights were concerned, there being no justification for a distinction based on birth outside marriage. With regard to the gifts made to the child and to the child's mother during the lifetime of the deceased, the Court held that Article 1 of Protocol No. 1 was not applicable, since the gifts had been retroactively annulled, but that there had been a violation of Article 8 of the Convention.

The other main cases dealing with discrimination were *Ünal Tekeli v. Turkey*[192], in which the Court found a violation on account of the obligation of a married woman to take the surname of her husband, and *Aziz v. Cyprus*, which is discussed below in the context of Article 3 of Protocol No. 1.

Several judgments dealt with issues under Article 3 of Protocol No. 1, and in particular the right to vote and the right to stand for election which are inherent in that provision. Two cases concerned the exclusion of certain groups of citizens from the right to vote. In *Hirst v. the United Kingdom (no. 2)*[193], the Court found that the blanket disenfranchisement of convicted prisoners was incompatible with the right to vote. The case has been referred to

the Grand Chamber. In *Aziz v. Cyprus*[194], the applicant, as a member of the Turkish-Cypriot community, had been unable to participate in elections because of the inexistence of a Turkish-Cypriot electoral roll and the refusal of the authorities to register him on the Greek-Cypriot electoral roll. The Court, noting that this situation stemmed from the fact that the constitutional provisions regulating the voting rights between members of the two communities had become impossible to implement in practice, held that there had been a violation of Article 3 of Protocol No. 1 and a violation of Article 14 of the Convention.

Other cases concerned rather the refusal to allow individuals to stand as candidates in elections. In *Ždanoka v. Latvia*[195], the applicant was not allowed to stand as a candidate in parliamentary elections because of previous involvement in the Communist Party. The Court held that there had been a violation of Article 3 of Protocol No. 1 as well as a violation of Article 11 of the Convention. The case has been referred to the Grand Chamber. *Melnychenko v. Ukraine*[196] concerned the refusal to register the applicant as an electoral candidate, on the ground that he had given untruthful information, as he had indicated his officially registered address (*propiska*) in Ukraine although he was in fact living abroad. The Court found that there had been a violation.

Finally, the Court declared inadmissible two applications in which the applicants complained that they had not been allowed to stand as candidates in presidential elections[197]. The Court examined the role and powers of the President in the respective countries, Azerbaijan and the former Yugoslav Republic of Macedonia, and concluded that the powers exercised were not such as to make that office part of the "legislature" within the meaning of Article 3 of Protocol No. 1, which was consequently inapplicable.

Property issues (Article 1 of Protocol No. 1)

In addition to its judgment in *Broniowski v. Poland*[198], the Grand Chamber delivered several other judgments in which the subject matter related to property rights[199], although in certain of these the property aspect was secondary[200]. Thus, in *Öneryıldız*[201], which concerned primarily the death of the applicant's relatives and the effectiveness of the investigation, the Court also found that there had been a violation of Article 1 of Protocol No. 1 on account of the destruction of his home and possessions. In that respect, it may be noted that the Court accepted that the applicant had a proprietary interest in the dwelling, although it had been unlawfully erected on public land, as well as in the movable items it contained.

The other main judgment delivered by the Grand Chamber in this area was in the case of *Kopecký v. Slovakia*[202]. The applicant had sought to recover gold and silver coins which had been confiscated following his father's conviction in 1959. However, his claim had been dismissed on the ground that he had failed to show where the coins were deposited when the Extra-Judicial Rehabilitations Act 1991 came into force. In its Chamber judgment of 7 January 2003, the Court had found that there had been a violation of Article 1 of Protocol No. 1, considering that the requirement to show where the coins had been had imposed an excessive burden on the applicant. However, the Grand Chamber held that there had been no violation. It reiterated its approach in previous cases dealing with restitution of property in the following terms: "Article 1 of Protocol No. 1 cannot be interpreted as imposing any general obligation on the Contracting States to restore property which was transferred to them before they ratified the Convention. Nor does Article 1 of Protocol No. 1 impose any restrictions on the Contracting States' freedom to determine the

scope of property restitution and to choose the conditions under which they agree to restore property rights of former owners … In particular, the Contracting States enjoy a wide margin of appreciation with regard to the exclusion of certain categories of former owners from such entitlement. Where categories of owners are excluded in this way, their claims for restitution cannot provide the basis for a 'legitimate expectation' attracting the protection of Article 1 of Protocol No. 1." The Court went on to review its case-law relating to the notion of "legitimate expectation", concluding that it did not "contemplate the existence of a 'genuine dispute' or an 'arguable claim' as a criterion for determining whether there is a 'legitimate expectation' protected by Article 1 of Protocol No. 1". It disagreed with the Chamber's reasoning in that respect, taking the view rather that "where the 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, for example where there is settled case-law of the domestic courts confirming it". Noting that the applicant's restitution claim had been a conditional one from the outset and that in the domestic proceedings the courts had found that he did not comply with the statutory requirements, the Court concluded that the claim had "not been sufficiently established to qualify as an 'asset' attracting the protection of Article 1 of Protocol No. 1".

Restitution was also the background to a group of cases which the Court dealt with in a single judgment in January 2004, *Jahn and Others v. Germany*[203]. The case was subsequently referred to the Grand Chamber, before which it is pending. The Chamber held that there had been a violation of Article 1 of Protocol No. 1 on account of the obligation to reassign to the tax authorities, without compensation, land which had been acquired by virtue of land reform in the former German Democratic Republic. As in *Broniowski*, cited above, the outcome of the case is of relevance to a large number of people.

Reference has already been made in the context of Article 6 to the effect on property rights of both the prolonged non-enforcement and the annulment of final and binding court decisions. In that connection it may be noted that, although the number of *Brumărescu*-type cases fell dramatically, a related issue arose in *Androne v. Romania*[204]. Moreover, in one case involving the reopening of proceedings, no complaint had been made under Article 6 in that respect but the Court found a violation of Article 1 of Protocol No. 1[205]. Similarly, in one non-enforcement case, the finding of a violation related only to Article 1 of Protocol No. 1[206].

Several judgments related to social benefits and pension rights. In *Kjartan Ásmundsson v. Iceland*[207], the Court found that the applicant had had to bear an individual and excessive burden when his disability pension was reduced as a result of changes to the conditions for entitlement, although his disability remained at the same level, while in *Pravednaya v. Russia*[208], it similarly held that a reduction in the applicant's pension entitlement following reconsideration of a final judgment on the basis of newly discovered circumstances which the Court considered were already known had upset the fair balance between the interests at stake.

Further judgments of some interest with regard to property rights are *Bäck v. Finland*[209], concerning the virtual extinction of a guarantor's claim against the principal debtor as a result of debt adjustment, in which the Court held that there had not been a violation, and three cases in which it found that there had been a violation: *Beneficio Cappella Paolini v. San Marino*[210], concerning the refusal of the authorities to return part of an expropriated property which had not been used for the purposes for which the expropriation had been

granted, *Kliafas and Others v. Greece*[211], concerning the obligation of accountants to remit earnings to the State following the annulment of a law liberalising the profession, and *I.R.S. and Others v. Turkey*[212], concerning prescription of property rights on the basis of twenty years' adverse possession by the State, without payment of any compensation.

Other cases of interest

There has been considerable discussion in recent months of the relationship between the Council of Europe and the European Union, and Protocol No. 14 to the Convention contains a specific provision to enable the European Union to accede to the European Convention on Human Rights[213]. Over the years there has been a steady if meagre flow of cases to the European Court (and former Commission) of Human Rights raising matters related to the functioning of the European Union and its institutions. In 2004 several applications raising interesting issues of this kind were examined by the Court. In particular, the Grand Chamber declared inadmissible *Senator Lines GmbH v. fifteen member States of the European Union*[214], on the ground that the applicant company could no longer claim to be a victim of the impugned measures, the fine imposed by the European Commission having been quashed[215].

In a couple of cases the Court applied Article 17 of the Convention, finding that the applicants could not rely on, respectively, Articles 10 and 11. One case involved the conviction of a member of a right-wing political party for displaying an anti-Islamic poster following the terrorist attack in New York[216], while the other concerned a prohibition on the formation of associations with anti-Semitic objectives[217].

Finally, the Court found in several cases that the respondent Government had either hindered the effective exercise of the right of petition by the applicant[218] or had failed to fulfil their obligation to furnish all necessary facilities for the effective conduct of an investigation by the Court[219].

Decision on a request for an advisory opinion

In 2004 the Court rendered its first ever decision on a request for an advisory opinion. Although the possibility for the Committee of Ministers of the Council of Europe to request an advisory opinion had existed since the entry into force of Protocol No. 2 to the Convention in 1970, no request was submitted until 2002 by virtue of the equivalent provisions in Articles 47 to 49 of the Convention as amended by Protocol No. 11. The request arose out of concerns expressed by the Parliamentary Assembly of the Council of Europe over the creation of a human rights protection system by the Commonwealth of Independent States (the "CIS", formed by twelve former Soviet Republics), some of whose members were also seeking membership of the Council of Europe and indeed subsequently became members. The Parliamentary Assembly, concerned that no regional system should be allowed to weaken the "unique unified system" of the European Convention, was particularly worried that the CIS system, with less exacting requirements, might be regarded as "another procedure of international investigation or settlement" within the meaning of Article 35 § 2 (b) of the European Convention, thus precluding the Court from examining an application where substantially the same matter had previously been submitted to the supervisory body established under the CIS system. On that basis, the Committee of Ministers requested the Court's opinion on whether the CIS system could be regarded as "another procedure of international investigation or settlement".

The Court considered that it first had to determine whether the request came within its advisory jurisdiction and concluded that it did not, since Article 47 § 2 of the Convention precluded it from giving an opinion, *inter alia*, on any question which it "might have to consider in consequence of any such proceedings as could be instituted in accordance with the Convention". In the Court's view, the question whether the CIS system was another procedure within the meaning of Article 35 § 2 (b) was clearly one which it might be required to examine in the context of a future application under Article 34 of the Convention. Consequently, it did not have competence to give the requested advisory opinion.

Notes

1. One judgment concerned two States.
2. In 2003 the same four States accounted for over 60% of all judgments.
3. The so-called "Pinto Act", Law no. 89 of 24 March 2001.
4. *Scordino v. Italy* (dec.), no. 36813/97, ECHR 2003-IV.
5. *Riccardi Pizzati v. Italy*, no. 62361/00, *Musci v. Italy*, no. 64699/01, *Giuseppe Mostacciuolo v. Italy (no. 1)*, no. 64705/01, *Cocchiarella v. Italy*, no. 64886/01, *Apicella v. Italy*, no. 64890/01, *Ernestina Zullo v. Italy*, no. 64897/01, *Giuseppina and Orestina Procaccini v. Italy*, no. 65075/01, and *Giuseppe Mostacciuolo v. Italy (no. 2)*, no. 65102/01, judgments of 10 November 2004.
6. 70 judgments, compared to 48 in 2003.
7. Law no. 4388 of 18 June 1999, amending Article 143 of the Constitution, and Law no. 4390 of 22 June 1999, amending Law no. 2845 on the national security courts. By virtue of provisional section 1 of Law no. 4390, the terms of office of the military judges and military prosecutors in service in the national security courts ended on 22 June 1999.
8. Law no. 5190 of 16 June 2004, published in the Official Gazette on 30 June 2004.
9. 35 judgments, compared to only 3 in 2003, while there had been 34 judgments dealing with this issue in 2002.
10. 27 judgments, although 20 of these were friendly settlements.
11. There were only 3 of these judgments, compared to 22 in 2003 and 27 in 2002.
12. *Belvedere Alberghiera S.r.l. v. Italy*, no. 31524/96, ECHR 2000-VI.
13. See *Brumărescu v. Romania* (just satisfaction) [GC], no. 28342/95, ECHR 2001-I. See also in this respect *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, ECHR 2000-VIII.
14. See, for example, *Ükünç and Güneş v. Turkey*, no. 42775/98, judgment of 18 December 2003. The first case in which this formula was used was *Gençel v. Turkey*, no. 53431/99, judgment of 23 October 2003.
15. *Somogyi v. Italy*, no. 67972/01, judgment of 18 May 2004, to be reported in ECHR 2004-IV, and *Sejdovic v. Italy*, no. 56581/00, judgment of 10 November 2004. The latter case is now pending before the Grand Chamber. A request for referral of *Somogyi* was refused by the panel.
16. [GC], no. 71503/01, judgment of 8 April 2004, to be reported in ECHR 2004-II.
17. [GC], no. 31443/96, judgment of 22 June 2004, to be reported in ECHR 2004-V.
18. *Hutten-Czapska v. Poland*, no. 35014/97. Judgment was delivered on 22 February 2005. It was estimated that 100,000 landlords were affected.
19. *Sejdovic v. Italy*, cited above, note 15.
20. No. 29865/96, judgment of 16 November 2004, to be reported in ECHR 2004-X (extracts).
21. [GC], no. 48939/99, judgment of 30 November 2004, to be reported in ECHR 2004-XII.
22. No. 46117/99, judgment of 10 November 2004, to be reported in ECHR 2004-X.
23. No. 4143/02, judgment of 16 November 2004, to be reported in ECHR 2004-X.
24. No. 58255/00, judgment of 18 November 2004, to be reported in ECHR 2004-XI (extracts).
25. [GC], no. 48787/99, judgment of 8 July 2004, to be reported in ECHR 2004-VII.
26. No. 31821/96, judgment of 16 November 2004.
27. [GC], No. 53924/00, judgment of 8 July 2004, to be reported in ECHR 2004-VIII.
28. [GC], no. 50385/99, judgment of 20 December 2004, to be reported in ECHR 2004-XI.
29. Nos. 43577/98 and 43579/98, judgment of 26 February 2004.
30. See also *Bekos and Koutropoulos v. Greece* (dec.), no. 15250/02, 23 November 2004 (admissible).
31. No. 57671/00, judgment of 27 July 2004, to be reported in ECHR 2004-IX (extracts).

32. *İpek v. Turkey*, no. 25760/94, judgment of 17 February 2004, to be reported in ECHR 2004-II (extracts). The Court held that there had been a violation of Article 2 "on account of the presumed death of the applicant's two sons".
33. See, in particular, *Tahsin Acar v. Turkey* [GC], no. 26307/95, judgment of 8 April 2004, to be reported in ECHR 2004-III. The Grand Chamber had earlier found in a judgment of 6 May 2003 that the application could not be struck out of the list on the basis of a unilateral declaration by the Government. See also the Chamber judgment of 9 April 2002 striking the application out of the list.
34. See *Zengin v. Turkey*, no. 46928/99, judgment of 28 October 2004, and *Şirin Yılmaz v. Turkey*, no. 35875/97, judgment of 29 July 2004. In both cases, the Court held that there had been a procedural violation of Article 2 but not a substantive violation.
35. *Ahmet Özkan and Others v. Turkey*, no. 21689/93, judgment of 6 April 2004.
36. With regard to ill-treatment of detainees, see, for example, *Çolak and Filizer v. Turkey*, nos. 32578/96 and 32579/96, judgment of 8 January 2004, and *Balogh v. Hungary*, no. 47940/99, judgment of 20 July 2004. See also *Martinez Sala and Others v. Spain*, no. 58438/00, judgment of 2 November 2004, in which the Court held that there had been a procedural violation but not a substantive violation. Several cases concerned ill-treatment during arrest: *R.L. and M.-J.D. v. France*, no. 44568/98, and *Toteva v. Bulgaria*, no. 42027/98, judgments of 19 May 2004, *Krastanov v. Bulgaria*, no. 50222/99, judgment of 30 September 2004, and *Barbu Anghelescu v. Romania*, no. 46430/99, judgment of 5 October 2004.
37. See, for example, *Iorgov v. Bulgaria*, no. 40653/98, and *B. v. Bulgaria*, no. 42346/98, judgments of 11 March 2004, concerning prisoners sentenced to death.
38. See *Batı and Others v. Turkey*, nos. 33097/96 and 57834/00, judgment of 3 June 2004, to be reported in ECHR 2004-IV (extracts), *Ilaşcu and Others v. Moldova and Russia*, cited above, note 25, *Bursuc v. Romania*, no. 42066/98, judgment of 12 October 2004, and *Abdülsamet Yaman v. Turkey*, no. 32446/96, judgment of 2 November 2004.
39. No. 67263/01, ECHR 2002-IX. The case concerned a prisoner undergoing treatment for cancer. The Court found a violation of Article 3.
40. No. 65436/01, ECHR 2003-XI. The case concerned the conditions in which an elderly detainee was hospitalised. The Court found a violation of Article 3.
41. See *Priebke v. Italy* (dec.), no. 48799/99, 5 April 2001, *Sawoniuk v. the United Kingdom* (dec.), no. 63716/00, ECHR 2001-VI, and *Papon v. France (no. 1)* (dec.), no. 64666/01, ECHR 2001-VI, concerning the continued detention of very old persons. The first case concerned detention on remand, the others imprisonment following conviction.
42. No. 4672/02, judgment of 2 December 2004. A request for referral of the case to the Grand Chamber is pending.
43. See *Sakkopoulos v. Greece*, no. 61828/00, judgment of 15 January 2004. See also *Koval v. Ukraine* (dec.), no. 65550/01, 30 March 2004 (admissible), and *Biç v. Turkey* (dec.), no. 55955/00, 2 December 2004, concerning continued detention despite a serious illness, from which the detainee in fact died: a complaint under Article 2 was declared inadmissible for non-exhaustion of domestic remedies but a complaint about the length of the detention was declared admissible.
44. No. 58749/00, judgment of 15 January 2004.
45. No. 25875/03, judgment of 14 December 2004.
46. See, for example, *Hun v. Turkey* (dec.), no. 5142/04, 2 September 2004.
47. *Léger v. France* (dec.), no. 19324/02, 21 September 2004.
48. *Pyrah v. the United Kingdom*, no. 17413/03.
49. *Venkadajalasarma v. the Netherlands*, no. 58510/00, and *Thampibillai v. the Netherlands*, no. 61350/00, judgments of 17 February 2004.
50. *Nasimi v. Sweden* (dec.), no. 38865/02, 16 March 2004.
51. *F. v. the United Kingdom* (dec.), no. 17341/03, 22 June 2004.
52. *Said v. the Netherlands* (dec.), no. 2345/02, 5 October 2004.
53. Judgment of 2 May 1997, *Reports of Judgments and Decisions* 1997-III.
54. See also *Cardoso and Johansen v. the United Kingdom* (dec.), no. 47061/99, 5 September 2000. The application was struck out of the list following a settlement between the parties providing for the first applicant to be allowed to enter the United Kingdom.
55. (dec.), no. 17868/03, 22 June 2004.
56. (dec.), no. 25629/04, 25 November 2004.
57. *Dragan and Others v. Germany* (dec.), no. 33743/03, 7 October 2004.
58. *Salkic v. Sweden* (dec.), no. 7702/04, 29 June 2004.
59. No. 70276/01, judgment of 19 May 2004, to be reported in ECHR 2004-IV.
60. Cited above, note 35.

61. Cited above, note 36.
62. No. 40905/98, judgment of 8 June 2004.
63. Cf. *Witold Litwa v. Poland*, no. 26629/95, ECHR 2000-III.
64. No. 45508/99, judgment of 5 October 2004 , to be reported in ECHR 2004-IX.
65. No. 39270/98, judgment of 8 April 2004.
66. No. 49158/99, judgment of 24 June 2004.
67. (dec.), no. 67175/01, 12 October 2004.
68. Judgment of 30 July 1998, *Reports* 1998-V.
69. See, with regard to detention on remand, *Klyakhin v. Russia*, no. 46082/99, judgment of 30 November 2004, and, with regard to psychiatric detention, *Tám v. Slovakia*, no. 50213/99, judgment of 22 June 2004. A request for referral of the former case to the Grand Chamber is pending.
70. See *Pavletić v. Slovakia*, no. 39359/98, judgment of 22 June 2004, and *Mitev v. Bulgaria*, no. 40063/98, judgment of 22 December 2004.
71. See, for example, *Prodan v. Moldova*, no. 49806/99, judgment of 18 May 2004, to be reported in ECHR 2004-III (extracts).
72. See, for example, *Zhovner v. Ukraine*, no. 56848/00, judgment of 29 June 2004.
73. *Qufaj Co. sh.p.k. v. Albania*, no. 54268/00, judgment of 18 November 2004.
74. *Wasserman v. Russia*, no. 15021/02, judgment of 18 November 2004. See also *Burdov v. Russia*, no. 59498/00, ECHR 2002-III.
75. See, for example, *Sabin Popescu v. Romania*, no. 48102/99, judgment of 2 March 2004.
76. *Mancheva v. Bulgaria*, no. 39609/98, judgment of 30 September 2004.
77. See, for example, *Metaxas v. Greece*, no. 8415/02, judgment of 27 May 2004.
78. See *Taşkın and Others v. Turkey*, cited above, note 22.
79. At the beginning of 2005, more than eighty further cases of this kind were pending before the Court.
80. At the beginning of 2005, some 250 applications against Ukraine were pending, around 150 of which had been communicated for observations. The equivalent figures for Russia were around 140, including some 40 which had been declared admissible or communicated for observations. These statistics, which are partly based on an initial assessment of applications, are approximate.
81. Judgment of 19 March 1997, *Reports* 1997-II.
82. See also in this connection *Loiseau v. France*, no. 46809/99, judgment of 28 September 2004, in which the failure to comply with a court decision was due to the inability of the authorities to locate the file. The Court held that there had been a violation of Article 6.
83. *Piven v. Ukraine*, no. 56849/00, judgment of 29 June 2004.
84. Nos. 78028/01 and 78030/01, judgment of 22 June 2004, to be reported in ECHR 2004-V (extracts).
85. Cited above, note 16.
86. Judgment of 21 February 1975, Series A no. 18.
87. No. 73936/01, judgment of 3 June 2004.
88. *Cordova v. Italy (no. 1)*, no. 40877/98, ECHR 2003-I, and *Cordova v. Italy (no. 2)*, no. 45649/99, ECHR 2003-I (extracts).
89. See also *A. v. the United Kingdom*, no. 35373/97, ECHR 2002-X.
90. *OGIS-Institut Stanislas and Others v. France*, nos. 42219/98 and 54563/00, judgment of 27 May 2004.
91. No. 62543/00, judgment of 27 April 2004, to be reported in ECHR 2004-III.
92. No. 36813/97, judgment of 29 July 2004.
93. *Maurice v. France* (dec.), no. 11810/03, and *Draon v. France* (dec.), no. 1513/03, 6 July 2004.
94. *Tregubenko v. Ukraine*, no. 61333/00, judgment of 2 November 2004.
95 *Kilián v. the Czech Republic*, no. 48309/99, judgment of 7 December 2004.
96. *Związek Nauczycielstwa Polskiego v. Poland*, no. 42049/98, judgment of 21 September 2004, to be reported in ECHR 2004-IX.
97. *Pramov v. Bulgaria*, no. 42986/98, judgment of 30 September 2004, and *Neshev v. Bulgaria*, no. 40897/98, judgment of 28 October 2004.
98. *Beneficio Cappella Paolini v. San Marino*, no. 40786/98, judgment of 13 July 2004, to be reported in ECHR 2004-VIII (extracts).
99. The provision has been amended.
100. [GC], no. 28342/95, ECHR 1999-VII. The number of cases of this type declined dramatically in 2004, with only three judgments. See also *Androne v. Romania*, no. 54062/00, judgment of 22 December 2004. A request for referral of that case to the Grand Chamber is pending.
101. *Sovtransavto Holding v. Ukraine*, no. 48553/99, ECHR 2002-VII, and *Ryabykh v. Russia*, no. 52854/99, ECHR 2003-IX. The Ukrainian term for this type of review is *protest*, while the Russian term is *nadzor*.

102. *Tregubenko v. Ukraine*, cited above, note 94, and *Svetlana Naumenko v. Ukraine*, no. 41984/98, judgment of 9 November 2004. In the latter case, the Court found a separate violation of Article 6 on the ground that the deputy president of the regional court had participated in the decision on the supervisory review request which he himself had submitted.
103. *Nikitin v. Russia*, no. 50178/99, judgment of 20 July 2004, to be reported in ECHR 2004-VIII.
104. No. 30508/96, judgment of 9 March 2004.
105. See *P.K. v. Finland* (dec.), no. 37442/97, 9 July 2002.
106. See also *Graviano v. Italy*, no. 10075/02, judgment of 10 February 2005.
107. See, for example, *Perna v. Italy* [GC], no. 48898/99, ECHR 2003-V.
108. *Laukkanen and Manninen v. Finland*, no. 50230/99, judgment of 3 February 2004, and *Morel v. France (no. 2)*, no. 43284/98, judgment of 12 February 2004.
109. See, for example, *Georgios Papageorgiou v. Greece*, no. 59506/00, ECHR 2003-VI (extracts).
110. No. 40847/98, judgment of 15 June 2004.
111. No. 47221/99, judgment of 22 June 2004, to be reported in ECHR 2004-V.
112. No. 41579/98, judgment of 26 October 2004.
113. Judgment of 22 June 1989, Series A no. 155.
114. *Puolitaival and Pirttiaho v. Finland*, no. 54857/00, judgment of 23 November 2004.
115. No. 33958/96, ECHR 2000-XII.
116. No. 77562/01, judgment of 29 July 2004, to be reported in ECHR 2004-IX.
117. Judgment of 10 June 1996, *Reports* 1996-III.
118. No. 53971/00, judgment of 10 February 2004, to be reported in ECHR 2004-I.
119. By way of contrast, see *Cianetti v. Italy*, no. 55634/00, judgment of 22 April 2004, in which trial judges had previously participated in an appeal decision concerning preventive measures.
120. No. 73797/01, judgment of 27 January 2004.
121. The Greek word, *ravasakia*, was understood by the court as meaning a love letter, although it may also mean a simple note.
122. In that connection, cf. *Weber v. Switzerland*, judgment of 22 May 1990, Series A no. 177, and *Ravnsborg v. Sweden*, judgment of 23 March 1994, Series A no. 283-B.
123. *Edwards and Lewis v. the United Kingdom* [GC], nos. 39647/98 and 40461/98, judgment of 27 October 2004, to be reported in ECHR 2004-X. See also *Rowe and Davis v. the United Kingdom* [GC], no. 28901/95, ECHR 2000-II, *Fitt v. the United Kingdom* [GC], no. 29777/96, ECHR 2000-II, and *Jasper v. the United Kingdom* [GC], no. 27052/95, judgment of 16 February 2000. Concerning a question of non-disclosure in an administrative context, see *H.A.L. v. Finland*, no. 38267/97, judgment of 27 January 2004.
124. *S.C. v. the United Kingdom*, no. 60958/00, judgment of 15 June 2004, to be reported in ECHR 2004-IV. See also *T. v. the United Kingdom* [GC], no. 24724/94, judgment of 16 December 1999, and *V. v. the United Kingdom* [GC], no. 24888/94, ECHR 1999-IX.
125. *Kansal v. the United Kingdom*, no. 21413/02, judgment of 27 April 2004. See also *Saunders v. the United Kingdom*, judgment of 17 December 1996, *Reports* 1996-VI, and *I.J.L. and Others v. the United Kingdom*, nos. 29522/95, 30056/96 and 30574/96, ECHR 2000-IX, both concerning the use of evidence given to inspectors investigating a company takeover. With regard to self-incrimination, see also *Weh v. Austria*, no. 38544/97, judgment of 8 April 2004, concerning the obligation of a car owner to provide information as to the identity of the person who was driving it at the time of a road traffic offence. The Court found that there had not been a violation of Article 6. In this connection, it may be noted that two cases raising related issues with regard to a similar provision of English law were communicated for observations in 2004: *O'Halloran and Francis v. the United Kingdom*, nos. 15809/02 and 25624/02. Furthermore, an application concerning the statutory liability of a car owner was declared inadmissible: *Falk v. the Netherlands* (dec.), no. 66273/01, 19 October 2004, to be reported in ECHR 2004-XI.
126. *G.W. v. the United Kingdom*, no. 34155/96, and *Le Petit v. the United Kingdom*, no. 35574/97, judgments of 15 June 2004, and *Miller and Others v. the United Kingdom*, nos. 45825/99, 45826/99 and 45827/99, judgment of 26 October 2004. See *Findlay v. the United Kingdom*, judgment of 25 February 1997, *Reports* 1997-I, *Cooper v. the United Kingdom* [GC], no. 48843/99, ECHR 2003-XII, and *Grieves v. the United Kingdom* [GC], no. 57067/00, ECHR 2003-XII (extracts). See also *Thompson v. the United Kingdom*, no. 36256/97, judgment of 15 June 2004, concerning the summary trial of a soldier by his commanding officer. Cf. *Hood v. the United Kingdom* [GC], no. 27267/95, ECHR 1999-I.
127. No. 40395/98, judgment of 10 November 2004.
128. [GC], no. 47287/99, judgment of 12 February 2004, to be reported in ECHR 2004-I.
129. See, in the French context, *Tomasi v. France*, judgment of 27 August 1992, Series A no. 241-A, and *Acquaviva v. France*, judgment of 21 November 1995, Series A no. 333-A.

130. In that connection, see *Garimpo v. Portugal* (dec.), no. 66752/01, 10 June 2004, concerning the position of an *assistente* (assistant to the prosecuting authority) in criminal proceedings in Portugal.
131. No. 44760/98, judgment of 9 November 2004.
132. See *O. v. Norway*, no. 29327/95, ECHR 2003-II, and *Hammern v. Norway*, no. 30287/96, judgment of 11 February 2003.
133. In this connection, mention should also be made of *Capeau v. Belgium*, no. 42914/98, judgment of 13 January 2005, in which the same approach was applied where the criminal proceedings had merely been discontinued.
134. No. 59335/00, judgment of 19 October 2004.
135. At the beginning of 2005, there were almost 600 applications against Poland raising this issue.
136. See *Djangozov v. Bulgaria*, no. 45950/99, judgment of 8 July 2004, *Dimitrov v. Bulgaria*, no. 47829/99, and *Rachevi v. Bulgaria*, no. 47877/99, judgments of 23 September 2004 (concerning civil proceedings), and *Osmanov and Yuseinov v. Bulgaria*, nos. 54178/00 and 59901/00, judgment of 23 September 2004, and *Mitev v. Bulgaria*, no. 40063/98, judgment of 22 December 2004 (concerning criminal proceedings).
137. See *Dostál v. the Czech Republic*, no. 52859/99, judgment of 25 May 2004, *Bartl v. the Czech Republic*, no. 50262/99, judgment of 22 June 2004, and *Konečný v. the Czech Republic*, nos. 47269/99, 64656/01 and 65002/01, judgment of 26 October 2004 (concerning civil proceedings), and *Hradecký v. the Czech Republic*, no. 76802/01, judgment of 5 October 2004. See also *Hartman v. the Czech Republic*, no. 53341/99, ECHR 2003-VIII (extracts).
138. See *Kangasluoma v. Finland*, no. 48339/99, judgment of 20 January 2004 (concerning criminal proceedings).
139. See *Lalousi-Kotsovos v. Greece*, no. 65430/01, judgment of 19 May 2004, and *Nastos v. Greece*, no. 6711/02, *Theodoropoulos and Others v. Greece*, no. 16696/02, judgments of 15 July 2004, and *Karellis v. Greece*, no. 6706/02, judgment of 2 December 2004 (concerning administrative proceedings). See also *Konti-Arvaniti v. Greece*, no. 53401/99, judgment of 10 April 2003.
140. See *O'Reilly and Others v. Ireland*, no. 54725/00, judgment of 29 July 2004 (concerning judicial review proceedings).
141. See *Lisławska v. Poland*, no. 37761/97, *Zynger v. Poland*, no. 66096/01, judgments of 13 July 2004, and *Lizut-Skwarek v. Poland*, no. 71625/01, judgment of 5 October 2004 (concerning civil proceedings). See also *D.M. v. Poland*, no. 13557/02, judgment of 14 October 2003, and *Kudła v. Poland* [GC], no. 30210/96, ECHR 2000-XI (concerning criminal proceedings).
142. See *Kormacheva v. Russia*, no. 53084/99, judgment of 29 January 2004, *Plaksin v. Russia*, no. 14949/02, judgment of 29 April 2004, *Yemanakova v. Russia*, no. 60408/00, judgment of 23 September 2004 (concerning civil proceedings), and *Klyakhin v. Russia*, cited above, note 69 (concerning criminal proceedings).
143. See *E.O. and V.P. v. Slovakia*, nos. 56193/00 and 57581/00, judgment of 27 April 2004 (concerning civil proceedings).
144. See *Merit v. Ukraine*, no. 66561/01, judgment of 30 March 2004 (concerning criminal proceedings).
145. *Glass v. the United Kingdom*, no. 61827/00, judgment of 9 March 2004, to be reported in ECHR 2004-II. The Court found that there had been a violation of Article 8.
146. *Jalloh v. Germany* (dec.), no. 54810/00, 26 October 2004. The application was declared admissible and in February 2005 the Chamber relinquished jurisdiction in favour of the Grand Chamber. See also *Wretlund v. Sweden* (dec.), no. 46210/99, 9 March 2004, concerning the obligation of an employee at a nuclear power station to undergo drug tests. The application was declared inadmissible.
147. No. 59320/00, judgment of 24 June 2004, to be reported in ECHR 2004-VI.
148. Cited above, note 22.
149. Cited above, note 23.
150. *Ashworth and Others v. the United Kingdom* (dec.), no. 39561/98, 20 January 2004. The case was distinguished from *Hatton and Others v. the United Kingdom* [GC], no. 36022/97, ECHR 2003-VIII.
151. *Ward v. the United Kingdom* (dec.), no. 31888/03, 9 November 2004.
152. The adequacy of the measures taken to ensure the applicant's right to respect for his home was in issue in *Surugiu v. Romania*, no. 48995/99, judgment of 20 April 2004.
153. Cited above, note 84.
154. No. 60457/00, judgment of 5 February 2004.
155. No. 63627/00, judgment of 29 June 2004.
156. No. 74969/01, judgment of 26 February 2004.
157. No. 45582/99, judgment of 1 June 2004, to be reported in ECHR 2004-IV.

158. In *Görgülü v. Germany*, the Court held that there had been a violation on account of the refusal of custody and access rights but that there had been no violation with regard to the adequacy of the applicant's involvement in the decision-making process.
159. *Haas v. the Netherlands*, no. 36983/97, judgment of 13 January 2004, to be reported in ECHR 2004-I.
160. See *Couillard Maugery v. France*, no. 64796/01, judgment of 1 July 2004, which concerned the keeping of children in care and restrictions on the mother's contact with them (no violation), and *Haase v. Germany*, no. 11057/02, judgment of 8 April 2004, to be reported in ECHR 2004-III (extracts), which concerned the taking into care of seven children, including a 7-day-old baby, on an emergency basis (violation). In this latter respect, cf. *K. and T. v. Finland* [GC], no. 25702/94, ECHR 2001-VII, *P., C. and S. v. the United Kingdom*, no. 56547/00, ECHR 2002-VI, and *Covezzi and Morselli v. Italy*, no. 52763/99, judgment of 9 May 2003.
161. No. 46572/99, judgment of 28 September 2004.
162. No. 59532/00, judgment of 29 July 2004.
163. Cited above, note 24.
164. No. 44774/98, judgment of 29 June 2004. A similar application, *Zeynep Tekin v. Turkey*, no. 41556/98, was struck out of the list on the same date. See also *Karaduman v. Turkey*, no. 16278/90, Commission decision of 3 May 1993, Decisions and Reports 74, and *Dahlab v. Switzerland* (dec.), no. 42393/98, ECHR 2001-V.
165. Cf. *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], nos. 41340/98, 41342/98, 41343/98 and 41344/98, ECHR 2003-II.
166. No. 39023/97, judgment of 16 December 2004.
167. [GC], no. 30985/96, ECHR 2000-XI.
168. *Ülke v. Turkey* (dec.), no. 39437/98, 1 June 2004.
169. *Ninety-seven members of the Gldani Congregation of Jehovah's Witnesses and four Others v. Georgia* (dec.), no. 71156/01, 6 July 2004.
170. [GC], no. 33348/96, judgment of 17 December 2004, to be reported in ECHR 2004-XI.
171. [GC], no. 49017/99, judgment of 17 December 2004, to be reported in ECHR 2004-XI.
172. *Selistö v. Finland*, no. 56767/00, judgment of 16 November 2004. Cf. Bergens Tidende *and Others v. Norway*, no. 26132/95, ECHR 2000-IV.
173. *Karhuvaara and Iltalehti v. Finland*, no. 53678/00, judgment of 16 November 2004, to be reported in ECHR 2004-X.
174. In that connection, reference may also be made to two more recent judgments in which the high level of damages awarded was an essential element in the finding of a violation: *Steel and Morris v. the United Kingdom*, no. 68416/01, judgment of 15 February 2005, and *Pakdemirli v. Turkey*, no. 35839/97, judgment of 22 February 2005.
175. *Rizos and Daskas v. Greece*, no. 65545/01, judgment of 27 May 2004. While the Court found a violation of Article 10, it held that the application of a special procedure for defamation via the press, with a minimum level of damages, did not violate Article 6.
176. *Sabou and Pîrcălab v. Romania*, cited above, note 161. The Court found a violation of Article 10.
177. *Busuioc v. Moldova*, no. 61513/00, judgment of 21 December 2004. The Court found several violations of Article 10. It found no violation in respect of one aspect.
178. *Vides Aizsardzības Klubs v. Latvia*, no. 57829/00, judgment of 27 May 2004.
179. *Amihalachioaie v. Moldova*, no. 60115/00, judgment of 20 April 2004, to be reported in ECHR 2004-III.
180. *Hrico v. Slovakia*, no. 49418/99, judgment of 20 July 2004.
181. No. 53984/00, judgment of 30 March 2004, to be reported in ECHR 2004-II.
182. No. 64915/01, judgment of 29 June 2004, to be reported in ECHR 2004-VI.
183. No. 58148/00, judgment of 18 May 2004, to be reported in ECHR 2004-IV.
184. [GC], no. 44158/98, judgment of 17 February 2004, to be reported in ECHR 2004-I.
185. No. 47978/99, judgment of 7 October 2004.
186. No. 65659/01, judgment of 5 October 2004.
187. *Maestri v. Italy* [GC], no. 39748/98, judgment of 17 February 2004, to be reported in ECHR 2004-I. See also *N.F. v. Italy*, no. 37119/97, ECHR 2001-IX.
188. Cited above, note 29.
189. No. 69498/01, judgment of 13 July 2004, to be reported in ECHR 2004-VIII.
190. No. 68864/01, judgment of 22 December 2004.
191. No. 34406/97, ECHR 2000-II.
192. Cited above, note 20.
193. No. 74025/01, judgment of 30 March 2004.
194. No. 69949/01, judgment of 22 June 2004, to be reported in ECHR 2004-V.
195. No. 58278/00, judgment of 17 June 2004.

196. No. 17707/02, judgment of 19 October 2004, to be reported in ECHR 2004-X.
197. *Guliyev v. Azerbaijan* (dec.), no. 35584/02, 27 May 2004, and *Boškoski v. the former Yugoslav Republic of Macedonia* (dec.), no. 11676/04, 2 September 2004, to be reported in ECHR 2004-VI.
198. Cited above, note 17.
199. In *Azinas v. Cyprus* [GC], no. 56679/00, judgment of 28 April 2004, to be reported in ECHR 2004-III, the Grand Chamber declared the application inadmissible on the ground of non-exhaustion of domestic remedies. The Chamber had found a violation of Article 1 of Protocol No. 1.
200. In *Ilaşcu and Others v. Moldova and Russia* (cited above, note 25), for example, the complaint concerned the confiscation of the applicants' possessions after their trial. The Court found that there had been no violation of Article 1 of Protocol No. 1.
201. Cited above, note 21.
202. [GC], no. 44912/98, judgment of 28 September 2004, to be reported in ECHR 2004-IX. See also *Němcová and Others v. the Czech Republic* (dec.), no. 72058/01, 9 November 2004.
203. Nos. 46720/99, 72203/01 and 72552/01, judgment of 22 January 2004.
204. No. 54062/00, judgment of 22 December 2004. A request for referral of the case to the Grand Chamber is pending.
205. *Valová and Slezák v. Slovakia*, no. 44925/98, judgment of 1 June 2004.
206. *Fotopoulou v. Greece*, no. 66725/01, judgment of 18 November 2004. The Court also found a violation of Article 13.
207. No. 60669/00, judgment of 12 October 2004, to be reported in ECHR 2004-IX.
208. No. 69529/01, judgment of 18 November 2004.
209. No. 37598/97, judgment of 20 July 2004, to be reported in ECHR 2004-VIII.
210. Cited above, note 98.
211. No. 66810/01, judgment of 8 July 2004.
212. No. 26338/95, judgment of 20 July 2004.
213. Article 17 of Protocol No. 14, amending Article 59 of the Convention.
214. (dec.) [GC], no. 56672/00, 10 March 2004, to be reported in ECHR 2004-IV. The States concerned are: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden and the United Kingdom.
215. The Court also communicated to the respondent Government *Emesa Sugar N.V. v. the Netherlands*, no. 62023/00, concerning the absence of any opportunity to submit observations on the opinion of the Advocate General in proceedings before the European Court of Justice. However, the application was declared inadmissible on 13 January 2005, on the ground that the subject matter of the dispute related to taxation and thus fell outside the scope of Article 6 of the Convention: see *Ferrazzini v. Italy* [GC], no. 44759/98, ECHR 2001-VII. Mention should also be made in this connection of *Bosphorus Airways v. Ireland* ((dec.), no. 45036/98, 13 September 2001) in which the Grand Chamber held a hearing on 29 September 2004.
216. *Norwood v. the United Kingdom* (dec.), no. 23131/03, 16 November 2004, to be reported in ECHR 2004-XI.
217. *W.P. and Others v. Poland* (dec.), no. 42264/98, 2 September 2004, to be reported in ECHR 2004-VII (extracts).
218. See *İkincisoy v. Turkey*, no. 26144/95, judgment of 27 July 2004, and *Ilaşcu and Others v. Moldova and Russia*, cited above, note 25. In two judgments concerning Russia, a violation of Article 34 was found on account of interferences with the correspondence of detained applicants: *Poleshchuk v. Russia*, no. 60776/00, judgment of 7 October 2004, and *Klyakhin v. Russia*, cited above, note 69.
219. See *İpek v. Turkey*, cited above, note 32, and *Tahsin Acar v. Turkey*, cited above, note 33.

XI. SUBJECT MATTER OF JUDGMENTS DELIVERED BY THE COURT IN 2004

SUBJECT MATTER OF JUDGMENTS DELIVERED BY THE COURT IN 2004

A. Subject matter of selected judgments, by Convention Article

Article 2

Cases concerning the right to life

Inapplicability of the crime of involuntary homicide to abortion made necessary by medical negligence (*Vo v. France* [GC], no. 53924/00)

Shooting by military police of two unarmed Roma conscripts who had escaped from detention imposed for being absent without leave, and lack of an effective investigation (*Nachova and Others v. Bulgaria*, nos. 43577/98 and 43579/98; the case is now pending before the Grand Chamber)

Shooting of applicant's brother by the police and lack of an effective investigation (*Ağdaş v. Turkey*, no. 34592/97)

Use by the police of potentially lethal force against an unarmed civilian (*Makaratzis v. Greece* [GC], no. 50385/99)

Death of applicants' relative after being taken into custody and lack of an effective investigation (*İkincisoy v. Turkey*, no. 26144/95)

Death in custody resulting from pneumonia contracted as a result of being forced to walk barefoot in the snow and the conditions of detention, and lack of an effective investigation (*Ahmet Özkan and Others v. Turkey*, no. 21689/93)

Death of applicant's partner while in detention pending deportation, allegedly as a result of a lack of adequate medical facilities, and impossibility for the partner to participate in the investigation into the cause of death (*Slimani v. France*, no. 57671/00)

Death of detainee in an explosion while he was showing the location of a terrorist shelter to the security forces, and lack of an effective investigation (*Özalp and Others v. Turkey*, no. 32457/96)

Suicide in police custody and lack of an effective investigation (*A. and Others v. Turkey*, no. 30015/96; *A.K. and V.K. v. Turkey*, no. 38418/97)

Murder by unidentified perpetrators and lack of an effective investigation (*Buldan v. Turkey*, no. 28298/95; *K. v. Turkey*, no. 29298/95; *Seyhan v. Turkey*, no. 33384/96; *Nuray Şen v. Turkey (no. 2)*, no. 25354/94; *O. v. Turkey*, no. 28497/95)

Disappearance and lack of an effective investigation (*Tekdağ v. Turkey*, no. 27699/95; *İpek v. Turkey*, no. 25760/94; *Tahsin Acar v. Turkey* [GC], no. 26307/95; *Erkek v. Turkey*, no. 28637/95)

Firing of weapons at village by the security forces, death of a child as a result of injuries sustained during military action in the village and death and injury of children while playing with an unexploded grenade (*Ahmet Özkan and Others v. Turkey*, no. 21689/93)

Shelling of village, resulting in the death of the applicant's wife, and lack of an effective investigation (*Şirin Yılmaz v. Turkey*, no. 35875/97)

Death of the applicant's husband during an armed clash and lack of an effective investigation (*Zengin v. Turkey*, no. 46928/99)

Killing of shepherds in northern Iraq, allegedly by Turkish troops conducting a military operation there (*Issa and Others v. Turkey*, no. 31821/96)

Death of nine of the applicant's relatives as a result of an explosion at a rubbish tip where a shanty town had been built, and effectiveness of the criminal proceedings brought against public officials in respect of alleged negligence (*Öneryıldız v. Turkey* [GC], no. 48939/99)

Article 3

Cases concerning physical integrity

Torture of detainees and lack of an effective investigation (*Batı and Others v. Turkey*, nos. 33097/96 and 57834/00; *Abdülsamet Yaman v. Turkey*, no. 32446/96; *Bursuc v. Romania*, no. 42066/98)

Ill-treatment of detainees and, in certain cases, lack of an effective investigation (*Sadık Önder v. Turkey*, no. 28520/95; *Çolak and Filizer v. Turkey*, nos. 32578/96 and 32579/96; *Aydın and Yunus v. Turkey*, nos. 32572/96 and 33366/96; *Bakbak v. Turkey*, no. 39812/98; *Mehmet Emin Yüksel v. Turkey*, no. 40154/98; *İkincisoy v. Turkey*, no. 26144/95; *A. and Others v. Turkey*, no. 30015/96; *Çelik and İmret v. Turkey*, no. 44093/98; *Tuncer and Durmuş v. Turkey*, no. 30494/96; *Talat Tepe v. Turkey*, no. 31247/96; *Balogh v. Hungary*, no. 47940/99; *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99; *Martinez Sala and Others v. Spain*, no. 58438/00)

Ill-treatment of a prisoner sentenced to death – forcible administration of drugs, handcuffing, beatings, electroshocks and "irradiation" (*Naumenko v. Ukraine*, no. 42023/98)

Ill-treatment by the police and, in some cases, lack of an effective investigation (*R.L. and M.-J.D. v. France*, no. 44568/98, *Krastanov v. Bulgaria*, no. 50222/99; *Toteva v. Bulgaria*, no. 42027/98; *Barbu Anghelescu v. Romania*, no. 46430/99)

Assault on detainee by a police officer claiming to have acted in self-defence (*Rivas v. France*, no. 59584/00)

Rounding up and ill-treatment of villagers by the security forces, and ill-treatment of detainees, including a forced march in the snow without adequate clothing (*Ahmet Özkan and Others v. Turkey*, no. 21689/93)

Conditions of detention (*Slimani v. France*, no. 57671/00; *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99)

Conditions of detention of prisoners sentenced to death (*Iorgov v. Bulgaria*, no. 40653/98; *B. v. Bulgaria*, no. 42346/98)

Continued detention of disabled prisoner and inadequacy of medical care (*Matencio v. France*, no. 58749/00)

Continued detention of detainee in ill-health and inadequacy of medical care (*Sakkopoulos v. Greece*, no. 61828/00)

Refusal to release prisoner suffering from Aids (*Gelfmann v. France*, no. 25875/03)

Continued detention of convicted prisoner despite his advanced age, severe infirmity and poor health (*Farbtuhs v. Latvia*, no. 4672/02)

Threatened expulsion of Tamils to Sri Lanka (*Venkadajalasarma v. the Netherlands*, no. 58510/00; *Thampibillai v. the Netherlands*, no. 61350/00)

Article 5

Cases concerning the right to liberty and security

Unlawful detention (*Gusinskiy v. Russia*, no. 70276/01; *İkincisoy v. Turkey*, no. 26144/95)

Detention on the basis of a conviction by the Supreme Court of "the Moldavian Republic of Transdniestria" (*Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99)

Continued detention of applicant in the Ajarian Autonomous Republic, despite an order of the Georgian Supreme Court to release him following his acquittal (*Assanidze v. Georgia* [GC], no. 71503/01)

Failure to comply with the requirements of domestic law and lack of proper custody records (*Ahmet Özkan and Others v. Turkey*, no. 21689/93)

Absence of reasonable suspicion justifying detention (*Tuncer and Durmuş v. Turkey*, no. 30494/96; *Talat Tepe v. Turkey*, no. 31247/96)

Continued detention on remand without any legal basis after expiry of a detention order (*P. v. Poland*, no. 34221/96; *K. v. Poland*, no. 38816/97)

Detention in a remand centre pending transfer to a custodial clinic (*Morsink v. the Netherlands*, no. 48865/99; *Brand v. the Netherlands*, no. 49902/99)

Delay in implementing orders to release from detention (*Bojinov v. Bulgaria*, no. 47799/99; *Mitev v. Bulgaria*, no. 40063/98; *Bojilov v. Bulgaria*, no. 45114/98)

Absence of justification for arrest and lawfulness of detention for psychiatric assessment (*R.L. and M.-J.D. v. France*, no. 44568/98)

Lawfulness of psychiatric detention and absence of a proper review of the lawfulness of detention (*Tám v. Slovakia*, no. 50213/99)

Confinement as an "informal patient" of person incapable of giving or refusing consent, and lack of a proper review of the lawfulness of the detention (*H.L. v. the United Kingdom*, no. 45508/99)

Detention of person under the influence of alcohol (*Hilda Hafsteinsdóttir v. Iceland*, no. 40905/98)

Absence of proper review of the lawfulness of detention on remand (*Klyakhin v. Russia*, no. 46082/99)

Absence of possibility of a court review of the lawfulness of house arrest (*Vachev v. Bulgaria*, no. 42987/98; *Nikolova v. Bulgaria (no. 2)*, no. 40896/98)

Absence of possibility of challenging an application to the Supreme Court to prolong detention on remand (*K. v. Poland*, no. 38816/97)

Failure to deal with a request for release from detention on remand made immediately before conviction (*König v. Slovakia*, no. 39753/98)

Absence of review of the lawfulness of continuing detention on the basis of a mandatory life sentence (*Hill v. the United Kingdom*, no. 19365/02) [see *Stafford v. the United Kingdom* [GC], no. 46295/99, ECHR 2002-IV]

Absence of hearing in connection with the prolongation of detention on remand (*Frommelt v. Liechtenstein*, no. 49158/99)

Length of time taken to decide on requests for release from detention on remand (*Pavletić v. Slovakia*, no. 39359/98; *Mitev v. Bulgaria*, no. 40063/98)

Article 6

Cases concerning the right to a fair trial

Fairness of proceedings relating to an appeal by a civil party against a decision of "no case to answer" (*Perez v. France* [GC], no. 47287/99)

Parliamentary immunity attaching to alleged defamation by a member of parliament (*De Jorio v. Italy*, no. 73936/01)

Expiry of time-limit for having a debtor declared bankrupt, as a result of delays by the authorities in providing the court with information (*Nordica Leasing S.p.a. v. Italy*, no. 51739/99)

Exclusion of jurisdiction of the courts with regard to certain civil disputes (*Tregubenko v. Ukraine*, no. 61333/00)

Exclusion from court review of decision of a property commission (*Związek Nauczycielstwa Polskiego v. Poland*, no. 42049/98), of the dismissal of employees of the State railway company (*Pramov v. Bulgaria*, no. 42986/98; *Neshev v. Bulgaria*, no. 40897/98) and of administrative decisions of a procedural nature (*Kilián v. the Czech Republic*, no. 48309/99)

Supervisory review of final and binding judgment (*Tregubenko v. Ukraine*, no. 61333/00; *Svetlana Naumenko v. Ukraine*, no. 41984/98)

Reconsideration of final judgment on the basis of newly discovered circumstances, although these were already known (*Pravednaya v. Russia*, no. 69529/01)

Reopening of proceedings which had ended with a final and binding judgment ordering return of property previously nationalised, following the lodging of a request out of time (*Androne v. Romania*, no. 54062/00) [see *Brumărescu v. Romania* [GC], no. 28342/95, ECHR 1999-VII]

Refusal of both civil and administrative courts to address the merits of a claim (*Beneficio Cappella Paolini v. San Marino*, no. 40786/98)

Dismissal of constitutional complaint on the ground of failure to comply with a formality (*Kadlec and Others v. the Czech Republic*, no. 49478/99)

Dismissal of appeal on points of law on account of failure to comply with formal requirement, although the appeal had been declared admissible several years earlier (*Saez Maeso v. Spain*, no. 77837/01)

Dismissal of a first constitutional complaint because an appeal on points of law lodged at the same time was pending, and dismissal of a subsequent constitutional complaint as out of time, the appeal on points of law not being taken into account (*Vodárenská akciová společnost, a.s., v. the Czech Republic*, no. 73577/01)

Refusal of the Constitutional Court to examine the merits of a constitutional complaint which it considered to be directed against the first-instance decision rather than the appeal judgment (*Bulena v. the Czech Republic*, no. 57567/00)

Refusal of legal aid in the context of divorce proceedings (*Santambrogio v. Italy*, no. 61945/00)

Adoption of legislation retroactively reducing the amount of reimbursement of contributions paid by bodies administering private schools and affecting the outcome of pending court proceedings (*OGIS-Institut Stanislas and Others v. France*, nos. 42219/98 and 54563/00)

Adoption of legislation affecting the outcome of pending court proceedings (*Scordino v. Italy (no. 1)*, no. 36813/97; the case is now pending before the Grand Chamber)

Adoption of regional law allegedly for the purpose of circumventing a binding court judgment, and lack of equality of arms in proceedings concerning a preliminary question submitted to the Constitutional Court (*Gorraiz Lizarraga and Others v. Spain*, no. 62543/00)

Refusal of civil courts to enforce an arbitration court decision ordering the conclusion of a contract for the transfer of property (*Kačmár v. Slovakia*, no. 40290/98)

Non-enforcement by private institution of court decisions granting adoption of children (*Pini and Others v. Romania*, nos. 78028/01 and 78030/01)

Delays by authorities in complying with court decisions (*Sabin Popescu v. Romania*, no. 48102/99; *Croitoriu v. Romania*, no. 54400/00; *Prodan v. Moldova*, no. 49806/99; *Sîrbu and Others v. Moldova*, nos. 73562/01, 73565/01, 73712/01, 73744/01, 73972/01 and 73973/01; *Luntre and Others v. Moldova*, nos. 2916/02, 21960/02, 21951/02, 21941/02, 21933/02, 20491/02, 2676/02, 23594/02, 21956/02, 21953/02, 21943/02, 21947/02 and 21945/02; *Pasteli and Others v. Moldova*, nos. 9898/02, 9863/02, 6255/02 and 10425/02; *Bocancea and Others v. Moldova*, nos. 18872/02, 20490/02, 18745/02, 6241/02, 6236/02, 21937/02, 18842/02, 18880/02 and 18875/02; *Croitoru v. Moldova*, no. 18882/02; *Ţîmbal v. Moldova*, no. 22970/02; *Shmalko v. Ukraine*, no. 60750/00; *Zhovner v. Ukraine*, no. 56848/00; *Piven v. Ukraine*, no. 56849/00; *Voytenko v. Ukraine*, no. 18966/02; *Romashov v. Ukraine*, no. 67534/01; *Bakalov v. Ukraine*, no. 14201/02; *Bakay and Others v. Ukraine*, no. 67647/01; *Mykhaylenky and Others v. Ukraine*, nos. 35091/02, 35196/02, 35201/02, 35204/02, 35945/02, 35949/02, 35953/02, 36800/02, 38296/02 and 42814/02; *Derkach and Palek v. Ukraine*, nos. 34297/02 and 39574/02; *Metaxas v. Greece*, no. 8415/02; *Zazanis and Others v. Greece*, no. 68138/01; *Mancheva v. Bulgaria*, no. 39609/98; *Wasserman v. Russia*, no. 15021/02; *Qufaj Co. sh.p.k. v. Albania*, no. 54268/00)

Failure of authorities to comply with a court decision on account of their inability to locate the file (*Loiseau v. France*, no. 46809/99)

Fairness of proceedings concerning child custody and access (*Görgülü v. Germany*, no. 74969/01)

Fairness of civil proceedings, in particular participation of a different presiding judge at each hearing (*Pitkänen v. Finland*, no. 30508/96)

Application of special procedure for defamation via the press, minimum level of damages, and failure of the court to give adequate reasons (*Rizos and Daskas v. Greece*, no. 65545/01)

Failure to give reasons for refusal of compensation for detention on remand (*Sakkopoulos v. Greece*, no. 61828/00)

Non-disclosure to a party of medical opinions obtained by the social insurance courts, and inadequacy of the reasons given for their decisions (*H.A.L. v. Finland*, no. 38267/97)

Refusal to hear witness requested by a party to civil proceedings (*Tamminen v. Finland*, no. 40847/98)

Lack of oral hearing in administrative proceedings (*Valová and Slezák v. Slovakia*, no. 44925/98)

Independence and impartiality of an expert judge who was simultaneously a member of parliament (*Pabla Ky v. Finland*, no. 47221/99)

Impartiality of lay assessors nominated by employers' and employees' associations to sit in the labour court (*AB Kurt Kellermann v. Sweden*, no. 41579/98)

Examination of request for retrial by the same judges who had dealt with the merits of the case (*San Leonard Band Club v. Malta*, no. 77562/01)

Impartiality of deputy president of regional court participating in a decision on supervisory review which he had requested (*Svetlana Naumenko v. Ukraine*, no. 41984/98)

Impartiality of court of appeal judge who, in previous civil proceedings brought by the applicants, had acted as the legal representative of the opposing party (*Puolitaival and Pirttiaho v. Finland*, no. 54857/00)

Dismissal of appeal on points of law as a result of the failure of an official to comply with a formality (*Boulougouras v. Greece*, no. 66294/01)

Obligation to comply with an arrest warrant as a prerequisite to contesting a default judgment declaring an appeal inadmissible and refusal of court to allow lawyer to represent absent appellant (*Maat v. France*, no. 39001/97)

Withdrawal of appeal in the belief that the advocate-general had undertaken to secure remission of the sentence (*Marpa Zeeland B.V. and Metal Welding B.V. v. the Netherlands*, no. 46300/99)

Scope of review of tax fines (*Silvester's Horeca Service v. Belgium*, no. 47650/99)

Summary trial of soldier by commanding officer and denial of legal assistance (*Thompson v. the United Kingdom*, no. 36256/97)

Request for supervisory review of a final acquittal (*Nikitin v. Russia*, no. 50178/99)

Refusal of authorities of the Ajarian Autonomous Republic to comply with an order of the Georgian Supreme Court to release the applicant following his acquittal (*Assanidze v. Georgia* [GC], no. 71503/01)

Effective participation of child in his trial (*S.C. v. the United Kingdom*, no. 60958/00)

Non-disclosure by the prosecution, on the ground of public interest immunity, of material potentially relevant to a defence of entrapment (*Edwards and Lewis v. the United Kingdom* [GC], nos. 39647/98 and 40461/98)

Use at trial of statements made to a receiver in bankruptcy under the threat of a sanction (*Kansal v. the United Kingdom*, no. 21413/02)

Lack of oral hearing in a criminal appeal (*Dondarini v. San Marino*, no. 50545/99)

Independence and impartiality of courts-martial (*G.W. v. the United Kingdom*, no. 34155/96; *Le Petit v. the United Kingdom*, no. 35574/97; *Miller and Others v. the United Kingdom*, nos. 45825/99, 45826/99 and 45827/99) [see *Findlay v. the United Kingdom*, judgment of 25 February 1997, *Reports of Judgments and Decisions* 1997-I; *Cooper v. the United Kingdom* [GC], no. 48843/99, ECHR-2003 XII; and *Grieves v. the United Kingdom* [GC], no. 57067/00, ECHR 2003-XII (extracts)]

Independence and impartiality of national security court dealing with drugs offences (*Canevi and Others v. Turkey*, no. 40395/98)

Impartiality of judge who had previously acted as prosecutor in the same case (*Pavletić v. Slovakia*, no. 39359/98)

Impartiality of judges of the Court of Cassation participating in the examination of an appeal on points of law against a conviction, having previously participated in the examination of an appeal on points of law against the decision to commit for trial (*Depiets v. France*, no. 53971/00)

Impartiality of trial judges who had previously participated in an appeal decision concerning preventive measures (*Cianetti v. Italy*, no. 55634/00)

Imposition of sanction of detention on a lawyer for contempt of court (*Kyprianou v. Cyprus*, no. 73797/01; the case is now pending before the Grand Chamber)

Imposition of fine on the owner of a car for providing insufficiently accurate information when required to disclose who was driving the car when it exceeded the speed limit (*Weh v. Austria*, no. 38544/97)

Breach of presumption of innocence on account of statements made by the police to the press (*B. and Others v. Turkey*, nos. 48173/99 and 48319/99)

Presumption of responsibility of an editor for defamatory information broadcast repeatedly on live radio (*Radio France and Others v. France*, no. 53984/00)

Refusal of compensation for detention on remand, following acquittal, on the ground that the claimants would have been convicted on an alternative charge (*Del Latte v. the Netherlands*, no. 44760/98)

Continuation of criminal trial throughout the night (*Makhfi v. France*, no. 59335/00)

Failure to hear accused personally in administrative criminal proceedings (*Yavuz v. Austria*, no. 46549/99)

Making of an order binding over to keep the peace and to be of good behaviour, without any opportunity to make submissions about the terms of the order (*Hooper v. the United Kingdom*, no. 42317/98)

Conviction *in absentia* and refusal to reopen the proceedings, despite doubts as to the effectiveness of notification (*Somogyi v. Italy*, no. 67972/01), and conviction *in absentia*, without personal notification, of person declared to be a fugitive (*Sejdovic v. Italy*, no. 56581/00; the case is now pending before the Grand Chamber)

Refusal to hear witnesses requested by the accused (*Laukkanen and Manninen v. Finland*, no. 50230/99; *Morel v. France (no. 2)*, no. 43284/98)

Conviction on appeal, following acquittal at first instance, without hearing the defence witnesses who had testified at the trial (*Destrehem v. France*, no. 56651/00)

Article 7

Cases concerning non-retroactivity of criminal offences and penalties

Retroactive application of a criminal law (*Puhk v. Estonia*, no. 55103/00) [see *Veeber v. Estonia (no. 2)*, no. 45771/99, ECHR 2003-I]

Imposition of heavier sentence on a recidivist, on the basis of a new law which had come into force after expiry of the original period relating to recidivism (*Achour v. France*, no. 67335/01; the case is now pending before the Grand Chamber)

Foreseeability of conviction of a radio journalist and an editor for repeated broadcasts of defamatory information on live radio (*Radio France and Others v. France*, no. 53984/00)

Article 8

Cases concerning the right to respect for private and family life, home and correspondence

Administration of a drug to a severely handicapped child against the wishes of his mother (*Glass v. the United Kingdom*, no. 61827/00)

Absence of protection against publication of photographs taken of a public figure in public places (*Von Hannover v. Germany*, no. 59320/00)

Failure of authorities to comply with a court decision annulling authorisation to operate a gold mine, on account of the effect on the environment, and subsequent granting of a new authorisation (*Taşkın and Others v. Turkey*, no. 46117/99)

Failure of authorities to prevent excessive nuisance from night-clubs and bars (*Moreno Gómez v. Spain*, no. 4143/02)

Adequacy of legal basis for recording a detainee's telephone conversations, retention and subsequent use of the recordings in criminal proceedings (*Doerga v. the Netherlands*, no. 50210/99)

Absence of legal basis for covert recording of conversations in police custody (*Wood v. the United Kingdom*, no. 23414/02) [see *Khan v. the United Kingdom*, no. 35394/97, ECHR-2000-V; *Taylor-Sabori v. the United Kingdom*, no. 47114/99, 22 October 2000; and *Allan v. the United Kingdom*, no. 48539/99, ECHR 2002-IX]

Exclusion of unacknowledged illegitimate child from father's succession (*Haas v. the Netherlands*, no. 36983/97)

Adequacy of measures taken by the authorities to enforce rights of access to children by a mother (*Kosmopoulou v. Greece*, no. 60457/00) and by a father (*Voleský v. the Czech Republic*, no. 63627/00)

Adequacy of measures taken to ensure compliance by a private institution with court decisions granting adoption of children by foreign parents (*Pini and Others v. Romania*, nos. 78028/01 and 78030/01)

Refusal to grant custody to the father of a child born out of wedlock and given up by the mother for adoption, suspension of his right of access and sufficiency of his involvement in the proceedings (*Görgülü v. Germany*, no. 74969/01)

Refusal to grant father access to his child born out of wedlock (*Lebbink v. the Netherlands*, no. 45582/99)

Taking into care of seven children, including a 7-day-old baby, on an emergency basis, without providing the parents with an opportunity to contest the order (*Haase v. Germany*, no. 11057/02)

Keeping children in public care and restrictions on the mother's contact with them (*Couillard Maugery v. France*, no. 64796/01)

Withdrawal of parental rights as an automatic consequence of the imposition of a prison sentence (*Sabou and Pîrcălab v. Romania*, no. 46572/99)

Expulsion of 18-year-old following a criminal conviction after eight years of residence (*Radovanovic v. Austria*, no. 42703/98)

Refusal, on security grounds, to permit the return of villagers to their homes (*Doğan and Others v. Turkey*, nos. 8803/02 to 8811/02, 8813/02, and 8815/02 to 8819/02)

Eviction from a local-authority Gypsy caravan site without providing an opportunity to contest the grounds for eviction (*Connors v. the United Kingdom*, no. 66746/01)

Termination of specially protected tenancy on the ground of the tenant's absence for more than six months during the war in Croatia (*Blečić v. Croatia*, no. 59532/00; the case is now pending before the Grand Chamber)

Eviction of partner of a deceased tenant without following the proper procedure (*Prokopovich v. Russia*, no. 58255/00)

Search of home and company offices and seizure of documents (*Van Rossem v. Belgium*, no. 41872/98)

Adequacy of measures taken by the authorities to stop incursions into the applicant's courtyard by third parties granted title to the land by an administrative authority despite recognition of the applicant's title by the courts (*Surugiu v. Romania*, no. 48995/99)

Absence of clear legal basis for the opening of a bankrupt's correspondence by the trustee (*Narinen v. Finland*, no. 45027/98)

Article 9

Cases concerning freedom of religion and belief

Refusal of building permit for a place of worship for "True Orthodox Christians" (*Vergos v. Greece*, no. 65501/01)

Restrictions on wearing the Muslim headscarf in universities (*Leyla Şahin v. Turkey*, no. 44774/98; the case is now pending before the Grand Chamber)

Recognition by the State of one of two rival leaderships of the Muslim community at the expense of the other (*Supreme Holy Council of the Muslim Community v. Bulgaria*, no. 39023/97) [see *Hasan and Chaush v. Bulgaria* [GC], no. 30985/96, ECHR 2000-XI]

Article 10

Cases concerning freedom of expression

Conviction of a radio journalist and an editor for defamation, and imposition on a radio station of the obligation to broadcast information about the judgment (*Radio France and Others v. France*, no. 53984/00)

Award of damages against environmental association for defamation of a mayor in a resolution published in a newspaper (*Vides Aizsardzības Klubs v. Latvia*, no. 57829/00)

Conviction of an author, a publishing company and its director for defamation of members of the French Resistance (*Chauvy and Others v. France*, no. 64915/01)

Award of damages against publisher for defamation of a Supreme Court judge (*Hrico v. Slovakia*, no. 49418/99)

Conviction of journalists for defamation of a prosecutor (*Rizos and Daskas v. Greece*, no. 65545/01), a judge (*Sabou and Pîrcălab v. Romania*, no. 46572/99), a surgeon (*Selistö v. Finland*, no. 56767/00) and several civil servants (*Busuioc v. Moldova*, no. 61513/00)

Conviction of a journalist and a newspaper editor for defamation of a former legal adviser to a local authority (*Cumpănă and Mazăre v. Romania* [GC], no 33348/96)

Conviction of a newspaper and an editor for infringement of privacy by referring to a member of parliament in a report on criminal proceedings against her husband (*Karhuvaara and Iltalehti v. Finland*, no. 53678/00)

Conviction of producers of a television programme for defamation of a senior police officer (*Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99)

Conviction of translator for defaming the armed forces in the translation of a report of a human rights non-governmental organisation (*Kürkçü v. Turkey*, no. 43996/98)

Imposition of administrative fine on lawyer for criticising a decision of the Constitutional Court in an interview with a journalist (*Amihalachioaie v. Moldova*, no. 60115/00)

Temporary injunction, followed by a permanent injunction, on dissemination, after the death of President Mitterrand, of a book describing his treatment for undisclosed cancer (*Editions Plon v. France*, no. 58148/00)

Dismissal of former KGB officers from posts in the public service and imposition of employment restrictions, allegedly on account of their views (*Sidabras and Džiautas v. Lithuania*, nos. 55480/00 and 59330/00)

Article 11

Cases concerning freedom of association

Refusal to register association as an organisation of the Silesian "national minority" (*Gorzelik and Others v. Poland* [GC], no. 44158/98)

Refusal to renew registration of political party (*Presidential Party of Mordovia v. Russia*, no. 65659/01)

Suspension of activities of political association (*Vatan v. Russia*, no. 47978/99)

Imposition of disciplinary sanction on judge on account of his membership of the Freemasons (*Maestri v. Italy* [GC], no. 39748/98)

Ineligibility to stand as candidate in parliamentary elections and termination of a mandate as a local councillor, on account of involvement in the Communist Party in 1991 (*Ždanoka v. Latvia*, no. 58278/00; the case is now pending before the Grand Chamber)

Article 14

Cases concerning the prohibition of discrimination

Racial discrimination – shooting by military police of two unarmed Roma conscripts who had escaped from detention imposed for being absent without leave (*Nachova and Others v. Bulgaria*, nos. 43577/98 and 43579/98; the case is now pending before the Grand Chamber)

Discrimination against member of the Turkish-Cypriot community with regard to voting rights (*Aziz v. Cyprus*, no. 69949/01)

Obligation of married woman to take her husband's surname (*Ünal Tekeli v. Turkey*, no. 29865/96)

Exclusion of adopted child from inheritance on the basis of the interpretation of a 1939 will which referred to "children of a legitimate marriage" (*Pla and Puncernau v. Andorra*, no. 69498/01)

Discrimination with regard to inheritance rights of children born of an adulterous relationship (*Merger and Cros v. France*, no. 68864/01)

Different age of consent for homosexual and for heterosexual acts (*B.B. v. the United Kingdom*, no. 53760/00) [see *Sutherland v. the United Kingdom* (striking out) [GC], no. 25186/94, 27 March 2001]

Exclusion of former KGB officers from employment in certain private sector spheres (*Sidabras and Džiautas v. Lithuania*, nos. 55480/00 and 59330/00)

Article 1 of Protocol No. 1

Cases concerning the right of property

Failure of the State to fulfil an obligation to provide property in compensation for land abandoned at the end of the Second World War (*Broniowski v. Poland* [GC], no. 31443/96)

Refusal to order return of confiscated coins on account of failure to specify their whereabouts (*Kopecký v. Slovakia* [GC], no. 44912/98)

Destruction of applicant's home and possessions as a result of an explosion at a rubbish tip (*Öneryıldız v. Turkey* [GC], no. 48939/99)

Damage to property as a result of shelling by the security forces, and subsequent denial of access to the property (*Şirin Yılmaz v. Turkey*, no. 35875/97)

Obligation of heirs of owners of land acquired by virtue of land reform in the former German Democratic Republic to reassign it to the tax authorities without compensation (*Jahn and Others v. Germany*, nos. 46720/99, 72203/01 and 72552/01; the case is now pending before the Grand Chamber)

Confiscation of possessions following trial (*Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99)

Deprivation of property following the reopening of proceedings which had ended with a final and binding judgment ordering the return of property previously nationalised (*Androne v. Romania*, no. 54062/00) [see *Brumărescu v. Romania* [GC], no. 28342/95, ECHR 1999-VII]

Deprivation of property as a result of the reopening of proceedings in which a restitution agreement was approved (*Valová and Slezák v. Slovakia*, no. 44925/98)

Effect of supervisory review on a property claim (*Tregubenko v. Ukraine*, no. 61333/00)

Reduction of pension entitlement following reconsideration of a final judgment (*Pravednaya v. Russia*, no. 69529/01)

Loss of pension rights as an automatic consequence of dismissal from the civil service (*Azinas v. Cyprus* [GC], no. 56679/00)

Termination of disability pension as a result of changes to the conditions for entitlement (*Kjartan Ásmundsson v. Iceland*, no. 60669/00)

Denial of benefits for a lengthy period on account of the length of proceedings and supervisory review of final and binding decision (*Svetlana Naumenko v. Ukraine*, no. 41984/98)

Retroactive reduction in the amount of reimbursement of contributions paid by bodies administering private schools (*OGIS-Institut Stanislas and Others v. France*, nos. 42219/98 and 54563/00)

Obligation of accountants to remit earnings to the State following annulment of the law liberalising the profession (*Kliafas and Others v. Greece*, no. 66810/01)

Reduction in value of guarantor's claim against the principal debtor as a result of debt adjustment (*Bäck v. Finland*, no. 37598/97)

Prolonged building prohibition (*Scordino v. Italy (no. 2)*, no. 36815/97)

Prolonged suspension of building work on account of the authorities' opposition, despite existence of planning permission (*Assymomitis v. Greece*, no. 67629/01)

Refusal to order eviction of tenant, notwithstanding the landlord's offer of alternative premises (*Schirmer v. Poland*, no. 68880/01)

Non-enforcement of arbitration court decision ordering the conclusion of a contract for the transfer of property (*Kačmár v. Slovakia*, no. 40290/98)

Failure of authorities to comply with an order to demolish a wall, confirmed to be binding by the Supreme Administrative Court (*Fotopoulou v. Greece*, no. 66725/01)

Delays by authorities in complying with court deisions concerning property rights or ordering payment of sums (*Sabin Popescu v. Romania*, no. 48102/99; *Croitoriu v. Romania*, no. 54400/00; *Prodan v. Moldova*, no. 49806/99; *Sîrbu and Others v. Moldova*, nos. 73562/01, 73565/01, 73712/01, 73744/01, 73972/01 and 73973/01; *Luntre and Others v. Moldova*, nos. 2916/02, 21960/02, 21951/02, 21941/02, 21933/02, 20491/02, 2676/02, 23594/02, 21956/02, 21953/02, 21943/02, 21947/02 and 21945/02; *Pasteli and Others v. Moldova*, nos. 9898/02, 9863/02, 6255/02 and 10425/02; *Bocancea and Others v. Moldova*, nos. 18872/02, 20490/02, 18745/02, 6241/02, 6236/02, 21937/02, 18842/02, 18880/02 and 18875/02; *Croitoru v. Moldova*, no. 18882/02; *Ţîmbal v. Moldova*, no. 22970/02; *Metaxas v. Greece*, no. 8415/02; *Zhovner v. Ukraine*, no. 56848/00; *Piven v. Ukraine*, no. 56849/00; *Voytenko v. Ukraine*, no. 18966/02; *Shmalko v. Ukraine*, no. 60750/00; *Bakalov v. Ukraine*, no. 14201/02; *Mykhaylenky and Others v. Ukraine*, nos. 35091/02, 35196/02, 35201/02, 35204/02, 35945/02, 35949/02, 35953/02, 36800/02, 38296/02 and 42814/02; *Derkach and Palek v. Ukraine*, nos. 34297/02 and 39574/02; *Angelov v. Bulgaria*, no. 44076/98; *Mancheva v. Bulgaria*, no. 39609/98; *Wasserman v. Russia*, no. 15021/02)

Termination of specially protected tenancy on the ground of the tenant's absence for more than six months during the war in Croatia (*Blečić v. Croatia*, no. 59532/00; the case is now pending before the Grand Chamber)

Irregular manner of termination of a 300-year-old lease of State property (*Bruncrona v. Finland*, no. 41673/98)

Refusal, on security grounds, to permit the return of villagers to their property (*Doğan and Others v. Turkey*, nos. 8803/02 to 8811/02, 8813/02 and 8815/02 to 8819/02)

Refusal to return part of expropriated property which was not used for the purposes for which it was expropriated (*Beneficio Cappella Paolini v. San Marino*, no. 40786/98)

Prescription, without compensation, of property rights on the basis of twenty years of occupation by the State (*I.R.S. and Others v. Turkey*, no. 26338/95)

Adequacy of compensation for expropriation (*Scordino v. Italy (no. 1)*, no. 36813/97; the case is now pending before the Grand Chamber)

Article 3 of Protocol No. 1

Cases concerning the right to free elections

Impossibility for member of the Turkish-Cypriot community to participate in elections, on account of refusal to register him on the Greek-Cypriot electoral roll and the inexistence of a Turkish-Cypriot roll (*Aziz v. Cyprus*, no. 69949/01)

Disenfranchisement of convicted prisoners (*Hirst v. the United Kingdom (no. 2)*, no. 74025/01; the case is now pending before the Grand Chamber)

Delay in striking applicant off the electoral list following disenfranchisement as a consequence of the imposition of preventive measures (*Vito Sante Santoro v. Italy*, no. 36681/97)

Refusal to register applicant as an electoral candidate, on the ground that he had given untruthful information, namely an address in Ukraine although he was living abroad (*Melnychenko v. Ukraine*, no. 17707/02)

Ineligibility to stand as candidate in parliamentary elections on account of involvement in the Communist Party in 1991 (*Ždanoka v. Latvia*, no. 58278/00; the case is now pending before the Grand Chamber)

Article 2 of Protocol No. 4

Cases concerning freedom of movement

Refusal to allow children adopted by foreign parents to leave the country (*Pini and Others v. Romania*, nos. 78028/01 and 78030/01)

Lawfulness of continued restrictions on freedom of movement following the expiry of preventive measures (*Vito Sante Santoro v. Italy*, no. 36681/97)

Article 4 of Protocol No. 7

Case concerning principally the right not to be tried or punished twice

Request by Prosecutor General for supervisory review of a final acquittal (*Nikitin v. Russia*, no. 50178/99)

B. Judgments dealing exclusively with issues already examined by the Court

207 judgments concerned the length of civil or administrative proceedings in Poland (61 judgments, including 3 friendly settlements), France (24 judgments, including 2 friendly settlements), the Czech Republic (20 judgments, including 1 friendly settlement), Greece (17 judgments), Hungary (16 judgments), Italy (11 judgments), Belgium (11 judgments, including 2 striking-out judgments and 1 friendly settlement), Austria and Slovakia (6 judgments each, including 1 friendly settlement each), Russia and Turkey (5 judgments), Portugal (5 judgments[1], including 1 friendly settlement), Bulgaria and Croatia (4 judgments each[2]), Sweden (3 friendly settlements), Ireland and Spain (2 judgments each), Germany, Luxembourg and the United Kingdom (1 judgment each), Denmark and the Netherlands (1 friendly settlement each)

1. Two of these judgments also raised issues under Article 1 of Protocol No. 1 with regard to the delay in fixing and paying final compensation for expropriation.
2. Two of the judgments concerning Croatia also related to the effect of the delay in enforcement proceedings on securing the eviction of tenants.

41 judgments concerned the length of criminal proceedings in France (9 judgments[1]), Poland (6 judgments[2]), Greece (4 judgments[3]), Austria and Bulgaria (4 judgments each), the Czech Republic and the United Kingdom (3 judgments each), Hungary (2 judgments), Denmark, Finland, Turkey and Ukraine (1 judgment each[4]), Lithuania and Portugal (1 friendly settlement each)

49 judgments concerned the lack of independence and impartiality of national security courts dealing with offences under counter-terrorism legislation in Turkey[5] (see the leading judgments *Incal v. Turkey*, of 9 June 1998, *Reports of Judgments and Decisions* 1998-IV, and *Çıraklar v. Turkey*, of 28 October 1998, *Reports* 1998-VII); the same issue also arose in numerous judgments dealing with freedom of expression (see below), as well as in two other judgments

20 judgments (including 1 friendly settlement) concerned both the lack of independence and impartiality of national security courts in Turkey, and convictions for dissemination of separatist propaganda and/or incitement to hatred and hostility[6]; a violation of Article 10 alone was found in a further judgment

1 judgment concerned the lack of independence and impartiality of a martial-law court in Turkey (see the leading judgment *Şahiner v. Turkey*, no. 29279/95, ECHR 2001-IX), as well as the length of the criminal proceedings

35 judgments concerned delays in payment of compensation for expropriations in Turkey (see the leading judgment *Akkuş v. Turkey*, of 9 July 1997, *Reports* 1997-IV)

27 judgments (including 20 friendly settlements) concerned the staying of civil proceedings relating to claims for compensation for damage caused by terrorism or by the armed forces or police during the war in Croatia (see the leading judgments *Kutić v. Croatia*, no. 48778/99, ECHR 2002-II, and *Multiplex v. Croatia*, no. 58112/00, 10 July 2003)

18 judgments (including 7 friendly settlements) concerned the impossibility for landlords in Italy to recover possession of their properties, on account of the system of staggering police assistance to enforce evictions (see the leading judgment *Immobiliare Saffi v. Italy* [GC], no. 22774/93, ECHR 1999-V)

17 judgments concerned various aspects of the right to an adversarial procedure and equality of arms in proceedings before the Court of Cassation in France, in particular the non-disclosure of the report of the *conseiller rapporteur* (see the leading judgments *Reinhardt and Slimane-Kaïd v. France*, of 31 March 1998, *Reports* 1998-II, and *Slimane-*

1. One judgment also concerned the length of administrative proceedings and another also concerned the length of proceedings relating to a complaint about the excessive length of criminal proceedings.
2. One judgment also concerned civil proceedings.
3. In One judgment, no violation was found.
4. No violation was found in the judgment concerning Denmark.
5. In two of these, the length of the proceedings was also in issue.
6. Violations of both Article 6 and Article 10 were found in all but one of the judgments, in which the conviction of a publisher on account of his membership of an illegal organisation was found not to have been in violation of the latter provision.

Kaïd v. France (no. 1), no. 29507/95, of 25 January 2000), the position of unrepresented appellants (see the leading judgment *Meftah and Others v. France* [GC], nos. 32911/96, 35237/97 and 34595/97, ECHR 2002-VII) or, in one judgment, an appellant represented by a lawyer not belonging to the *Conseil d'Etat* and Court of Cassation Bar, and the presence of the *avocat général* during the court's deliberations (see *Kress v. France* [GC], no. 39594/98, ECHR 2001-VI, which concerned the procedure before the *Conseil d'Etat*); one judgment also concerned the length of the proceedings

7 judgments concerned the failure to bring detainees promptly before a judge in Turkey[1]; the same issue was raised in 5 other judgments

5 judgments (including 1 friendly settlement) concerned the destruction of possessions and homes by the security forces in Turkey[2]; the same matter was also partly in issue in a further judgment

3 judgments concerned the annulment of final decisions ordering the restitution of property in Romania and/or the exclusion of the jurisdiction of the courts in the matter (see the leading judgment *Brumărescu v. Romania* [GC], no. 28342/95, ECHR 1999-VII)

3 judgments concerned the effect of the excessive length of bankruptcy proceedings in Italy on property rights and/or restrictions on the receipt of correspondence and the freedom of movement of persons declared bankrupt (see the leading judgment *Luordo v. Italy*, no. 32190/96, ECHR 2003-IX)

1 judgment concerned the ordering of detention on remand by a prosecutor in Poland (see the leading judgment *Niedbała v. Poland*, no. 27915/95, 4 July 2000)

1 friendly settlement concerned the unavailability of certain widows' benefits to widowers in the United Kingdom (see *Willis v. the United Kingdom*, no. 36042/97, ECHR 2002-IV)

1 judgment concerned the age of consent for homosexual acts between adults and adolescents (see the leading judgments *L. and V. v. Austria*, nos. 39392/98 and 39829/98, ECHR 2003-I, and *S.L. v. Austria*, no. 45330/99, ECHR 2003-I)

1 judgment concerned the continuation of detention on remand in Poland by virtue of a practice without any legal basis (see the leading judgment *Baranowski v. Poland*, no. 28358/95, ECHR 2000-III)

1 judgment concerned the exclusion from court review of conviction by the administrative authorities for certain minor offences in Slovakia (see the leading judgments *Lauko* and *Kadubec v. Slovakia*, of 2 September 1998, *Reports* 1998-VI)

1 judgment concerned the failure of a court in Greece to hear the applicant prior to deciding not to award compensation for detention on remand, and the failure to give

1. In one judgment, the only other issue was the independence and impartiality of the national security court, while several cases also raised the absence of a right to review and/or denial of contact with the outside world during the initial period of custody (no violation was found in that respect).
2. In one judgment, no violation was found.

reasons (see the leading judgments *Georgiadis v. Greece*, of 29 May 1997, *Reports* 1997-III, and *Karakasis v. Greece*, no. 38194/97, of 17 October 2000)

1 judgment concerned the compulsory reafforestation of land on the basis of a ministerial decision of 1934, without re-examination (see *Papastavrou and Others v. Greece*, no. 46372/99, ECHR 2003-IV)

1 judgment concerned the lengthy delay in the fixing and payment of compensation in respect of the occupation of land in the context of nationalisation (see *Almeida Garrett, Mascarenhas Falcão and Others v. Portugal*, nos. 29813/96 and 30229/96, ECHR 2000-I); two other judgments also raised this issue along with the length of the proceedings

1 judgment concerned the lack of an oral hearing before the administrative court in Austria (see *Stallinger and Kuso v. Austria*, judgment of 23 April 1997, *Reports* 1997-II)

1 judgment concerned the refusal of the courts to allow representation of an absent accused (see *Van Geyseghem v. Belgium* [GC], no. 26103/95, ECHR 1999-I)

In addition, a number of judgments dealt at least in part with issues in respect of which the Court has already established clear principles in its case-law: length of detention on remand (8 judgments against Bulgaria, 6 judgments against Poland, including 1 friendly settlement, 4 judgments against Turkey, including 2 friendly settlements, and 1 judgment each against France, Georgia (friendly settlement), Germany, Hungary, Russia and Slovakia); censorship of prisoners' correspondence (2 judgments against Italy[1], 2 judgments against Poland[2], 2 judgments against Russia[3] and 1 judgment against France); the role of investigators and prosecutors in ordering detention[4] (6 judgments against Bulgaria); dismissal of an appeal on points of law as a result of the appellant's failure to surrender into custody or, in one judgment, lodge security, prior to the appeal hearing[5] (3 judgments against France, including 1 friendly settlement); absence of any right for a detainee to appear or be represented at hearings relating to the prolongation of detention on remand[6] (2 judgments against Poland).

C. Friendly-settlement judgments

In addition to the friendly-settlement judgments mentioned above, friendly settlements were reached in cases concerning the following issues:

Killing of applicants' son by the security forces (*Çelik v. Turkey*, no. 41993/98)

1. See *Calogero Diana* and *Domenichini v. Italy*, judgments of 15 November 1996, *Reports* 1996-V.
2. In one judgment, in which the matter was examined under Article 34 of the Convention, no violation was found.
3. In one judgment, the Court found a violation of Article 34 of the Convention taken alone, while in the other it found violations of both Article 8 and Article 34.
4. See *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports* 1998-VIII, and *Nikolova v. Bulgaria*, no. 31195/96, ECHR 1999-II; two of the judgments, as well as a further one, also raised the issue of the scope of review of the lawfulness of detention.
5. See *Omar* and *Guérin v. France*, judgments of 29 July 1998, *Reports* 1998-V.
6. See *Niedbała v. Poland*, no. 27915/95, 4 July 2000; *Włoch v. Poland*, no. 27785/95, ECHR 2000-XI; and *Migón v. Poland*, no. 24244/94, 25 June 2002.

Alleged ill-treatment in custody, length of detention on remand and length of criminal proceedings (*Kaptan v. Turkey*, no. 46749/99)

Ill-treatment in custody (*Şahmo v. Turkey*, no. 37415/97; *Örnek and Eren v. Turkey*, no. 41306/98; *Madi v. France*, no. 51294/99)

Alleged ill-treatment in custody, lawfulness of detention and alleged lack of possibility of review, access to a court, disclosure of applicant's identity in a television programme about juvenile delinquency, and alleged harassment on account of application to the Court (*Notar v. Romania*, no. 42860/98)

Alleged ill-treatment by the police during search of home (*Temel v. Turkey*, no. 37047/97)

Alleged assault by the police and damage to property (*Binbay v. Turkey*, no. 24922/94)

Shelling of village, resulting in injuries to applicants and destruction of their property, lack of effective investigation (*Boztaş and Others v. Turkey*, no. 40299/98)

Effectiveness of investigation into allegations of ill-treatment by the police (*Bălăşoiu v. Romania*, no. 37424/97)

Detention for non-payment of community charge, local taxes or fines, absence of right to compensation, and unavailability of legal aid for proceedings relating to non-payment of community charge (*Broadhurst v. the United Kingdom*, no. 69187/01; *Edwards and Others v. the United Kingdom*, nos. 38260/97, 46416/99, 47143/99, 46410/99, 58896/00 and 3859/02)

Lack of oral hearing in proceedings before social security courts (*Romlin v. Sweden*, no. 48630/99)

Enforcement of tax surcharges prior to determination of liability by a court (*Manasson v. Sweden*, no. 41265/98)

Covert video surveillance of a tenant by a local authority (*Martin v. the United Kingdom*, no. 63608/00)

Withdrawal of residence permits of Jehovah's Witnesses (*Lotter v. Bulgaria*, no. 39015/97)

Refusal to award interest or take depreciation into account on annulment of contract for purchase of property (*Suciu v. Romania*, no. 49009/99)

Delay in enforcing eviction order due to the requirement that the State provide alternative accommodation (*Kostić v. Croatia*, no. 69265/01)

D. Judgments striking applications out of the list

In addition to the striking-out judgments mentioned above, cases concerning the following issues were struck out of the list:

Imposition of disciplinary sanction on a person employed under contract by a State company for participating in a one-day stoppage (*Balıkçı v. Turkey*, no. 26481/95)

Alleged ill-treatment in custody (*Çalişkan v. Turkey*, no. 32861/96)

Prohibition on wearing the Muslim headscarf during clinical sessions at a nursing college (*Zeynep Tekin v. Turkey*, no. 41556/98)

Alleged lack of adequate medical care of detainee, lawfulness and length of detention on remand and lack of possibility of review of lawfulness, and alleged breach of presumption of innocence (*Absandze v. Georgia*, no. 57861/00)

Refusal of compensation for detention on remand, on the ground that, despite acquittal, suspicion had not been entirely dissipated (*Reinmüller v. Austria*, no. 69169/01)

Refusal of legal aid for an appeal on points of law in divorce proceedings (*Blommen v. Belgium*, no. 47265/99)

E. Other judgments

11 judgments concerning just satisfaction (4 concerning Greece, 3 concerning Italy, 3 concerning Romania, including 1 friendly settlement and 1 striking out judgment, and 1 concerning Austria) and 3 judgments concerning revision (concerning France, Greece and Romania) were delivered.

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1. The foregoing summaries are intended to highlight the issues raised in cases and do not indicate the Court's conclusion. Thus, a statement such as "ill-treatment in custody ..." covers cases in which no violation was found or in which a friendly settlement was reached, as well as cases in which a violation was found.

2. The length of court proceedings was in issue in a total of 280 judgments, in 219 of which it was the sole issue, while in a further 24 the only additional issue was the availability of an effective remedy under Article 13. Violations were found in all but 8 of the cases in which the merits were addressed, although in a further 3 there were findings of both violation and no violation in relation to different proceedings.

3. 398 out of the 718 judgments delivered (over 55%) concerned five groups of cases dealing exclusively with the following issues: the length of court proceedings (including the question of effective remedies), the independence and impartiality of national security courts in Turkey (alone or in combination with infringements of the right to freedom of expression), delays in payment of compensation for expropriation in Turkey, staying of civil proceedings in Croatia and the problem of securing eviction of tenants in Italy. It may

be noted that in 2003, the number of judgments in the first, second and fifth groups were also numerous, whereas there were very few in the other two groups; conversely, one of the main groups of judgments in 2003 – *Brumărescu*-type cases – all but disappeared in 2004. The judgments referred to under B, C, D and E above, totalling 499, account for almost 70% of those delivered in 2004.

4. The highest numbers of judgments concerned the following States:

Turkey	171	(23.82%)
Poland	79	(11.00%)
France	75	(10.45%)
Italy	47	(6.55%)
Greece	40	(5.57%)

The figures in brackets indicate the percentage of the total number of judgments delivered in 2004.

5. All judgments and admissibility decisions (other than those adopted by the Committees) are available in full text in the Court's case-law database (HUDOC), which is accessible via the Court's Internet site (http://www.echr.coe.int).

XII. CASES ACCEPTED FOR REFERRAL TO THE GRAND CHAMBER AND CASES IN WHICH JURISDICTION WAS RELINQUISHED BY A CHAMBER IN FAVOUR OF THE GRAND CHAMBER IN 2004

CASES ACCEPTED FOR REFERRAL TO THE GRAND CHAMBER AND CASES IN WHICH JURISDICTION WAS RELINQUISHED BY A CHAMBER IN FAVOUR OF THE GRAND CHAMBER IN 2004

A. Cases accepted for referral to the Grand Chamber

In 2004 the five-member panel of the Grand Chamber (Article 43 § 2 of the Convention and Rule 24 § 5 of the Rules of Court) held five meetings (on 24 March, 14 June, 7 July, 10 November and 15 December) to examine requests by the parties for cases to be referred to the Grand Chamber under Article 43 of the Convention. It considered requests concerning a total of 121 cases, fifty-six of which were submitted by the respondent Governments (in five cases both the Government and the applicant submitted requests).

The panel accepted referral requests in the following seven cases:

Nachova and Others v. Bulgaria, nos. 43577/98 and 43579/98
Leyla Şahin v. Turkey, no. 44774/98
Jahn and Others v. Germany, nos. 46720/99, 72203/01 and 72552/01
Ždanoka v. Latvia, no. 58278/00
Blečić v. Croatia, no. 59532/00
Kyprianou v. Cyprus, no. 73797/01
Hirst v. the United Kingdom (no. 2), no. 74025/01

B. Cases in which jurisdiction was relinquished by a Chamber in favour of the Grand Chamber

First Section

Makaratzis v. Greece, no. 50385/99
Sørensen v. Denmark, no. 52562/99
Rasmussen v. Denmark, no. 52620/99

Second Section

Draon and Others v. France, no. 1513/03
Maurice v. France, no. 11810/03

Third Section

Roche v. the United Kingdom, no. 32555/96
Von Maltzan and Others v. Germany, no. 71916/01
Von Zitzewitz and Others v. Germany, no. 71917/01
Man Ferrostaal and Töpfer Stiftung v. Germany, no. 10260/02

Fourth Section

Bosphorus Airways v. Ireland, no. 45036/98
Hepple and Others v. the United Kingdom, no. 65731/01
Kimber v. the United Kingdom, no. 65900/01

XIII. STATISTICAL INFORMATION

STATISTICAL INFORMATION[1]

Judgments delivered in 2004	
Grand Chamber	15 (16)
Section I	198 (207)
Section II	195 (221)
Section III	140 (164)
Section IV	167 (205)
Sections in former compositions	3
Total	**718 (816)**

Type of judgment[2]					
	Merits	Friendly settlement	Striking out	Other	Total
Grand Chamber	14 (15)	0	0	1	15 (16)
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	156 (161)	33 (37)	3	6	198 (207)
Section II	177 (203)	11	2	5	195 (221)
Section III	130 (154)	8	1	1	140 (164)
Section IV	148 (181)	16 (21)	2	1	167 (205)
Total	**626 (715)**	**68 (77)**	**8**	**16**	**718 (816)**

1. A judgment or decision may concern more than one application: when both figures are given, the number of applications is shown in brackets. The statistical information provided in this and the following section is provisional. For a number of reasons (in particular, different methods of calculation of unjoined applications dealt with in a single decision), discrepancies may arise between the different tables.
2. The statistics concerning Section judgments do not take into account the recomposition of the Sections on 1 November 2004. The heading "former Sections" refers to Sections in their composition prior to 1 November 2001.

Decisions adopted in 2004		
I. Applications declared admissible		
Grand Chamber		1
Section I		252 (262)
Section II		185 (201)
Section III		167 (189)
Section IV		152 (189)
Total		**757 (842)**
II. Applications declared inadmissible		
Grand Chamber		1
Section I	Chamber	120 (122)
	Committee	6,034
Section II	Chamber	93 (95)
	Committee	5,401
Section III	Chamber	79 (81)
	Committee	3,656
Section IV	Chamber	95 (111)
	Committee	4,301
Total		**19,780 (19,802)**
III. Applications struck out		
Section I	Chamber	85
	Committee	68
Section II	Chamber	52
	Committee	63
Section III	Chamber	142
	Committee	45
Section IV	Chamber	35
	Committee	57
Total		**547**
Total number of decisions (excluding partial decisions)		**21,084 (21,191)**

Applications communicated in 2004	
Section I	634 (647)
Section II	530 (555)
Section III	889 (891)
Section IV	301
Total number of applications communicated	**2,354 (2,394)**

Development in the number of individual applications lodged with the Court (formerly the Commission)

	1955-1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	Total
Applications lodged	49,122	5,279	6,104	6,456	9,759	10,335	11,236	12,704	14,166	18,164	22,617	30,069	31,228	34,509	38,810	40,943 (prov.)	**341,501**
Applications allocated to a decision body	15,911	1,657	1,648	1,861	2,037	2,944	3,481	4,758	4,750	5,981	8,400	10,482	13,845	28,214	27,189	32,512	**165,670**
Decisions taken	14,249	1,216	1,659	1,704	1,765	2,372	2,990	3,400	3,777	4,420	4,251	7,862	9,728	18,450	18,034	21,181	**117,058**
Applications declared inadmissible or struck out	13,571	1,065	1,441	1,515	1,547	1,789	2,182	2,776	3,073	3,658	3,520	6,776	8,989	17,868	17,272	20,350	**107,392**
Applications declared admissible	670	151	217	189	218	582	807	624	703	762	731	1,086	739	578	753	830	**9,640**
Applications terminated by a decision to reject in the course of the examination of the merits	8	0	1	0	1	1	0	0	1	0	0	0	0	5	1	1	**19**
Judgments delivered by the Court	205	30	72	81	60	50	56	72	106	105	177	695	889	844	703	718	**4,863**

XIV. STATISTICAL TABLES BY STATE

STATISTICAL TABLES BY STATE

Evolution of cases – Applications

State	Applications lodged (provisional statistics)			Applications allocated to a decision body			Applications declared inadmissible or struck out			Applications referred to Government			Applications declared admissible		
	2002	**2003**	**2004**	**2002**	**2003**	**2004**	**2002**	**2003**	**2004**	**2002**	**2003**	**2004**	**2002**	**2003**	**2004**
Albania	23	24	26	15	17	13	3	11	12	1	1	–	–	1	1
Andorra	0	2	1	–	2	1	–	1	–	1	–	–	–	1	–
Armenia	31	89	108	7	67	96	–	28	24	–	1	2	–	–	–
Austria	432	445	414	309	324	304	370	401	253	51	71	7	14	19	21
Azerbaijan	265	266	225	–	238	151	–	45	200	–	3	15	–	–	–
Belgium	265	216	234	139	117	125	124	118	135	31	11	19	3	12	11
Bosnia-Herzegovina	51	94	205	4	59	137	–	–	46	–	–	5	–	–	–
Bulgaria	615	700	944	461	517	739	394	293	298	43	37	57	15	26	34
Croatia	861	878	639	666	664	697	338	349	580	49	38	59	8	25	13
Cyprus	38	44	55	47	36	47	44	11	2	7	5	2	2	4	–
Czech Republic	491	941	1,370	329	629	1,064	437	280	399	54	16	91	2	7	41
Denmark	128	142	124	86	73	86	40	65	88	3	4	8	2	6	–
Estonia	116	178	179	89	131	138	57	138	70	1	5	4	2	1	4
Finland	229	285	308	184	260	244	151	97	191	22	11	27	8	12	15
France	2,934	2,904	2,921	1,606	1,481	1,737	1,253	1,451	1,678	124	89	105	66	89	70
Georgia	42	44	54	29	35	47	13	24	17	4	6	7	2	1	1
Germany	1,781	1,935	2,470	1,019	998	1,527	748	461	914	58	17	16	13	10	10
Greece	379	480	376	311	354	274	134	171	253	74	72	96	29	26	34
Hungary	317	499	519	307	330	397	198	293	337	30	25	12	10	15	15
Iceland	5	17	10	5	10	6	2	5	6	–	–	–	2	1	–
Ireland	85	76	62	45	29	32	43	31	16	1	2	1	3	2	–
Italy	1,360	1,848	1,821	1,302	1,351	1,480	1,126	1,009	1,178	89	89	228	133	16	95
Latvia	260	312	314	208	133	195	102	152	115	15	10	14	3	7	5

Evolution of cases – Applications (continued)

State	Applications lodged (provisional statistics)			Applications allocated to a decision body			Applications declared inadmissible or struck out			Applications referred to Government			Applications declared admissible		
	2002	**2003**	**2004**	**2002**	**2003**	**2004**	**2002**	**2003**	**2004**	**2002**	**2003**	**2004**	**2002**	**2003**	**2004**
Liechtenstein	3	5	5	3	3	5	1	3	2	2	–	–	–	1	1
Lithuania	439	485	448	529	355	451	166	199	586	6	21	6	3	5	3
Luxembourg	47	58	36	25	21	12	11	28	3	1	5	2	2	2	1
Malta	9	19	14	4	4	8	2	–	4	2	3	3	–	1	3
Moldova	253	357	364	245	238	344	31	105	79	4	64	53	1	2	38
Netherlands	574	451	545	317	278	350	278	235	339	14	19	58	9	7	11
Norway	79	74	106	48	51	82	20	62	44	–	3	3	–	1	–
Poland	4,521	5,359	5,445	4,032	3,658	4,321	2,469	1,702	2,344	84	123	66	46	83	54
Portugal	250	243	172	143	148	115	108	252	102	27	8	18	22	5	10
Romania	2,277	4,282	3,776	1,960	2,165	3,225	508	700	1,200	29	57	65	13	22	22
Russia	4,716	6,062	6,691	3,989	4,738	5,835	2,222	3,206	3,704	58	169	232	12	15	64
San Marino	5	2	4	6	2	–	1	2	5	3	2	1	3	3	1
Serbia-Montenegro	15	101	578	–	–	452	–	–	–	–	–	1	–	–	–
Slovakia	432	539	470	406	349	403	366	277	353	39	8	63	11	28	12
Slovenia	264	265	285	270	251	271	72	60	198	7	86	128	–	3	2
Spain	822	604	679	798	455	423	1,345	377	204	10	12	8	7	6	3
Sweden	371	436	511	296	257	398	350	303	366	13	13	25	1	5	8
Switzerland	281	273	305	214	162	203	182	108	170	3	6	15	1	1	4
"Former Yugoslav Republic of Macedonia"	95	148	142	90	98	115	16	57	51	6	1	11	–	–	–
Turkey	3,879	2,944	3,491	3,866	3,558	3,679	1,639	1,632	1,817	377	357	740	102	142	172
Ukraine	2,944	2,287	2,131	2,819	1,858	1,538	1,764	1,665	1,246	18	158	141	3	6	31
United Kingdom	1,525	1,396	1,366	986	685	745	737	865	721	312	86	25	25	134	20
Total	**34,509**	**38,810**	**40,943**	**28,214**	**27,189**	**32,512**	**17,865**	**17,272**	**20,350**	**1,673**	**1,714**	**2,439**	**578**	**753**	**830**

Evolution of cases – Judgments

State	Judgments (Chamber and Grand Chamber)			Judgments (final – after referral to Grand Chamber)			Judgments (friendly settlements)			Judgments (striking out)		
	2002	**2003**	**2004**	**2002**	**2003**	**2004**	**2002**	**2003**	**2004**	**2002**	**2003**	**2004**
Albania	–	–	1	–	–	–	–	–	–	–	–	–
Andorra	–	–	1	–	–	–	–	–	–	–	–	–
Armenia	–	–	–	–	–	–	–	–	–	–	–	–
Austria	15	17	14	–	–	–	5	2	1	–	–	1
Azerbaijan	–	–	–	–	–	–	–	–	–	–	–	–
Belgium	13	7	11	–	–	–	–	1	1	1	–	3
Bosnia and Herzegovina	–	–	–	–	–	–	–	–	–	–	–	–
Bulgaria	2	11	26	–	–	–	1	–	1	–	–	–
Croatia	6	6	12	–	–	–	3	–	21	–	–	–
Cyprus	5	2	2	–	–	1	1	–	–	–	–	–
Czech Republic	4	5	27	–	–	–	–	1	1	–	–	–
Denmark	1	2	1	–	–	1	1	–	1	–	–	–
Estonia	1	3	1	–	–	–	–	–	–	–	–	–
Finland	5	3	12	–	–	–	–	2	–	–	–	–
France	66	83	70	1	–	–	6	7	4	2	–	–
Georgia	–	–	1	–	–	–	–	–	–	–	–	1
Germany	8	9	6	–	2	–	–	1	–	1	–	–
Greece	17	23	35	–	–	–	3	3	–	–	–	–
Hungary	1	13	20	–	–	–	2	2	–	–	1	–
Iceland	–	2	2	–	–	–	–	–	–	–	–	–
Ireland	1	2	2	–	–	–	–	–	–	–	–	–
Italy	330	107	37	1	1	–	49	29	7	2	4	–
Latvia	2	1	3	–	–	–	–	–	–	–	–	–

Evolution of cases – Judgments (continued)

State	Judgments (Chamber and Grand Chamber)			Judgments (final – after referral to Grand Chamber)			Judgments (friendly settlements)			Judgments (striking out)		
	2002	**2003**	**2004**	**2002**	**2003**	**2004**	**2002**	**2003**	**2004**	**2002**	**2003**	**2004**
Liechtenstein	–	–	1	–	–	–	–	–	–	–	–	–
Lithuania	5	3	1	–	–	–	–	1	1	–	–	–
Luxembourg	–	4	1	–	–	–	1	–	–	–	–	–
Malta	–	1	1	–	–	–	–	–	–	–	–	–
Moldova	–	–	10	–	–	–	–	–	–	–	–	–
Netherlands	9	7	9	–	–	–	1	–	1	–	–	–
Norway	–	5	–	–	–	–	–	–	–	–	–	–
Poland	22	43	74	–	–	1	3	22	4	–	2	–
Portugal	14	16	5	–	–	–	18	1	2	1	–	–
Romania	26	25	11	–	–	1	–	–	3	1	3	–
Russia	2	5	15	–	–	–	–	–	–	–	–	–
San Marino	–	3	2	–	–	–	–	1	–	–	–	–
Serbia and Montenegro	–	–	–	–	–	–	–	–	–	–	–	–
Slovakia	4	19	12	–	–	1	3	8	1	–	–	–
Slovenia	–	–	–	–	–	–	1	–	–	–	–	–
Spain	3	9	6	–	–	–	–	–	–	–	–	–
Sweden	6	3	1	–	–	–	1	–	5	–	–	–
Switzerland	4	1	–	–	–	–	–	–	–	–	–	–
"Former Yugoslav Republic of Macedonia"	–	–		–	–	–	1	–	–	–	–	–
Turkey	55	76	156	1	1	2	45	44	10	4	1	3
Ukraine	1	6	14	–	–	–	–	–	–	–	–	–
United Kingdom	33	20	18	1	2	1	6	3	4	–	–	–
Total	**664**	**542**	**621**	**4**	**6**	**8**	**151**	**128**	**68**	**11**	**11**	**8**

Evolution of cases – Judgments (continued)

State	Judgments (just satisfaction)			Judgments (preliminary objections)			Judgments (interpretation)			Judgments (revision)		
	2002	**2003**	**2004**	**2002**	**2003**	**2004**	**2002**	**2003**	**2004**	**2002**	**2003**	**2004**
Albania	–	–	–	–	–	–	–	–	–	–	–	–
Andorra	–	–	–	–	–	–	–	–	–	–	–	–
Armenia	–	–	–	–	–	–	–	–	–	–	–	–
Austria	–	–	1	–	–	–	–	–	–	–	–	–
Azerbaijan	–	–	–	–	–	–	–	–	–	–	–	–
Belgium	–	–	–	–	–	–	–	–	–	–	–	–
Bosnia and Herzegovina	–	–	–	–	–	–	–	–	–	–	–	–
Bulgaria	–	–	–	–	–	–	–	–	–	–	–	–
Croatia	–	–	–	–	–	–	–	–	–	–	–	–
Cyprus	–	1	–	–	–	–	–	–	–	–	–	–
Czech Republic	–	–	–	–	–	–	–	–	–	–	–	–
Denmark	–	–	–	–	–	–	–	–	–	–	–	–
Estonia	–	–	–	–	–	–	–	–	–	–	–	–
Finland	–	–	–	–	–	–	–	–	–	–	–	–
France	–	2	–	–	–	–	–	–	–	–	2	1
Georgia	–	–	–	–	–	–	–	–	–	–	–	–
Germany	–	–	–	–	–	–	–	–	–	–	–	–
Greece	5	2	4	–	–	–	–	–	–	–	–	1
Hungary	–	–	–	–	–	–	–	–	–	–	–	–
Iceland	–	–	–	–	–	–	–	–	–	–	–	–
Ireland	–	–	–	–	–	–	–	–	–	–	–	–
Italy	1	2	3	–	–	–	–	–	–	8	5	–
Latvia	–	–	–	–	–	–	–	–	–	–	–	–

Evolution of cases – Judgments (continued)

State	Judgments (just satisfaction)			Judgments (preliminary objections)			Judgments (interpretation)			Judgments (revision)		
	2002	**2003**	**2004**	**2002**	**2003**	**2004**	**2002**	**2003**	**2004**	**2002**	**2003**	**2004**
Liechtenstein	–	–	–	–	–	–	–	–	–	–	–	–
Lithuania	–	–	–	–	–	–	–	–	–	–	–	–
Luxembourg	–	–	–	–	–	–	–	–	–	–	–	–
Malta	–	–	–	–	–	–	–	–	–	–	–	–
Moldova	–	–	–	–	–	–	–	–	–	–	–	–
Netherlands	1	–	–	–	–	–	–	–	–	–	–	–
Norway	–	–	–	–	–	–	–	–	–	–	–	–
Poland	1	–	–	–	–	–	–	–	–	–	–	–
Portugal	–	–	–	–	–	–	–	–	–	–	–	–
Romania	–	–	3	–	–	–	–	–	–	–	–	1
Russia	–	–	–	–	–	–	–	–	–	–	–	–
San Marino	–	–	–	–	–	–	–	–	–	–	–	–
Serbia and Montenegro	–	–	–	–	–	–	–	–	–	–	–	–
Slovakia	–	–	–	–	–	–	–	–	–	–	–	–
Slovenia	–	–	–	–	–	–	–	–	–	–	–	–
Spain	–	–	–	–	–	–	–	–	–	–	–	–
Sweden	–	–	–	–	–	–	–	–	–	–	–	–
Switzerland	–	–	–	–	–	–	–	–	–	–	–	–
"Former Yugoslav Republic of Macedonia"	–	–	–	–	–	–	–	–	–	–	–	–
Turkey	–	–	–	–	1	–	–	–	–	–	–	–
Ukraine	–	1	–	–	–	–	–	–	–	–	–	–
United Kingdom	–	–	–	–	–	–	–	–	–	–	–	–
Total	**8**	**8**	**11**	**–**	**1**	**–**	**–**	**–**	**–**	**8**	**7**	**3**

Judgments 2004

State concerned	Cases which gave rise to a finding of		Cases which gave rise to no finding on the merits		Just satisfaction	Revision	Total
	at least one violation	no violation	Friendly settlement	Striking out			
Albania	1	–	–	–	–	–	1
Andorra	1	–	–	–	–	–	1
Armenia	–	–	–	–	–	–	–
Austria	13	1	1	1	1	–	17
Azerbaijan	–	–	–	–	–	–	–
Belgium	11	–	1	3	–	–	15
Bosnia and Herzegovina	–	–	–	–	–	–	–
Bulgaria	25	1	1	–	–	–	27
Croatia	11	1	21	–	–	–	33
Cyprus	2	1[1]	–	–	–	–	3
Czech Republic	27	–	1	–	–	–	28
Denmark	–	2	1	–	–	–	3
Estonia	1	–	–	–	–	–	1
Finland	8	4	–	–	–	–	12
France	59	11	4	–	–	1	75
Georgia	1	–	–	1	–	–	2
Germany	6	–	–	–	–	–	6
Greece	32	3	–	–	4	1	40
Hungary	20	–	–	–	–	–	20
Iceland	2	–	–	–	–	–	2
Ireland	2	–	–	–	–	–	2
Italy	36	1	7	–	3	–	47
Latvia	3	–	–	–	–	–	3
Liechtenstein	1	–	–	–	–	–	1
Lithuania	1	–	1	–	–	–	2
Luxembourg	1	–	–	–	–	–	1
"Former Yugoslav Republic of Macedonia"	–	–	–	–	–	–	–
Malta	1	–	–	–	–	–	1
Moldova	10	–	–	–	–	–	10
Netherlands	6	3	1	–	–	–	10
Norway	–	–	–	–	–	–	–
Poland	74	1	4	–	–	–	79
Portugal	5	–	2	–	–	–	7
Romania	12	–	3	–	3	1	19
Russia	13	2[2]	–	–	–	–	15
San Marino	2	–	–	–	–	–	2
Serbia and Montenegro	–	–	–	–	–	–	–
Slovakia	11	2	1	–	–	–	14
Slovenia	–	–	–	–	–	–	–
Spain	5	1	–	–	–	–	6
Sweden	–	1	5	–	–	–	6
Switzerland	–	–	–	–	–	–	–
Turkey	154	4	10	3	–	–	171
Ukraine	13	1	–	–	–	–	14
United Kingdom	19	–	4	–	–	–	23
Total	**589**	**40**	**68**	**8**	**11**	**3**	**719[3]**

1. The figure includes a further judgment which concerned preliminary issues.
2. In one case, a preliminary objection was allowed.
3. One judgment concerned both Moldova and Russia.

Violations by Article and by country 1999-2004

1999-2004	Judgments finding at least one violation	Judgments finding no violation	Friendly settlement/Striking out	Other judgments*	Right to life – deprivation of life	Lack of effective investigation	Inhuman or degrading treatment or punishment	Prohibition of torture	Lack of effective investigation	Prohibition of slavery/forced labour	Right to liberty and security	Right to a fair trial	Length of procedure	No punishment without law	Right to respect for private and family life	Freedom of thought, conscience and religion	Freedom of expression	Freedom of assembly and association	Right to an effective remedy	Prohibition of discrimination	Protection of property	Right to education	Right to free elections	Right not to be tried or punished twice	Other Articles of the Convention	Number of judgments
	Total	Total	Total	Total	2	2	3	3	3	4	5	6	6	7	8	9	10	11	12	13	14	P1-1	P1-2	P1-3	P7-4		Total
Albania	1											1														**1**
Andorra	1		1																		1					**2**
Armenia																										**0**
Austria	73	5	16	4							1	30	33		5		9				4				3		**98**
Azerbaijan																										**0**
Belgium	34	4	8								2	14	24		2		1			2						1	**46**
Bosnia and Herzegovina																										**0**
Bulgaria	43	2	3		4	3		6	3		55	3	19		2	2	1	1		10	1	2					**48**
Croatia	27	2	24									11	15		3					5							**53**
Cyprus	13	1	3	2				2			1	4	7							1	2	2		1		1	**19**
Czech Republic	41	1	3								3	8	31							4	1	2					**45**
Denmark	3	4	8								1		1		1												**15**
Estonia	4	2	1									1	1	3													**7**
Finland	25	4	5									11	6		5		3			1		2					**34**
France	293	36	45	11		1	1	4			13	75	207	1	6		5	1		10	7	6				2	**385**
Georgia	1		1								1	1														**2**
Germany	37	9	4								6	7	16		9		1				6	1					**50**
Greece	105	5	16	15	1	1		2			3	32	59		2	2	1			9	1	31					**141**
Hungary	36	2	6					1	1		2	1	32														**44**
Iceland	4		2								1	2										1					**6**
Ireland	6	2	1								2	4	3							2							**9**
Italy	1,101	18	321	26				1	1		7	162	906		20		1	3		8		156		2		8	**1,466**
Latvia	6		1					1			2	2	1		2		1	1						2			**7**
Liechtenstein	2										1						1			1							**2**

Violations by Article and by country 1999-2004

1999-2004	Judgments finding at least one violation	Judgments finding no violation	Friendly settlement/Striking out	Other judgments*	Right to life – deprivation of life	Lack of effective investigation	Inhuman or degrading treatment or punishment	Lack of effective investigation	Prohibition of torture	Right to liberty and security	Prohibition of slavery/forced labour	Right to a fair trial	Length of procedure	No punishment without law	Right to respect for private and family life	Freedom of thought, conscience and religion	Freedom of expression	Freedom of assembly and association	Right to marry	Right to an effective remedy	Prohibition of discrimination	Protection of property	Right to education	Right to free elections	Right not to be tried or punished twice	Other Articles of the Convention	Number of judgments
	Total	Total	Total	Total	2	2	3	3	3	4	5	6	6	7	8	9	10	11	12	13	14	P1-1	P1-2	P1-3	P7-4		Total
Lithuania	14	1	3					1			12	4	4		3						1	1					18
Luxembourg	8		1										6		2		2										9
Malta	5										5	1															5
Moldova	11						2	4			3	7				1	2			1		7				1	11
Netherlands	23	10	9	1				2			3	5	5		7		1			1	2						43
Norway	7	2										5					3										9
Poland	167	7	39	1				1			45	7	139		12		2			7		3					214
Portugal	64		51	1							1	2	57		1		1				1	4					116
Romania	67	1	7	5			1	2	3		5	89	2		7		3			2		47				1	80
Russia	20	1		1			4	5			12	6	8		3			1		4		4				4	22
San Marino	8		1									7	2			1						1					9
Serbia and Montenegro																											0
Slovak Republic	41	4	19								8	4	27				3			2		2					64
Slovenia	2	1	1					1			2		1		1												4
Spain	19	6	1	1					1		1	6	6	1	3		1										27
Sweden	6	4	10									4	2							1		2					20
Switzerland	13	5	2								4	4	2		3		1										20
" Former Yugoslav Republic of Macedonia"		1	1																								2
Turkey	494	11	179	2	26	42	6	40	6		63	168	47	3	17	1	49	5		52	2	206	1	1		16	686
Ukraine	20	1	1	1				6	2			14	2		6	2				5		9		1			23
United Kingdom	116	20	25	4	1	7		6			30	50	14		28		1	1	2	19	2	1		2		1	165
Sub-total	**2,960**	**172**	**819**	**75**	**32**	**54**	**14**	**85**	**17**	**0**	**295**	**752**	**1,685**	**8**	**150**	**9**	**93**	**13**	**2**	**147**	**31**	**490**	**1**	**9**	**3**	**35**	**4,027**
Total	**4,026***																										

** One judgment concerns Moldova and Russia.*

Violations by Article and by country 2004

2004	Judgments finding at least one violation	Judgments finding no violation	Friendly settlement/Striking out	Other judgments **	Right to life – deprivation of life investigations	Right to life - inadequate	Prohibition of torture	Lack of effective investigation	Inhuman or degrading treatment or punishment	Right to liberty and security	Prohibition of slavery/forced labour	No punishment without law	Length of proceedings	Right to a fair trial	Freedom of thought, conscience and religion	Right to respect for private and family life	Freedom of expression	Freedom of assembly and association	Right to an effective remedy	Right to marry	Prohibition of discrimination	Protection of property	Right to education	Right to free elections	Right not to be tried or punished twice	Other Articles	Number of judgments
	Total	Total	Total	Total	2	2	3	3	3	4	5	6	6	7	8	9	10	11	12	13	14	P1-1	P1-2	P1-3	P7-4		Total
Albania	1											1															1
Andorra	1																				1						1
Armenia																											0
Austria	13	1	2	1								2	11		1						1						17
Azerbaijan																											0
Belgium	11		4									3	8		1												15
Bosnia and Herzegovina																											0
Bulgaria	25	1	1		1	1		4	2		29	3	12			1				5	1	2					27
Croatia	11	1	21									7	4		2												33
Cyprus	2			1								3									1			1			3
Czech Republic	27		1									3	26							3							28
Denmark		2	1																								3
Estonia	1													2													1
Finland	8	4										2	2		1		2			1		1					12
France	59	11	4	1		1		2			4	23	34	1	1		1			2	2						75
Georgia	1		1								1	1															2
Germany	6										1		2		3							1					6
Greece	32	3		5	1	1					1	5	22		1		1			6		5					40
Hungary	20							1			1		19														20
Iceland	2										1											1					2
Ireland	2												2							1							2
Italy	36	1	7	3								16	13		4			1		1		15		1		3	47
Latvia	3							1									1	1						1			3
Liechtenstein	1										1																1

Violations by Article and by country 2004

2004	Judgments finding at least one violation	Judgments finding no violation	Friendly settlement/Striking out	Other judgments **	Right to life – deprivation of life	Right to life - inadequate investigations	Prohibition of torture	Inhuman or degrading treatment or punishment	Lack of effective investigation	Prohibition of slavery/forced labour	Right to liberty and security	Right to a fair trial	Length of proceedings	No punishment without law	Right to respect for private and family life	Freedom of thought, conscience and religion	Freedom of expression	Freedom of assembly and association	Right to an effective remedy	Right to marry	Prohibition of discrimination	Protection of property	Right to education	Right to free elections	Right not to be tried or punished twice	Other Articles	Number of judgments
	Total	Total	Total	Total	2	2	3	3	3	4	5	6	6	7	8	9	10	11	12	13	14	P1-1	P1-2	P1-3	P7-4		Total
Lithuania	1		1												1						1						2
Luxembourg	1												1														1
Malta	1											1															1
Moldova	10						2	4			3	7					2					7				1	10
Netherlands	6	3	1								2	2	1		2												10
Norway																											0
Poland	74	1	4								12	1	67		1					3		2					79
Portugal	5		2										4									3					7
Romania	12		3	4			1	1	2			10	1		2		2			1		6					19
Russia	13	1		1			4	4			7	2	6		2			1		4		2				4	15
San Marino	2											2	1									1					2
Serbia and Montenegro																											0
Slovak Republic	11	2	1								6	1	5				1			1		1					14
Slovenia																											0
Spain	5	1							1			1	2		1												6
Sweden		1	5																								6
Switzerland																											0
"Former Yugoslav Republic of Macedonia"																											0
Turkey	154	3	13	1	6	18	1	14	2		28	74	8		6		20			21	2	42				4	171
Ukraine	13	1										13	2							4		8		1			14
United Kingdom	19		4								4	9	4		3					1	1			1			23
Sub-total	**588**	**37**	**76**	**17**	**8**	**21**	**8**	**31**	**7**	**0**	**101**	**192**	**257**	**3**	**32**	**1**	**30**	**3**	**0**	**54**	**10**	**97**	**0**	**5**	**0**	**12**	**719**
Total	**718***																										

* One judgment concerns Moldova and Russia.
**Other judgments: just satisfaction, revision and preliminary objections.