

ANNUAL REPORT 2005

**EUROPEAN COURT
OF HUMAN RIGHTS
STRASBOURG**



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European Court
of Human Rights

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Registry of the European Court
of Human Rights
Strasbourg, 2006

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FOREWORD

As readers of this edition of the Annual Report will see from these pages, 2005 was, for the Court and its Registry, a period in which the logistical and conceptual challenges of upholding human rights in Europe were met with considerable success. By the year's end, there were grounds for cautious optimism as regards the institution's capacity to gain ground against the ever-rising tide of new applications and the enormous backlog of cases awaiting judicial determination. Eager to reap the benefits of the new procedures that Protocol No. 14 will institute, the Court has already made a number of innovations in its working methods that have allowed it to deal more expeditiously with applications that fail to meet the admissibility criteria, while at the same time increasing the number of judgments delivered by more than half compared to 2004. These encouraging results vouch for the dedication of the judges and Registry staff, which was highlighted by Lord Woolf in his review of the Court's working methods, delivered to the Court and the Council of Europe authorities as the year drew to a close¹. The year 2005 will stand out, I believe, as one that showed the limits of what was possible under the system configured around the "new" Court by Protocol No. 11.

It is plain to all actors in and observers of the Convention system that the potential of Protocol No. 14 to measure up to the scale of the task of protecting human rights throughout the European continent in the coming years is limited. Preventive and remedial efforts at national level, as spelled out in the 2004 reform package of recommendations and resolutions by the Committee of Ministers, must be stepped up in all States. In this connection, the intensive intergovernmental work of reviewing the implementation of the 2004 reform package and prompting ratification of Protocol No. 14 is to be commended. The Court has continued its close cooperation and dialogue with member States and the Council of Europe authorities regarding the functioning and future of the system. Its proposal to set up a Group of Wise Persons to make proposals for the system's further reform was accepted at the Third Summit of the Council of Europe in Warsaw. In view of its eminent membership drawn from the highest judicial, academic and administrative echelons, the Court is confident that the Group will put forward an excellent blueprint for the consolidation and development of the Convention system in the longer term.

*Among the many important judgments handed down, particular mention should be made of *Broniowski*². Just over a year after the judgment on the merits, the applicant reached a friendly settlement with the Polish Government that addressed not only his particular claims but, crucially, those of the whole category of Bug River claimants as well, an estimated 80,000 people. This successful conclusion of the first pilot judgment bodes well for the contribution that this procedure can make to the system, serving the interests of applicants by bringing about a more accessible remedy to their claim and reducing congestion at the Strasbourg Court. The pilot-judgment procedure has subsequently been applied, where necessary with some adaptation, to other types of claims against other States and promises to be a feature of the case-law for some time to*

1. Lord Woolf's report may be consulted on the Court's Internet site (www.echr.coe.int).

2. *Broniowski v. Poland* (friendly settlement) [GC], no. 31443/96, to be reported in ECHR 2005-IX.

come. Also to be welcomed is the finding by the Court, in the decision in *Charzyński*¹, that the remedies introduced in Polish law to deal with excessive delay in legal proceedings, as required by the landmark judgment in *Kudła*², were effective for the purpose of the exhaustion of domestic remedies rule.

The cases decided by the Court in 2005 were, as ever, of the greatest diversity, posing the conceptual challenge of consistent application of Convention principles and orderly development of the case-law. Violations of the utmost gravity were found in cases concerning the most fundamental of rights. The Court handed down its first judgments arising out of civilian deaths in the Chechen war, finding substantive and procedural violations of Article 2³. It came to the same conclusion in the case brought by the widow of murdered Ukrainian journalist Georgiy Gongadze, finding in addition a violation of Article 3 in view of the intensity of her suffering in the aftermath of her husband's death⁴.

The plight of a Togolese girl held in servitude in Paris came before the Court in *Siliadin*⁵, and it took the opportunity to extend the case-law principles on the effective protection of vulnerable persons from exploitation developed under Articles 3 and 8 to Article 4. It ruled that French criminal law, as it stood at the relevant time, failed to afford the victim an adequate degree of protection.

The problem of racial discrimination came before the Court in several cases, in particular *Nachova and Others*⁶, which was decided by the Grand Chamber. While the Court was unable to find on the facts established before it that the killing of two unarmed Roma conscripts as they fled from military police was motivated by racism, it held that Article 2 of the Convention, taken in conjunction with Article 14, placed a duty on the authorities to investigate the motives of those responsible and take appropriate action against them.

Readers will find many more cases referred to in these pages that are likely to be regarded in future as landmarks in European human rights law⁷.

Luzius Wildhaber
President
of the European Court of Human Rights

1. *Charzyński v. Poland* (dec.), no. 15212/03, to be reported in ECHR 2005-V.

2. *Kudła v. Poland* [GC], no. 30210/96, ECHR 2000-XI.

3. See, for example, *Isayeva and Others v. Russia*, nos. 57947/00, 57948/00 and 57949/00, 24 February 2005.

4. *Gongadze v. Ukraine*, no. 34056/02, to be reported in ECHR 2005-XI.

5. *Siliadin v. France*, no. 73316/01, to be reported in ECHR 2005-VII.

6. *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, to be reported in ECHR 2005-VII.

7. I wish to extend my thanks to Mr Stanley Naismith, former Head of the Publications and Case-Law Information Division, and to his successor Mr Peter Kempees, along with the members of the Division, 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. It was repealed by Protocol No. 11, which restructured the enforcement machinery (see below). Other Protocols concerned the organisation of and procedure before the Convention institutions. In May 2004, in response to the need for further streamlining, Protocol No. 14 was opened for signature (see below).

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. In the years that followed the entry into force of Protocol No. 11, the Court's caseload grew at an unprecedented rate. The number of new applications rose from 18,200 in 1998 to 44,100 in 2004, an increase of approximately 140%. Concerns about the Court's capacity to deal with the growing volume of cases led to requests for additional resources and speculation about the need for further reform.

Different reform initiatives launched by a Ministerial Conference on Human Rights, held in Rome on 3 and 4 November 2000 to mark the 50th anniversary of the opening of the Convention for signature, culminated in the opening for signature of Protocol No. 14 on 13 May 2004. The Protocol will come into force three months after all the Parties to the Convention have ratified it (see also below).

In addition, in view of doubts as to whether the measures enshrined in Protocol No. 14 would be sufficient to preserve the long-term effectiveness of the Convention machinery, the Council of Europe Third Summit of Heads of State and Government held in Warsaw in May 2005 established a group of Wise Persons to develop a long-term strategy for the Convention system.

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-six). 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.

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 Presidents of Sections for a period of three years.

9. With effect from 1 March 2006 the Court will be divided into five 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 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 the 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 and are to be found on the Court's website (www.echr.coe.int).

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 present their own cases, but legal representation is recommended, and indeed usually required once an application has been communicated to the respondent Government. The Council of Europe has set up a legal aid scheme for applicants who do not have sufficient means. Legal aid is not available before an application has been communicated to the Government concerned.

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 communicated to the respondent Government, 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 and merits

17. Each individual application is assigned to a Section.

18. A Committee of three judges 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 and State applications are examined by a Chamber of seven judges. Chambers determine both admissibility and the merits. Such applications are communicated to the respondent Government for their observations, to which the applicant may reply, and that reply will in turn be transmitted to the Government for a response. If an application is inadmissible, the Chamber will issue a decision to that effect. Where the application is admissible, admissibility and the merits are now frequently dealt with together in the judgment. Separate admissibility decisions are adopted only in the more complex cases.

20. In the course of the exchange of observations, the applicant will be invited to submit any claims for compensation arising out of the alleged Convention breach as well as for reimbursement of costs and expenses.

21. 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.

22. The procedure is generally written. Only in relatively few cases does the Chamber decide to hold a public hearing. Such hearings will usually concern both admissibility and the merits.

23. 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 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.

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

3. Judgments

25. 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.

26. 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 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, two Section Presidents designated by rotation, and two other judges also selected by rotation. The panel may not include any judge who took part in the consideration of the admissibility or merits of the case before the Chamber.

27. 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.

28. 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.

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

30. 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.

4. Protocol No. 14

31. Protocol No. 14 must be ratified by all the Contracting States before it comes 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 (new 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 applicant has not suffered a significant disadvantage. However, cases may not be dismissed on this ground if “respect for human rights” requires an examination on the merits or where the case has not been duly examined by a domestic tribunal. In the two years following the entry into force of the Protocol, this criterion may be applied only by Chambers and the Grand Chamber.

(d) The Court’s increasingly frequent practice of dealing with admissibility and the merits together, rather than separately as envisaged in the present Article 29 § 3, is reflected in paragraph 1 of amended Article 29.

(e) As far as the execution process is concerned, two new possibilities are created for the Committee of Ministers. Firstly, where its supervision of execution is hindered by a problem of interpretation, it may refer the matter to the Court for a ruling (new Article 46 § 3). Secondly, where a respondent State refuses to abide by a final judgment, the Committee of Ministers may institute proceedings before the Court to determine whether the State has, or has not, fulfilled its execution obligations (new Article 46 §§ 4 and 5).

32. As regards the judges, the main change is the introduction of a single nine-year term of office to replace the present renewable six-year term (Article 23 § 1 as amended). In addition, *ad hoc* judges replacing elected judges who are unable to sit as the national judge in a particular case will, under Protocol No. 14, be chosen by the President of the Court from a list submitted in advance, rather than simply being appointed by the respondent State as now (new Article 26 § 4).

33. Finally, Article 59 is amended to provide in a new paragraph 2 that the European Union may accede to the Convention.

5. *Advisory opinions*

34. The Court may, at the request of the Committee of Ministers, give advisory opinions on legal questions concerning the interpretation of the Convention and its Protocols.

Decisions of the Committee of Ministers to request an advisory opinion are taken by a majority vote.

35. Advisory opinions are given by the Grand Chamber and adopted by a majority vote. Any judge may attach to the advisory opinion a separate opinion or a bare statement of dissent.

II. COMPOSITION OF THE COURT

COMPOSITION OF THE COURT

At 31 December 2005 the Court was composed as follows (in order of precedence)¹:

Mr Luzius Wildhaber, <i>President</i>	(Swiss)
Mr Christos L. Rozakis, <i>Vice-President</i>	(Greek)
Mr Jean-Paul Costa, <i>Vice-President</i>	(French)
Sir Nicolas Bratza, <i>Section President</i>	(British)
Mr Boštjan Zupančič, <i>Section President</i>	(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 Pavlovski	(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)
Mr Dragoljub Popović	(citizen of Serbia and Montenegro)
Mrs Ineta Ziemele	(Latvian)
Mr Erik Fribergh, <i>Registrar</i>	(Swedish)

1. The seat of the judge in respect of Monaco is currently vacant.

2. Elected as the judge in respect of Liechtenstein.

III. COMPOSITION OF THE SECTIONS

COMPOSITION OF THE SECTIONS
(in order of precedence)

At 31 December 2005

	Section I	Section II	Section III	Section IV
<i>President</i>	Mr C.L. Rozakis	Mr J.-P. Costa	Mr B. Zupančič	Sir Nicolas Bratza
<i>Vice-President</i>	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	Mr D. Popović	Mrs I. Ziemele	Mrs L. Mijović
				Mr J. Šikuta
<i>Section Registrar</i>	Mr S. Nielsen	Mrs S. Dollé	Mr V. Berger	Mr M. O'Boyle
<i>Deputy Section Registrar</i>	Mr S. Quesada	Mr S. Naismith	Mr M. Villiger	Mrs F. Elens-Passos

**IV. SPEECH GIVEN BY
Mr LUZIUS WILDHABER,
PRESIDENT OF THE EUROPEAN COURT
OF HUMAN RIGHTS,
ON THE OCCASION OF THE OPENING
OF THE JUDICIAL YEAR,
20 JANUARY 2006**

**SPEECH GIVEN BY Mr LUZIUS WILDHABER,
PRESIDENT OF THE EUROPEAN COURT
OF HUMAN RIGHTS,
ON THE OCCASION OF THE OPENING
OF THE JUDICIAL YEAR,
20 JANUARY 2006**

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

As always, it is a great pleasure for me to welcome you here today to our traditional ceremony to mark the opening of the judicial year. Many guests, including around fifty Presidents and other judges from Supreme and Constitutional Courts, are honouring us with their presence this evening. Among them, I should like to welcome in particular our distinguished guest of honour, Mrs Tülay Tuğcu, President of the Constitutional Court of Turkey, and the three rapporteurs for this afternoon's seminar, Mr Egidijus Kūris, President of the Lithuanian Constitutional Court, Mr Hans-Jürgen Papier, President of the Federal Constitutional Court of Germany, and Lord Justice Sedley, from the Court of Appeal of England and Wales, to whom I would like to express our sincere gratitude for their most stimulating contributions.

There are far too many distinguished guests here this evening to name them all, but just let me mention that we are happy to welcome the mayor of our host city, Mrs Fabienne Keller. On a personal note, I am delighted to say that my own family is represented by my daughter Anne.

I would also wish to greet two members of the Group of Wise Persons, Professor Rona Aybay and President Veniamin Yakovlev.

Since the entry into force in 1998 of Protocol No. 11, which established the fully judicial character of the European Convention machinery, the importance and relevance of the European Court of Human Rights has continually increased. As I put it in my address to the Council of Europe Summit in Warsaw in May 2005, it is more than just another European institution, it is a symbol. It harmonises law and justice and tries to secure, as impartially and as objectively as is humanly possible, fundamental rights, democracy and the rule of law so as to guarantee long-lasting international stability, peace and prosperity. It strives to establish the kind of good governance that Ambrogio Lorenzetti depicted in the town hall of Sienna some 665 years ago. The European Convention on Human Rights has brought into being the most effective international system of human rights protection ever developed. As the most successful attempt to implement the United Nations' Universal Declaration of Human Rights of 1948 in a legally binding way, it is part of the heritage of international law; it constitutes a shining example in those parts of the world where human rights protection, whether national or international, remains an aspiration rather than a reality; it is both a symbol of, and a catalyst for, the victory of democracy over totalitarian government; it is the ultimate expression of the capacity, indeed the necessity, for democracy and the rule of law to transcend frontiers.

It is a privilege for us judges to be at this Court. We may have workload problems, but the avalanche of applications that reaches us simply reflects the importance the Court has

acquired in the minds and hearts of all Europeans. We may be confronted by a lack of understanding in some quarters as to what an independent court is, but since our arguments are principled, we trust that they will prevail. We may be criticised for certain judgments, but this is quite legitimate and indeed inevitable in the pluralistic democracy we describe in these very judgments and of which we ourselves are a part. All in all our mission is a deeply enriching one.

Sometimes one feels like one is wandering in a blossoming garden, where one is constantly discovering new colours and new shades. And so we have the exciting, sometimes exhilarating and sometimes very demanding and challenging task of making human rights a reality across Europe. And since human rights come as a package, we have in essence the task of giving a tangible content to such elementary notions as the principles of democracy, the rule of law and minority rights through decisions we give on a daily basis which define the content of human rights in a modern, democratic society.

In the first years of the new Court, some critics expressed concern about what they called politically motivated double standards, reflected in a more flexible interpretation of the Convention in cases concerning the new member States. Remember that? There have been no double standards. The Court rightly showed understanding for the transitional period of consolidation of democracy in cases such as *Rekvenyi v. Hungary*¹ or for the need to protect the essence of democracy against subversion in cases such as *Refah Partisi (the Welfare Party) and Others v. Turkey*². However, these cases did no more than express the need to confirm and consolidate democracy and the rule of law and to prevent them being undermined.

The leitmotiv of the Court's case-law has been continuity in the framework of an evolutive jurisprudence. Thus, the dynamic interpretation of the Convention, initiated by our predecessor institutions, has been pursued by the Court, as can be seen in cases such as *Selmouni v. France*³, *Matthews v. the United Kingdom*⁴, *Lustig-Prean and Beckett v. the United Kingdom*⁵, *Immobiliare Saffi v. Italy*⁶, *Thlimmenos v. Greece*⁷, *Rotaru v. Romania*⁸, *Brumărescu v. Romania*⁹, *Kudła v. Poland*¹⁰, *Cyprus v. Turkey*¹¹, *Christine Goodwin v. the United Kingdom*¹², *Stafford v. the United Kingdom*¹³, *Sovtransavto Holding v. Ukraine*¹⁴, *Kalashnikov v. Russia*¹⁵, *Öcalan v. Turkey*¹⁶, *Maestri v. Italy*¹⁷, *Assanidze v. Georgia*¹⁸,

1. [GC], no. 25390/94, ECHR 1999-III.

2. [GC], nos. 41340/98, 41342/98, 41343/98 and 41344/98, ECHR 2003-II.

3. [GC], no. 25803/94, ECHR 1999-V.

4. [GC], no. 24833/94, ECHR 1999-I.

5. Nos. 31417/96 and 32377/96, 27 September 1999.

6. [GC], no. 22774/93, ECHR 1999-V.

7. [GC], no. 34369/97, ECHR 2000-IV.

8. [GC], no. 28341/95, ECHR 2000-V.

9. [GC], no. 28342/95, ECHR 1999-VII.

10. [GC], no. 30210/96, ECHR 2000-XI.

11. [GC], no. 25781/94, ECHR 2001-IV.

12. [GC], no. 28957/95, ECHR 2002-VI.

13. [GC], no. 46295/99, ECHR 2002-IV.

14. No. 48553/99, ECHR 2002-VII.

15. No. 47095/99, ECHR 2002-VI.

16. [GC], no. 46221/99, to be reported in ECHR 2005-IV.

17. [GC], no. 39748/98, ECHR 2004-I.

18. [GC], no. 71503/01, ECHR 2004-II.

*Broniowski v. Poland*¹, *Nachova and Others v. Bulgaria*², *Hirst v. the United Kingdom (no. 2)*³ or *Sørensen and Rasmussen v. Denmark*⁴, and I could cite many more. Of course, our case-law also evolves through inadmissibility decisions and findings of no violation. As examples, I might mention, apart from the cases I have already cited of *Rekvényi and Refah Partisi (the Welfare Party) and Others*, those of *Gratzinger and Gratzingerova v. the Czech Republic*⁵, *Streletz, Kessler and Krenz v. Germany*⁶ (the so-called “*Mauerschützenfälle*”), *Al-Adsani v. the United Kingdom*⁷, *Z and Others v. the United Kingdom*⁸, *Banković and Others v. Belgium and Others*⁹, *Şahin v. Turkey*¹⁰, or *Jahn and Others v. Germany*¹¹ as well as *Von Maltzan and Others v. Germany*¹². What I am saying is that our Court has continued to offer guidance to national courts on the development and evolution of human rights protection. Yet at the same time it has followed precedent, except where cogent reasons impelled it to adjust the interpretation of the Convention to changes in societal values or in present-day conditions. And it has followed precedent not only in judgments concerning particular respondent States, but also in recognising that the same European minimal standards should be observed in all member States. It is indeed in the interests of legal certainty, of a coherent development of the Convention case-law, of equality before the law, of the rule of law and of the separation of powers for the Court to have in principle a flexible approach to the doctrine of precedent.

Obviously in describing our tasks in this way, I espouse a certain view of what the role of a European quasi-constitutional judge should be. Our Court is to a certain extent a law-making body. How could it be otherwise? How is it possible to give shape to Convention guarantees such as the prohibition of torture, equality of arms, freedom of expression or respect for private and family life, if – like Montesquieu – you see in the judge only the mouthpiece of the law? Such guarantees are programmatic formulations, open to the future, to be unfolded and developed in the light of changing conditions. My personal philosophy of the task of judges is that they should find their way gradually, in a way experimentally, inspired by the facts of the cases that reach a court. As you will realise, I do not believe in closed theoretical systems that are presented as sacrosanct on the basis of speculative hypotheses or ideologies. Such monocausal explanations ignore the complex and often contradictory manner in which societies and international relations (and incidentally also individual human beings) evolve. Conversely, it has to be acknowledged that in developing the law it is difficult to avoid value judgments, whether on domestic or on international law. This applies especially to human rights, which, anchored as they are in the concepts of constitutionalism, democracy and the rule of law, are value judgments *par excellence*.

Let me emphasise that I do not plead for a “*gouvernement des juges*”. To give broad answers which are in no way called for by the facts of a case is to confuse a judicial mandate with that of the legislature or of the executive, and cannot and should not be the

1. [GC], no. 31443/96, ECHR 2004-V.

2. [GC], nos. 43577/98 and 43579/98, to be reported in ECHR 2005-VII.

3. [GC], no. 74025/01, to be reported in ECHR 2005-IX.

4. [GC], nos. 52562/99 and 52620/99, 11 January 2006.

5. (dec.) [GC], no. 39794/98, ECHR 2002-VII.

6. [GC], nos. 34044/96, 35532/97 and 44801/98, ECHR 2001-II.

7. [GC], no. 35763/97, ECHR 2001-XI.

8. [GC], no. 29392/95, ECHR 2001-V.

9. [GC], no. 52207/99, ECHR 2001-XII.

10. No. 31961/96, 25 September 2001.

11. [GC], nos. 46720/99, 72203/01 and 72552/01, to be reported in ECHR 2005-VI.

12. (dec.) [GC], nos. 71916/01, 71917/01 and 10260/02, to be reported in ECHR 2005-V.

role of courts. I agree with Jutta Limbach, the former President of the German Constitutional Court, who stated: “The tighter the Court ties the net of constitutional conditions, the more it restricts the potential of Parliament to act and the more it paralyses its political creativity.”

The courts are not instruments of power. In the famous *Federalist Papers*, Alexander Hamilton, the great theoretician of the American Constitution, wrote that the government holds the sword, the legislature holds the money box and the only thing the courts hold for themselves is their independence. It is that independence which puts us in a position to watch over fairness and justice within governments.

The *Sachsenspiegel* – the oldest written record of customary law in Germany going back, in its earliest version, to the years 1220-35 – defined what and how a judge should be as follows: “Each judge should have four virtues ... The first one is justice, the second one wisdom, the third one fortitude, the fourth one moderation.” I would venture to suggest that this is still a helpful way of looking at what a judge is and does. Judges might also be inspired by the motto of the Puritans, “Do what is fair and do not fear anyone”. I would like to add that, whereas international human rights judges should indeed do what is fair and should fear no one, they should at the same time have regard for the context in which they live and for the aims they are serving. Human rights are our common responsibility. First and foremost they must be respected by the national parliaments, governments, courts and civil society at large. Only if they fail does our Court come in. The subsidiarity I describe and advocate here is more than pragmatic realism, it is also a way of paying respect to democratic processes (always provided they are indeed democratic), and I am firmly convinced that it is the best means of translating the “human rights law in law books” not only into a “human rights law in courts”, but also into a “human rights law in action” and – hopefully – in reality in all of our member States.

I should now like to describe some of the more important cases the Court decided in 2005 which, once again, provide an illustration of what lies at the heart of our activities and reflection.

The judgment in *Leyla Şahin v. Turkey*¹ is one of that rare breed of pivotal judgments that can be said to develop a real theory of democratic society. The case concerned a Turkish student who was refused access to university for wearing the Islamic headscarf. On the merits, the Grand Chamber endorsed the earlier decisions of the Fourth Section and the Turkish Constitutional Court, holding that there had been no violation of her right to freedom of religion. After reiterating that pluralism and tolerance were among the fundamental principles of any democratic society, the Grand Chamber said that it also had to take into account the need for the public authorities to protect the rights and freedoms of others, to preserve public order and to secure civil peace and true religious pluralism, which was vital to the survival of democratic society. In this case, it found that, in a context in which the values of pluralism and respect for the rights of others and, in particular, equality before the law of men and women were being taught and applied in practice, it was understandable that the relevant authorities should wish to preserve the secular nature of the institutions concerned and so consider it contrary to such values to allow religious attire, including the Islamic headscarf, to be worn.

1. [GC], no. 44774/98, to be reported in ECHR 2005-XI.

There have been new developments on Article 14, which prohibits discrimination in the enjoyment of the Convention rights. In *Nachova and Others*, cited above, the Grand Chamber was the first formation of the Court to apply this provision in conjunction with Article 2, which protects the right to life. The case originated in a military operation in which two young deserters of Roma origin were shot and killed by members of the military police who had received orders to track them down. The applicants, who were members of the victims' families, alleged among other things that prejudice and hostile attitudes of a racist nature had played a role in their deaths. On the merits, the Court found that it had not been established that the men had been killed as a result of racism. However, it went on to find that the domestic authorities should have examined, in the course of their investigation, whether racist motives had played a role in the men's deaths and, if so, they should have brought those responsible to justice.

In addition to reiterating certain basic principles governing Articles 5 and 6, the Grand Chamber's judgment in *Öcalan v. Turkey*¹ offered the Court an opportunity to examine two important issues. With regard to the death penalty, it found under Article 3 that imposing a death sentence after an unfair trial wrongfully subjected the person concerned to the fear that he or she would be executed. In circumstances where there existed a real possibility that the sentence would be enforced, the fear and uncertainty as to the future the death penalty generated meant that it infringed Article 3. As to the consequences of a violation of Article 6, the Court considered that where an individual, as in the instant case, had been convicted by a court that did not meet the Convention requirements of independence and impartiality, a retrial or a reopening of the case, if requested, represented in principle an appropriate way of redressing the violation. However, the specific remedial measures, if any, required of a respondent State in order to discharge its obligations had to depend on the particular circumstances of the individual case and be determined in the light of the terms of the Court's judgment in that case.

In *Mamatkulov and Askarov v. Turkey*², the Court reviewed its *Cruz Varas and Others v. Sweden*³ jurisprudence in the light of developments in international law concerning interim measures. Referring to recent decisions of other international tribunals such as the International Court of Justice, the Inter-American Court of Human Rights and the Human Rights Committee of the United Nations, it said that henceforth "[a] failure by a Contracting State to comply with interim measures is to be regarded as preventing the Court from effectively examining the applicant's complaint and as hindering the effective exercise of his or her right and, accordingly, as a violation of Article 34 of the Convention".

Lastly, in *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland*⁴, the Court made an important and much awaited contribution to clarification of the relationship between the Convention and Community law. It found that the protection of fundamental rights by Community law, unless manifestly deficient, could be considered "equivalent" to that of the Convention system. Consequently, there was a presumption that a State would not depart from the requirements of the Convention when it was merely implementing legal obligations flowing from its membership of the European Union.

1. [GC], no. 46221/99, to be reported in ECHR 2005-IV.

2. [GC], nos. 46827/99 and 46951/99, to be reported in ECHR 2005-I.

3. Judgment of 20 March 1991, Series A no. 201.

4. [GC], no. 45036/98, to be reported in ECHR 2005-VI.

The striking-out judgment in *Broniowski v. Poland*¹ marked a satisfactory conclusion to proceedings that had produced the first so-called “pilot” judgment which the Court had delivered on the merits in June 2004. It concerned the case of an applicant who had been unable to secure, through a lack of funds, the payment of a debt owed to him by the Polish State as compensation for expropriation following changes made to the international borders after the Second World War. In its judgment on the merits, the Court had found a violation of the right of property and reserved the question of just satisfaction while inviting the respondent State to take, in addition to individual measures in the applicant’s case, general measures capable of remedying the situation of the 80,000 or so potential applicants in the same situation as Mr Broniowski. I should like to pay tribute to the Polish Government for complying with the judgment so expeditiously and for their constructive attitude throughout the negotiations that led to the conclusion of a friendly settlement that enabled the Court to strike the case out of the list.

I now come to the third part of my speech, devoted to the reform of the Convention system, as part of which we must consider measures that will make it possible for the Court to continue to fulfil its crucial and unique role in the coming years and decades, in the present and future European institutional framework.

Our Court, the so-called new Court of Protocol No. 11, began its activity in 1998 with a substantial backlog of some 7,000 applications, many of which were complicated cases requiring detailed judgments on the merits. As early as mid-2000, the Court drew attention to the danger that the workload would become uncontrollable. It organised a reflection day on possible reform avenues. As part of the follow-up to the Rome Conference marking the 50th anniversary of the Convention, the Ministers’ Deputies set up an Evaluation Group to consider guarantees for “the continued effectiveness of the Court, with a view, if appropriate, to making proposals for reform”.

The Group’s recommendations, submitted in September 2001, as well as the continuing and apparently inexorable rise in the number of cases, led to the preparation of Protocol No. 14. The Court submitted a position paper in September 2003 and proposed a separate filtering system and a new pilot-judgment procedure for repetitive cases. Neither of the proposals was adopted, but the pilot-judgment procedure found support in Resolution Res(2004)3 of the Committee of Ministers and was successfully implemented by the Court in *Broniowski*.

Protocol No. 14 brings about four main procedural changes. The single-judge formation for clearly inadmissible applications; the extended competence of the three-judge Committees instead of seven-judge Chambers for applications which are “already the subject of well-established case-law of the Court”; the joint examination of admissibility and merits of applications; and “significant disadvantage” as a new admissibility criterion. The Court urges all member States to ratify Protocol No. 14 forthwith. It will be ready to apply the Protocol as soon as it comes into force.

Two extensive audits by the Internal Auditor and by a British external auditor carried out in 2004 gave a full picture of a good many aspects of the Court’s internal workings. Briefly put, the Internal Auditor stated, and the external auditor confirmed, that the Court

1. (friendly settlement) [GC], no. 31443/96, to be reported in ECHR 2005-IX.

would need, on top of the 530 persons it currently employs, another 660 persons in order to cope with all incoming applications, leaving aside the backlog.

In addition to the two audit reports, the former Lord Chief Justice of England and Wales, Lord Woolf of Barnes, carried out a management report on the Court. Let me quote from his report:

“The Court has been extensively audited and reviewed, but despite possible ‘audit fatigue’ we found everyone we met to be open, welcoming and helpful. We were struck throughout by the dedication of the staff, and their positive and pro-active attitude in the face of an ever-growing workload which would, in many situations, lead to low morale and apathy. The lawyers and judges of the Court are all extremely committed, and are constantly looking to innovate and improve, and try out new working methods. It is, in my view, to their credit that the Court continues to function in the face of its enormous and often overwhelming workload.”

As we see it, the Court has been amply vindicated by the various reports. We now wish to concentrate on our real work, of which we have plenty. Last year, in 2005, some 45,500 applications were lodged with the Court, and at the end of 2005, 81,000 applications were pending before the Court, of which a still too high proportion constitutes backlog. We are the first to recognise how high these figures are. But the true miracle lies in the fact that the backlog figures are not much higher. It is only thanks to the constant, tireless efforts of the Court – of the judges and the Registry, to all of whom I pay a richly deserved tribute – to streamline, reconsider, improve and simplify existing procedures and working methods that we have survived as successfully as we have.

The Court’s methods have continually evolved and it has constantly reinvented itself and its procedures. The most recent result has been that it delivered 1,105 judgments in 2005, which constitutes an increase of around 54% as compared to 2004.

We will of course continue to review our working methods and procedures. In doing so, we will be responding to the recommendations made by Lord Woolf, many of which are indeed already under way or envisaged. I note with satisfaction the Secretary General’s willingness to implement quickly those recommendations for which his assistance will be required. I would also wish to pay tribute to the member States of the Council of Europe, and their representatives here in Strasbourg, for the financial effort they have made in approving the Court’s budget for 2006. True, the Court would have preferred to have had a three-year programme adopted with an annual increase of 75 staff. But member States have accepted an increase of 46 staff members in difficult financial circumstances. We do appreciate this special effort, which will make it possible to implement one of Lord Woolf’s recommendations, based on a proposal that was already on the table, that is, to set up a secretariat with the specific task of dealing with backlog cases.

The eleven Wise Persons, appointed in the aftermath of the Warsaw Summit of May 2005, have begun their work under the chairmanship of Gil Carlos Rodríguez Iglesias, the former long-time President of the Court of Justice of the European Communities. We await their proposals with optimism, given the high competence and the excellent qualifications of the members of the Group. We expect that full attention shall be given to their future views, and that their proposals will be implemented promptly.

Ladies and gentlemen, as you will have understood from what I said earlier, my time as President has been and continues to be an immensely rewarding one, in terms both of the colleagues that I have, and have had, the pleasure of working with and of what we feel we have accomplished over that period. However, I find it very hard to understand or accept the difficulties the Court has encountered in establishing its institutional position in accordance with the text and spirit of Protocol No. 11 as a fully independent judicial organ. These matters may also be addressed by the Wise Persons in the course of their work, as they go to the effectiveness of the Convention system, but I wish to mention them here. There are three principal problems.

1. The first point concerns the Court's budget. The fact that our budget is part of the budget of the Council of Europe is not objectionable as such. However, the Court's budget should be voted on the basis of a request and explanations that stem directly from the Court. Moreover, the Court should manage autonomously the budget that has been voted. The necessary arrangements for this could be implemented easily and rapidly, and it would also increase efficiency.

2. The second point concerns the appointment of the Court's staff. All other international courts appoint, promote and exercise disciplinary powers over their staff, either on the basis of a specific legal rule (for example, at the International Criminal Court) or on the basis of a specific agreement with the respective Secretary General (for example, at the United Nations for the *ad hoc* international criminal courts or at the Organisation of American States for the Inter-American Court of Human Rights). The Court's Rules Committee has submitted proposals to guarantee such operational independence. Opposition to these proposals purports to rely on the Council of Europe's staff regulations, which are of course based on the Statute of the Council of Europe, which itself pre-dates the Convention. The staff regulations should have been amended long ago to bring them into conformity with the Convention, and certainly since Protocol No. 11 amended Article 25 of the Convention, which now states that "the Court shall have a registry, the functions and organisation of which shall be laid down in the rules of the Court". Let me just add that it would cost nothing to do this and that, in addition to the principle of judicial independence, sound management and plain common sense suggest that the body that has authority in practice over the Registry staff should also be empowered to appoint, promote and, if necessary, discipline them.

3. The third point concerns the total lack of a scheme of pensions and social security for judges. The approach adopted to this problem by the Council of Europe last year entirely failed to address the matter of principle that lies at the heart of this question. The present situation is incompatible with the notion of an independent judiciary under the rule of law, as well as being contrary to the Council of Europe's own Social Charter. It is high time for the Council of Europe to address the matter of principle at stake and assume the responsibilities flowing from it.

Ladies and gentlemen, let me finish by quoting the ambassador of one of the member States of the Council of Europe who recently paid me a courtesy visit. Somewhere in the course of our conversation, he said: "Mr President, this Court is the ultimate expression of justice." And he added: "It represents justice accessible to everyone." One could hardly better summarise the essence of the Court's role and its two basic components: justice and accessibility. And that is probably how we would like to describe our role: being accessible to help to realise law and justice in order to contribute to building a freer and more just society.

It is time now for me to turn to our guest of honour, Mrs Tülay Tuğcu, President of the Turkish Constitutional Court. Mrs Tuğcu, let me assure you that we are very pleased to have you here today. Your court has done a lot recently for human rights in your country. We are all keen to hear more about it. Mrs Tuğcu, you have the floor.

**V. SPEECH GIVEN BY Mrs TÜLAY TUĞCU,
PRESIDENT OF THE CONSTITUTIONAL COURT OF TURKEY,
ON THE OCCASION OF THE OPENING
OF THE JUDICIAL YEAR,
20 JANUARY 2006**

**SPEECH GIVEN BY Mrs TÜLAY TUĞCU,
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Mr President, distinguished colleagues, ladies and gentlemen,

I am very honoured to address this distinguished audience. I wish to take this opportunity to express my sincere thanks to President Wildhaber for giving me the chance to be with you today at the opening ceremony of the new judicial year of the European Court of Human Rights.

Before I comment on the place of the European Convention on Human Rights in the Turkish legal system in general and in the case-law of the Turkish Constitutional Court in particular, let me speak briefly about our Constitutional Court.

The Constitutional Court, one of the early examples of the European model of constitutional jurisdiction, was established by the 1961 Constitution and started working on 25 April 1962. The structure and functions of the Constitutional Court envisaged in 1961 were, to a great extent, maintained by the 1982 Constitution.

The Constitutional Court is composed of eleven full members and four substitute members. Although nomination of the judges is by different institutions, their appointment has been exclusively vested in the President of the Republic. The plenary is composed of all eleven judges and, sitting in camera, takes decisions by absolute majority except decisions concerning the dissolution of political parties which require a three-fifths' majority.

Our court has been, first and foremost, charged with examining the constitutionality of laws and decrees having the force of law and the Rules of Procedure of the Turkish Grand National Assembly both *in abstracto* and in their application. In addition to this principal task our court, sitting as the Supreme Court, tries, *inter alia*, the President of the Republic, members of the Council of Ministers and members of higher courts for offences relating to their functions; audits the income and expenditure of political parties; decides on the dissolution of political parties; and takes decisions on objections against the loss of parliamentary immunity or membership of deputies.

The President of the Republic, parliamentary groups of the party in power and of the main opposition party and a minimum of one-fifth of the total number of members of the Turkish Grand National Assembly have the right to apply for actions for annulment to the Constitutional Court. There is no restriction on the courts that can initiate the *a posteriori* control of legal norms. Application for the dissolution of a political party is made by the Chief Public Prosecutor of the Republic. Even though the rights recognised by human rights treaties have quasi-constitutional rank, their infringement may not be referred by individuals directly to the Constitutional Court.

Mr President, ladies and gentlemen, the caseload of the Turkish Constitutional Court tripled after 2000 as a result of certain amendments made to the Constitution and the radical legal reforms that were largely inspired by the case-law of the Strasbourg Court and undertaken in order to align Turkish law with the *acquis*. A vast increase in the number of applications over recent years due to the evolving Turkish legislative landscape has placed an enormous strain on the capacity of the court. In addition, the court started sitting as the Supreme Court in 2004, as a result of indictments against former ministers. At present, seven ministers and a former prime minister are being tried for offences they allegedly committed at the time of their office.

Due to the ever-increasing workload and backlog problems, a thorough review of the workings of the court and possibly a reform of the constitutional system are urgently required. To overcome the burden of the workload, our court has drafted a proposal for constitutional amendments with a view to its organisational and procedural restructuring. It is proposed to increase the number of judges and eliminate the distinction between full and substitute members. In order to manage the increasing workload effectively, the draft proposal splits the court into two sections, reserving jurisdiction in certain matters for the plenary court. The draft proposal also introduces an individual constitutional complaint mechanism for civil and political rights in order to reduce the number of applications against Turkey taken to the Strasbourg Court.

I believe we can benefit from the Strasbourg Court's experience of maintaining the consistency of the case-law of four independent sections, filtering out unmeritorious cases and developing measures for dealing with repetitive cases when considering how to simplify our review procedure and cope with our rapidly expanding caseload.

I hope to see the proposed amendments come into force in the near future.

Mr President, ladies and gentlemen, let me make a general observation about human rights treaties in Turkey.

Turkey ratified the European Convention on Human Rights and Protocol No. 1 six months after the Convention came into force. At that time, the ratification of the Convention did not generate much interest in Turkish public opinion and no coverage was given to it in the press. It was only after 1987, when the competence of the European Commission of Human Rights was recognised, that the Convention became popular in the media. Soon after the jurisdiction of the Strasbourg Court was accepted, the Convention became an essential part of Turkish social and political life.

In recent years the Turkish legal system has been thoroughly screened with a view to strengthening democracy, consolidating the rule of law and ensuring respect for fundamental rights and freedoms, reforming Turkish legislation with due regard to the European Convention on Human Rights and the case-law of the Strasbourg Court. So far, nine reform packages and two substantial sets of constitutional amendments have been adopted.

Thanks to impressive progress made in recent years¹, Turkey is now party to all the principal human rights conventions of the United Nations. In line with this progress, just three weeks ago, Turkey ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights. The ratification of the first Protocol is also under way.

The norms of the Council of Europe, embodied in more than 190 conventions, provide a basic point of reference for us. In recent years, a number of European conventions and protocols have been ratified. Suffice it to recall that just a month ago, Turkey ratified Protocol No. 13 abolishing the death penalty in all circumstances.

Mr President, ladies and gentlemen, as far as the place of international treaties in the Turkish legal system is concerned, according to the fifth paragraph of Article 90 of the Constitution, “International treaties duly put into effect have the force of law. No appeal to the Constitutional Court can be made with regard to these treaties on the ground that they are unconstitutional”. For almost four decades, there have been acrimonious disputes over the status of international treaties *per se* and the European Convention on Human Rights in particular due to the ambiguous nature of the phrase “have the force of law”.

There have been three different approaches to the meaning of this phrase. The first kind of interpretation adopts a literal approach whereby treaties are seen as having equal standing with domestic legislation due to explicit acknowledgment. The supporters of this approach, therefore, hold the view that if the Constitution had wished to grant treaties a superior position in comparison to national legislation it would have expressed this in unequivocal terms, just as many European constitutions do.

The second kind of interpretation is based on the idea that a literal reading of the last paragraph of Article 90 is obscure and devoid of meaning. The denial of judicial review by the Constitutional Court implies that international treaties are superior to national laws. As a result, in the case of conflict between international provisions and national ones, international treaties should prevail. Therefore, under no circumstances does the *lex posterior* principle come to the fore. According to this view, the phrase “have the force of law” indicates a monist approach.

1. Major human rights treaties ratified since 2003: International Covenant on Civil and Political Rights (23 September 2003); International Covenant on Economic, Social and Cultural Rights (23 September 2003); Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (18 March 2004); Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty (18 September 2003); Criminal Law Convention on Corruption, Civil Law Convention on Corruption, Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (2 March 2004); European Agreement relating to Persons Participating in Proceedings of the European Court of Human Rights (17 April 2004); International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (8 July 2004); Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty in all circumstances (13 December 2005); and Second Optional Protocol to the International Covenant on Civil and Political Rights (27 December 2005). Human rights treaties signed since 2003: Optional Protocol to the International Covenant on Civil and Political Rights (3 February 2004); Second Optional Protocol to the International Covenant on Civil and Political Rights (6 April 2004); United Nations Convention against Corruption (10 December 2003); Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms amending the control system of the Convention (6 October 2004); Protocol amending the European Social Charter (6 October 2004); and European Social Charter (revised) (6 October 2004).

According to the third kind of interpretation, based on a teleological approach, theoretical and doctrinal debates on the meaning of “have the force of law” have often had a largely formal character and frequently no practical significance. Since Article 2 of the Constitution defines the Republic as “a State governed by the rule of law ... respecting human rights”, treaties relating to fundamental rights and freedoms should be distinguished from other treaties and given a status superior to that of national laws.

A constitutional amendment in May 2004¹ added a new sentence to the last paragraph of Article 90 of the Constitution as follows:

“In the case of a conflict between international treaties in the area of fundamental rights and freedoms duly put into effect and the domestic laws, due to differences in provisions on the same matter, the provisions of international agreements shall prevail.”

Thanks to this provision, disputes over the status of human rights treaties have come to an end. The courts of general jurisdiction are now obliged to apply the Convention provisions in their judgments. Recent judgments of the Court of Cassation and the Supreme Administrative Court disclose direct application of the provisions of the European Convention and other international treaties on human rights².

Lower courts are not entitled to apply to the Constitutional Court claiming that a domestic law that appears to contradict the European Convention should be declared unconstitutional, and individuals are not required to appeal to the Constitutional Court claiming the unconstitutionality of a court ruling before lodging an application with the Strasbourg Court. This is because the Constitution does not empower the Constitutional Court to review the constitutionality of national laws *vis-à-vis* the European Convention. In cases of conflict between the domestic laws and the Convention, the Constitutional Court may ask the court *a quo* to apply the provisions of the Convention directly by virtue of the supremacy of international human rights treaties.

It is worth mentioning that the impact of the case-law of the Strasbourg Court on the Turkish legal system is likely to increase in the years to come, as it is exceedingly difficult for the domestic courts to determine in practice whether generally abstract provisions of the Convention are in conflict with national legislation. To be more precise, it is almost impossible for Turkish judges to apply the new wording of Article 90 without taking into account the case-law of the Strasbourg Court.

There remains one final point I would like to mention concerning the relationship between the Turkish Constitutional Court and the European Convention. In August 2002³ and January 2003⁴, the Turkish parliament adopted a number of reforms whereby the finding of a violation of the Convention by the Strasbourg Court has been accepted among

1. Law no. 5170, Official Gazette no. 25469, 22 May 2004.

2. See, *inter alia*, judgment of 25 May 2005 of the Civil Plenary of the Court of Cassation (E:2005/9-320, K:2005/355); judgment of 13 July 2004 of the Ninth Criminal Division of the Court of Cassation (E:2004/3780, K:2004/3879); judgment of 24 May 2005 of the Criminal Plenary of the Court of Cassation (E:2005/7-24, K:2005/56); judgment of 8 February 2005 of the Thirteenth Division of the Supreme Administrative Court (E:2005/588, K:2005/692); and judgment of 29 September 2004 of the Fifth Division of the Supreme Administrative Court (E:2004/291, K:2004/3370).

3. Law no. 4771, Official Gazette no. 24841, 9 August 2002.

4. Law no. 4793, Official Gazette no. 25014, 4 February 2003.

the causes for retrial in civil and criminal cases. As a result of a legislative amendment¹, final judgments of the administrative courts were also brought within the scope of the retrial procedure. The retrials that have taken place so far have led to the acquittal of a number of persons.

As regards the dissolution of political parties and the trial of certain key statesmen, where our court applies criminal procedural law in the same way as the ordinary courts, a couple of retrial requests have been received so far. In the context of those proceedings, our court may be led to reconsider application of the provisions of the Convention and the interpretation of the Strasbourg Court in coming to a conclusion. As the cases are still pending, I would like to make no further comment.

Mr President, ladies and gentlemen, let me briefly comment on the impact of the European Convention and the case-law of the Strasbourg Court on the decisions of our court.

As the Turkish Constitution provides that the State shall recognise and protect fundamental human rights in accordance with the Constitution, the primary duty of the Constitutional Court is to protect human rights in accordance with the Constitution.

Nevertheless, the Constitutional Court has, in various ways, referred to the Convention and the case-law of the Strasbourg Court. In some of our decisions, the reasons for referring to the Convention have been touched on, while in others the Convention has been briefly cited. Where the Convention is the *ratio legis* of the provisions of the Constitution, our court makes references to the preparatory work of the constitutional provisions. In cases where the Convention contains explanatory or supportive norms, our court does not hesitate to take advantage of the Convention's provisions to strengthen its arguments. In some cases, we make use of the provisions of the Convention to interpret a constitutional principle.

Since its establishment², our court has referred to international treaties sixty-one times, and to the European Convention on thirty-seven occasions. These references are mainly related to gender equality, the right to a fair trial, the right of property and the dissolution of political parties. Despite the fact that our court is not formally bound by the judgments of the Strasbourg Court, given that the Constitution and the rule of incorporation do not create such an obligation, we assign to the rulings of the Strasbourg Court an authority of interpretation³.

1. Law no. 4928, Official Gazette no. 25173, 19 July 2003.

2. The Constitutional Court first referred to the ECHR ten months after its establishment (19 February 1963, K:1963/34). In the same year it referred to the ECHR in three decisions.

3. So far, decisions of the Strasbourg Court have been cited in four of our cases. For example, in 1999 the Constitutional Court referred to *Sporrong and Lönnroth v. Sweden* (judgment of 23 September 1982, Series A no. 52) in connection with the regulatory seizure of real estate. In 2003 the Constitutional Court declared a *de facto* expropriation unconstitutional, referring to three judgments of the Strasbourg Court, namely, *Papamichalopoulos and Others v. Greece* (judgment of 24 June 1993, Series A no. 260-B), *Carbonara and Ventura v. Italy* (no. 24638/94, ECHR 2000-VI) and *Belvedere Alberghiera S.r.l. v. Italy* (no. 31524/96, ECHR 2000-VI).

Mr President, ladies and gentlemen, we are aware that harmonisation of the jurisprudence of European constitutional courts on the one hand and collaboration of national and regional courts on the other will significantly improve the implementation of fundamental rights and freedoms. We are also aware that the effectiveness of the European Convention system depends on the willingness of member States to enforce the judgments of the Strasbourg Court. Even though we are not bound by its rulings, our court and other national courts make genuine efforts to monitor the case-law of the Strasbourg Court. As the role of the Convention is enhanced in the Turkish legal system, the element of mutual trust between the Strasbourg Court and the Turkish judiciary also becomes more important.

Let me conclude my remarks by stating that our court is committed to remaining in the vanguard of the struggle to defend human dignity and individual rights and to make human rights ever more fully and widely respected in Turkey and in Europe.

I hope that Protocol No. 14 will come into force as soon as possible.

I wish the Strasbourg Court a very fruitful judicial year.

VI. VISITS

VISITS

25 January 2005	Mr Victor Yushchenko, President, Ukraine
25 January 2005	Parliamentary delegations, Switzerland and Liechtenstein
26 January 2005	Mr Michel Barnier, Minister for Foreign Affairs, France
18 February 2005	Mr Mohan Menon, Consular Minister, India
21 February 2005	Mr Anton Ivanov, President of the Supreme Court, Russia
7 March 2005	Mr Zoltan Lomnici, President of the Supreme Court, Hungary
16 March 2005	Constitutional Court, Thailand
22 March 2005	Mr Rasim Ljajic, Minister for Human and Minority Rights, Serbia and Montenegro
22 April 2005	Mr Sviatoslav Piskun, Prosecutor General, Ukraine
26 April 2005	Constitutional Court, Ukraine
28 April 2005	Mr Adam D. Rotfeld, Minister for Foreign Affairs, Poland
29 April 2005	<i>Conseil constitutionnel</i> , France
10 May 2005	Mr Juan Fernando López Aguilar, Minister of Justice, Spain
18 May 2005	Supreme Court, Spain
19 May 2005	Ms Victoria Iftodi, Minister of Justice, Mr Valeriu Balaban, Prosecutor General, and Ms Valeria Sterbet, President of the Supreme Court, Moldova
20 May 2005	Council of the Bars and Law Societies of Europe
23-24 May 2005	Supreme Court, Italy
30 May 2005	Supreme Administrative Court, Finland
30 May 2005	Mr Pekka Hallberg, President of the Supreme Administrative Court, Finland
2 June 2005	Mr Miodrag Vlahović, Minister for Foreign Affairs, Montenegro
6 June 2005	Constitutional Court, Bulgaria
20 June 2005	Supreme Administrative Court, Turkey

20 June 2005	Mr Adnan Terzic, President of the Council of Ministers, Bosnia and Herzegovina
20 June 2005	Senior Advisory Council of the Association of Asian Parliaments for Peace
20 June 2005	Belgian delegation of the Parliamentary Assembly of the Council of Europe
28 June 2005	Constitutional Court, Georgia
29 June 2005	Mr Zoran Stojković, Minister of Justice, Serbia
8 September 2005	Presidents of the Constitutional Courts of South America
12 September 2005	Ms Monica Macovei, Minister of Justice, Romania
15 September 2005	Lord Goldsmith, Attorney-General, United Kingdom
27 September 2005	<i>Conseil d'Etat</i> , France
3 October 2005	Constitutional Court, Hungary
4 October 2005	Luxembourg delegation of the Parliamentary Assembly of the Council of Europe
6 October 2005	Mr Volodymyr Mykhailovych Lytvyn, Speaker of Parliament, Ukraine
7 October 2005	Zürich Administrative Tribunal, Switzerland
14 October 2005	Constitutional Court, Bulgaria
7 November 2005	Ankara Law Academy, Turkey
7-9 November 2005	Supreme Court, Norway
9 November 2005	Parliamentary delegation, Lithuania
15 November 2005	Mr Besnik Mustafaj, Minister for Foreign Affairs, Albania
15 November 2005	Presidents of Russian Bar Associations
18 November 2005	Mr Željko Šturanović, Minister of Justice, Montenegro
22-23 November 2005	International Criminal Court, The Hague, Netherlands
23 November 2005	Supreme Court, Spain

23-24 November 2005 Constitutional Court, Lithuania

28 November 2005 Mr Serhiy Holovaty, Minister of Justice, Ukraine

**VII. ACTIVITIES OF THE GRAND CHAMBER
AND SECTIONS**

ACTIVITIES OF THE GRAND CHAMBER AND SECTIONS

1. Grand Chamber

At the beginning of the year, there were 29 cases (concerning 38 applications) pending before the Grand Chamber. At the end of the year there were 27 cases (concerning 31 applications).

20 new cases (concerning 20 applications) were referred to the Grand Chamber, 4 by relinquishment of jurisdiction by the respective Chambers in accordance with Article 30 of the Convention and 16 by a decision of a panel of the Grand Chamber to accept a referral request under Article 43 of the Convention.

The Grand Chamber held 25 oral hearings.

The Grand Chamber adopted 2 decisions on admissibility (*Von Maltzan and Others v. Germany* and *Stec and Others v. the United Kingdom*) and delivered 11 judgments (concerning 15 applications), 4 in relinquishment cases and 7 in referral request cases, as well as a striking-out friendly-settlement judgment.

2. First Section

In 2005 the Section held 40 Chamber meetings. Oral hearings were held in 6 cases. The Section delivered 300 judgments, of which 289 concerned the merits, 7 concerned a friendly settlement and 2 concerned the striking out of cases. The remainder concerned revision or just satisfaction. The Section applied Article 29 § 3 of the Convention (combined examination of admissibility and merits) in 521 cases.

Of the applications examined by a Chamber

- (a) 307 were declared admissible;
- (b) 73 were declared inadmissible;
- (c) 64 were struck out of the list; and
- (d) 614 were communicated to the State concerned for observations, of which 554 were communicated by the President.

In addition, the Section held 60 Committee meetings. 6,811 applications were declared inadmissible and 67 applications were struck out of the list. The total number of applications rejected by a Committee represented 98% of the inadmissibility and striking-out decisions adopted by the Section during the year.

At the end of the year 14,739 applications were pending before the Section.

3. Second Section

In 2005 the Section held 41 Chamber meetings (including one in the framework of the Section's former composition). Oral hearings were held in 7 cases. The Section delivered

385 judgments (including 8 in its former composition), of which 365 concerned the merits¹, 14 concerned a friendly settlement, 5 were striking-out judgments and one dealt with just satisfaction². The Section applied Article 29 § 3 of the Convention (combined examination of admissibility and merits) in 1,047 cases and 235 judgments were delivered under this procedure.

Of the applications examined by a Chamber

- (a) 350 were declared admissible;
- (b) 106 were declared inadmissible;
- (c) 128 were struck out of the list; and
- (d) 1,039 were communicated to the State concerned for observations, of which 880 were communicated by the President.

In addition, the Section held 98 Committee meetings. 5,968 applications were declared inadmissible and 110 applications were struck out of the list. The total number of applications rejected by a Committee represented 96.3% of the inadmissibility and striking-out decisions adopted by the Section during the year.

At the end of the year 15,050 applications were pending before the Section.

4. Third Section

In 2005 the Section held 45 Chamber meetings³. An oral hearing was held concerning 4 applications. The Section delivered 212 judgments, of which 187 concerned the merits and 20 concerned the striking out of a case (12 of which following a friendly settlement)⁴. The Section applied Article 29 § 3 of the Convention (combined examination of admissibility and merits) in 618 cases and 114 judgments were delivered under this procedure.

Of the applications examined by a Chamber

- (a) 214 were declared admissible;
- (b) 151 were declared inadmissible;
- (c) 91 were struck out of the list; and
- (d) 575 were communicated to the State concerned for observations, of which 504 were communicated by the President.

In addition, the Section held 60 Committee meetings. 5,284 applications were declared inadmissible and 121 applications were struck out of the list. The total number of applications rejected by a Committee represented 96.4% of the inadmissibility and striking-out decisions adopted by the Section during the year.

1. In one judgment, the Government's preliminary objection was upheld.

2. Two of the judgments adopted by the Section in its former composition related to the same case. One concerned a partial friendly settlement and the other concerned the merits of the complaints of the remaining applicants.

3. Including seven in its composition before 1 November 2004.

4. Including 18 judgments of the Third Section in its composition before 1 November 2004, of which 14 concerned the merits and 3 the striking out of a case.

At the end of the year 15,111 applications were pending before the Section.

5. *Fourth Section*

In 2005 the Section held 40 Chamber meetings. Oral hearings were held in 6 cases. The Section delivered 196 judgments, of which 188 concerned the merits and 4 concerned a friendly settlement. 3 cases were struck out of the list by a judgment. Article 29 § 3 of the Convention (combined examination of admissibility and merits) was applied in 563 cases and 79 judgments were delivered under this procedure.

Of the applications examined by a Chamber

- (a) 163 were declared admissible;
- (b) 167 were declared inadmissible;
- (c) 53 were struck out of the list; and
- (d) 614 were communicated to the State concerned for observations, of which 418 were communicated by the President.

In addition, the Section held 93 Committee meetings. 8,297 applications were declared inadmissible and 118 applications were struck out of the list. The total number of applications rejected by a Committee represented 97.45% of the inadmissibility and striking-out decisions adopted by the Section during the year.

At the end of the year 11,157 applications were pending before the Section.

**VIII. 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 GmbH, 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 2005 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 2005-I

Judgments

Py v. France, no. 66289/01 (extracts)

Sciacca v. Italy, no. 50774/99

Capeau v. Belgium, no. 42914/98

Enhorn v. Sweden, no. 56529/00

Karademirci and Others v. Turkey, nos. 37096/97 and 37101/97

Partidul Comunistilor (Nepeceristi) and Ungureanu v. Romania, no. 46626/99 (extracts)

Mamatkulov and Askarov v. Turkey [GC], nos. 46827/99 and 46951/99

Decisions

Pentiacova and Others v. Moldova (dec.), no. 14462/03

Phull v. France (dec.), no. 35753/03

ECHR 2005-II

Judgments

Steel and Morris v. the United Kingdom, no. 68416/01
Novoseletskiy v. Ukraine, no. 47148/99 (extracts)
Brudnicka and Others v. Poland, no. 54723/00
Bubbins v. the United Kingdom, no. 50196/99 (extracts)
Akkum and Others v. Turkey, no. 21894/93 (extracts)
Nevmerzhitsky v. Ukraine, no. 54825/00 (extracts)

Decisions

Bastone v. Italy (dec.), no. 59638/00 (extracts)
Accardi and Others v. Italy (dec.), no. 30598/02

ECHR 2005-III

Judgments

Shamayev and Others v. Georgia and Russia, no. 36378/02
Lo Tufo v. Italy, no. 64663/01

Decisions

Sottani v. Italy (dec.), no. 26775/02 (extracts)
Husain v. Italy (dec.), no. 18913/03

ECHR 2005-IV

Judgments

Buck v. Germany, no. 41604/98
Öcalan v. Turkey [GC], no. 46221/99
Chmelíř v. the Czech Republic, no. 64935/01
Fadeyeva v. Russia, no. 55723/00

Decision

Woś v. Poland (dec.), no. 22860/02

ECHR 2005-V

Judgments

Krasuski v. Poland, no. 61444/00 (extracts)
Independent News & Media PLC and Independent Newspapers (Ireland) Ltd v. Ireland,
no. 55120/00 (extracts)
Storck v. Germany, no. 61603/00

Milatová and Others v. the Czech Republic, no. 61811/00
Kolanis v. the United Kingdom, no. 517/02

Decisions

Charzyński v. Poland (dec.), no. 15212/03
Von Maltzan and Others v. Germany (dec.) [GC], nos. 71916/01, 71917/01 and 10260/02

ECHR 2005-VI

Judgments

Jahn and Others v. Germany [GC], nos. 46720/99, 72203/01 and 72552/01
Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland [GC], no. 45036/98
Turczanik v. Poland, no. 38064/97
Said v. the Netherlands, no. 2345/02

Decisions

Manoilescu and Dobrescu v. Romania (dec.), no. 60861/00
Fairfield and Others v. the United Kingdom (dec.), no. 24790/04

ECHR 2005-VII

Judgments

Nachova and Others v. Bulgaria [GC], nos. 43577/98 and 43579/98
Malinovskiy v. Russia, no. 41302/02 (extracts)
Okyay and Others v. Turkey, no. 36220/97
Moldovan and Others v. Romania, nos. 41138/98 and 64320/01 (extracts)
Străin and Others v. Romania, no. 57001/00
Siliadin v. France, no. 73316/01

Decisions

Veermäe v. Finland (dec.), no. 38704/03
Mattick v. Germany (dec.), no. 62116/00

ECHR 2005-VIII

Judgments

Taniş and Others v. Turkey, no. 65899/01
Stoianova and Nedelcu v. Romania, nos. 77517/01 and 77722/01
Salov v. Ukraine, no. 65518/01 (extracts)
İ.A. v. Turkey, no. 42571/98
Amat-G Ltd and Mebaghishvili v. Georgia, no. 2507/03

Decisions

Põder and Others v. Estonia (dec.), no. 67723/01
M.A. v. the United Kingdom (dec.), no. 35242/04
Ratajczyk v. Poland (dec.), no. 11215/02
Berisha and Haljiti v. “the former Yugoslav Republic of Macedonia” (dec.), no. 18670/03
(extracts)

ECHR 2005-IX

Judgments

Broniowski v. Poland (friendly settlement) [GC], no. 31443/96
Mathew v. the Netherlands, no. 24919/03
Van Houten v. the Netherlands (striking out), no. 25149/03
Hirst v. the United Kingdom (no. 2) [GC], no. 74025/01
Maurice v. France [GC], no. 11810/03

Decision

Melnychuk v. Ukraine (dec.), no. 28743/03

ECHR 2005-X

Judgments

Lukenda v. Slovenia, no. 23032/02
N.A. and Others v. Turkey, no. 37451/97
Roche v. the United Kingdom [GC], no. 32555/96
Ouranio Toxo and Others v. Greece, no. 74989/01 (extracts)
Emrullah Karagöz v. Turkey, no. 78027/01 (extracts)
Khudoyorov v. Russia, no. 6847/02 (extracts)

Decisions

Stec and Others v. the United Kingdom (dec.) [GC], nos. 65731/01 and 65900/01
Clarke v. the United Kingdom (dec.), no. 23695/02 (extracts)
Ceylan v. Turkey (dec.), no. 68953/01
Leveau and Fillon v. France (dec.), nos. 63512/00 and 63513/00

ECHR 2005-XI

Judgments

Gongadze v. Ukraine, no. 34056/02
Bader and Kanbor v. Sweden, no. 13284/04
Leyla Şahin v. Turkey [GC], no. 44774/98

Decisions

Ivanciuc v. Romania (dec.), no. 18624/03
Goudswaard-van der Lans v. the Netherlands (dec.), no. 75255/01
Papon v. France (dec.), no. 344/04 (extracts)
Perrin v. the United Kingdom (dec.), no. 5446/03
Banfield v. the United Kingdom (dec.), no. 6223/04
MPP Golub v. Ukraine (dec.), no. 6778/05

ECHR 2005-XII

Judgments

Reinprecht v. Austria, no. 67175/01
Capital Bank AD v. Bulgaria, no. 49429/99 (extracts)
Păduraru v. Romania, no. 63252/00 (extracts)
İletmiş v. Turkey, no. 29871/96
Timishev v. Russia, nos. 55762/00 and 55974/00

Decisions

Blake v. the United Kingdom (dec.), no. 68890/01 (extracts)
Nagula v. Estonia (dec.), no. 39203/02
EEG-Slachthuis Verbist Izegem S.A. v. Belgium (dec.), no. 60559/00
Jeličić v. Bosnia and Herzegovina (dec.), no. 41183/02 (extracts)

ECHR 2005-XIII

Judgments

Bekos and Koutropoulos v. Greece, no. 15250/02 (extracts)
Kyprianou v. Cyprus [GC], no. 73797/01

Decisions

Zu Leiningen v. Germany (dec.), no. 59624/00
SCEA Ferme de Fresnoy v. France (dec.), no. 61093/00 (extracts)
Nordisk Film & TV A/S v. Denmark (dec.), no. 40485/02
Mahdid and Haddar v. Austria (dec.), no. 74762/01 (extracts)
Nilsson v. Sweden (dec.), no. 73661/01
Eskinazi and Chelouche v. Turkey (dec.), no. 14600/05 (extracts)

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 2005 the Court's site had 123 million hits in the course of 2 million user sessions.

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

**IX. SHORT SURVEY OF CASES
EXAMINED BY THE COURT
IN 2005**

**SHORT SURVEY OF CASES
EXAMINED BY THE COURT
IN 2005**

Introduction

In the course of 2005 the Court delivered 1,105 judgments¹, twelve of which were delivered by the Grand Chamber. This represented by far the highest number of judgments ever delivered by the Court in a single year since its creation more than fifty years ago, and in particular since it was established as a permanent court in 1998. The number of judgments delivered in 2005 showed an impressive increase of over 400 (54%) compared to the previous year (718). Furthermore, while many of the judgments concerned so-called “repetitive” cases, the number of complex judgments continued to grow at a significant rate: the number of judgments allocated an importance level of 1 or 2 in the Court’s case-law database in 2005 was 319, 25% higher than the corresponding figure for 2004 (244). In addition, the proportion of judgments relating to friendly settlements fell dramatically: in 2004, the percentage had already fallen to 9.5% from around 18% in the two preceding years but in 2005 only 3.34% of the judgments delivered concerned friendly settlements. However, the effect of the increasingly frequent application of Article 29 § 3 of the Convention (joint examination of admissibility and merits) should be taken into account in this connection. Whereas in the past the fact that an application was declared admissible provided the Government with an indication that a potential problem existed, the mere communication of the application for observations may constitute less of an incentive to settle the case. That said, in practice a significant number of pre-admissibility friendly settlements were secured, leading to the striking out of the applications by way of a decision rather than a judgment. This approach was used extensively, for example, in applications against the Czech Republic.

Five States accounted for over 60% of all judgments. However, of the four States with the highest counts in both 2003 and 2004, only Turkey and Italy remained, with 290 judgments (26.24%) and 79 judgments (7.15%) respectively. The three new States in this category were Ukraine (120 judgments), Greece (105) and Russia (83). Judgments were delivered in respect of all Contracting States except Andorra, Armenia, Azerbaijan, Bosnia and Herzegovina, Iceland, Norway, Serbia and Montenegro and Spain.

The number of applications lodged with the Court stabilised to some extent in 2005, with the provisional figures showing a fairly modest rise, from 44,128 to 45,500. The number of applications declared admissible (including those declared admissible in the joint procedure) showed a much sharper rise of 25%, from 830 to 1,036, while the number of applications communicated to Governments for observations rose by 16.5%, from 2,439 to 2,842.

For many years the problem of the excessive length of court proceedings at the national level has generated large numbers of applications to the Court and in 2005 the number of judgments in which this was the principal issue continued to rise, albeit slightly, from 248 to 274. As a proportion of the total number of judgments delivered, however, these “length of proceedings” cases showed a decrease in relation to the two previous years (from 33.43% in 2003 and 34.49% in 2004 to around 25% in 2005). One State – Greece –

1. Two judgments concerned two States.

accounted for 89 of these judgments but otherwise they were spread among twenty-six States, with only Slovakia and Turkey exceeding 20 each. These judgments, together with four other groups of cases, represented almost 600 of the judgments delivered in 2005, equivalent to over 54% of all judgments. The four other groups concerned (i) the non-enforcement of binding court decisions¹, which has become one of the principal issues in applications against several States, including Russia and Ukraine, (ii) delays in paying compensation for expropriation in Turkey², (iii) the independence and impartiality of national security courts in Turkey³, including cases in which the only other issue was freedom of expression⁴, and (iv) the legitimation by way of the notion of “indirect expropriation” of the occupation of property by the authorities without a formal expropriation procedure in Italy⁵. Moreover, several other familiar issues continued to give rise to considerable numbers of judgments, such as the fairness of proceedings before the Court of Cassation and *Conseil d’Etat* in France⁶, the non-enforcement of evictions of tenants in Italy⁷ and the indefinite staying of civil proceedings in Croatia⁸.

“Core” rights (Articles 2, 3 and 4 of the Convention)

The right to life (Article 2)

(i) Capital punishment

Although the death penalty has been abolished in all member States of the Council of Europe, issues relating to its imposition were raised in the Grand Chamber case of *Öcalan v. Turkey*. The applicant, who was the leader of the PKK (Workers’ Party of Kurdistan) terrorist group, was apprehended by Turkish security forces in Kenya and subsequently tried in Turkey, where capital punishment remained applicable at the relevant time, although a moratorium had been in force since 1984. In 1999 the applicant was convicted of various offences and sentenced to death. However, capital punishment was abolished in Turkey in 2002⁹, following which the sentence was commuted to life imprisonment. In its judgment, the Grand Chamber, referring to the abolition of capital punishment and to Turkey’s ratification of Protocol No. 6 to the Convention, held that there had been no violation of Articles 2 or 3 of the Convention as far as the implementation of the death penalty was concerned. However, it went on to find that the imposition of the death sentence following an unfair trial – it considered that the trial had not been in compliance with Article 6 of the Convention – amounted to inhuman treatment and thus constituted a violation of Article 3, since during the period of three years between imposition of the death sentence and abolition of capital punishment there had been a real possibility that it would be carried out and the fear and uncertainty generated, in particular following an unfair trial, amounted to inhuman treatment.

1. 156 judgments.

2. 63 judgments, compared to 35 in 2004 and 34 in 2002, although only 3 such judgments were delivered in 2003.

3. As noted in the 2004 Annual Report, the participation of military judges in national security courts ended in June 1999 and national security courts were abolished in 2004.

4. 68 judgments, compared to 70 in 2004 and 48 in 2003. The independence/impartiality issue arose in a further 18 judgments, while freedom of expression was in issue in a further 7.

5. 37 judgments.

6. 17 judgments.

7. 16 judgments, compared to 18 in 2004.

8. 13 judgments, compared to 27 (including 20 friendly settlements) in 2004.

9. Turkey ratified Protocol No. 6 to the Convention in 2003.

(ii) Disappearances and killings by unidentified perpetrators

As in previous years, a number of judgments concerning Turkey dealt with disappearances, abductions and murders by unidentified perpetrators. The majority of the dozen or so cases related to incidents dating back to the mid-1990s but *Taniş and Others v. Turkey* concerned the more recent disappearance, in 2001, of two leaders of a political party. After conducting a fact-finding mission in Turkey, the Court held in that case that the State's responsibility was engaged and that there had been both substantive and procedural violations of Article 2 (as well as violations of Articles 3, 5 and 13). Although in some of the other cases the Court did not find it established that there had been a substantive violation of Article 2, it concluded in all of them that there had not been an effective investigation. This was also the result in *Belkıza Kaya and Others v. Turkey*, which concerned the deaths of six detainees when the minibus in which they were being transferred came under attack. The driver and several village guards were also killed. The Court found that the applicants' allegation of extra-judicial execution was no more than speculation and that it could not be concluded that the authorities could have prevented the attack. There had therefore been no substantive violation. On the other hand, the lack of an effective investigation led it to conclude that there had been a procedural violation.

Two cases concerned the murders of political journalists, *Adalı v. Turkey* and *Gongadze v. Ukraine*. In the first case, the applicant's husband, a Turkish Cypriot writer and journalist who had been highly critical of the policies of the Turkish government and of the authorities of the "Turkish Republic of Northern Cyprus", had been shot dead outside his house in northern Cyprus by unknown persons. The Court took evidence in the case but did not find it established that the applicant's husband had been killed by or with the connivance of State agents. It did conclude once more, however, that there had not been an effective investigation into the killing. The case in *Gongadze* also concerned the murder of the applicant's husband, a political journalist who had for months before his disappearance in 2000 told relatives and colleagues that he was under surveillance and had received threats. The authorities had declined, however, to take any protective measures. The Court, taking into account the fact that eighteen journalists had died in Ukraine since 1991, considered that "the authorities, primarily prosecutors, ought to have been aware of the vulnerable position in which a journalist who covered politically sensitive topics placed himself/herself *vis-à-vis* those in power at the material time" and noting also the "blatantly negligent" response of the prosecuting authorities, which had in addition neglected subsequent events pointing to the possible involvement of State officials, held that there had been a substantive violation of Article 2. It further concluded that there had been a procedural violation and that the attitude of the investigating authorities to the applicant had amounted to degrading treatment in violation of Article 3.

(iii) The use of force

Several judgments concerned the use of force by the police or security forces. In *Nachova and Others v. Bulgaria*, the Grand Chamber found both substantive and procedural violations of Article 2 with regard to the fatal shooting by military police officers of two unarmed conscripts who had absconded from detention that had been imposed on them for being absent without leave. By way of contrast, a finding of no violation of either aspect of Article 2 was reached in the case of *Bubbins v. the United Kingdom*, which concerned the fatal shooting by police of a young man whom they mistakenly believed to be an armed intruder (he was brandishing a replica gun and had

refused to give himself up). The Court found that the planning and control of the operation had been adequate. The case of *Ramsahai v. the Netherlands* also concerned the fatal shooting of a young man by police officers. The victim had stolen a scooter and had similarly brandished a pistol. The Court, considering that the use of force had been “absolutely necessary” to effect his arrest and to protect the lives of the pursuing officers¹, found no substantive violation of Article 2, but it did conclude that there had been a procedural violation on account of the deficiencies in the investigation (principally a lack of independence and a lack of publicity). The case is now pending before the Grand Chamber.

The case of *Kakoulli v. Turkey* concerned the shooting by a Turkish soldier of a Greek Cypriot civilian who had crossed the ceasefire line between northern and southern Cyprus while gathering snails. The Turkish Government maintained that warning shots had been fired and that Mr Kakoulli had attempted to run away, but the Court considered that even if this was correct it did not justify the use of lethal force when there was no imminent risk of death or harm to the soldier or anyone else. The use of such force could not therefore be regarded as proportionate or “absolutely necessary” within the meaning of Article 2, which had consequently been violated in its substantive as well as its procedural aspect.

More general police action was in issue in *Şimşek and Others v. Turkey*, which involved the reaction of the police to two violent demonstrations arising out of an incident in 1995 in a neighbourhood of Istanbul where the majority of residents belong to the Alevi sect. The police had opened fire on the demonstrators, killing a number of them. While observing that the use of force may be legitimate for the purpose of quelling a riot, the Court noted that the Turkish police had shot directly at the demonstrators, “without first having recourse to less life-threatening methods, such as tear gas, water cannons or plastic bullets”, so that the principle of Turkish law whereby firearms may be used only in limited and special circumstances had not been respected. In reply to the Government’s contention that the police officers had been under great stress and psychological pressure, the Court considered that the police should be able “to evaluate all parameters and carefully organise their operations” and that “governments should undertake to provide effective training to the police force with the objective of complying with international standards for human rights and policing ... [and] police should receive clear and precise instructions as to the manner and circumstances in which they should make use of firearms”. In the case in question, the police officers had enjoyed great autonomy of action and had taken initiatives whilst in the grip of panic and pressure. Moreover, in the Court’s view, it was the responsibility of the security forces “to provide the necessary equipment, such as tear gas, plastic bullets, water cannons, etc., to disperse the crowd ... [and] the lack of such equipment [was] unacceptable”. It therefore concluded that there had been a violation of Article 2 with regard to the responsibility of the respondent State for the seventeen deaths. It also found a violation of the same provision with regard to the lack of an effective investigation.

A number of incidents relating to military action were examined in judgments. *Akkum and Others v. Turkey* concerned the killing of three shepherds during a military operation against the PKK in 1992. Oral evidence was taken from a number of witnesses in this case (by the former European Commission of Human Rights). The Court found that the Government had failed to comply with their obligation to furnish all necessary facilities, having failed to submit various documents, and in particular those relating to the military operation and the subsequent investigation. On the basis of its assessment of the facts,

1. See *Makaratzis v. Greece*, no. 50385/99, ECHR 2004-XI.

including inferences which it considered it could legitimately draw from the Government's failure to submit relevant material, the Court found it established that one of the victims had been killed by soldiers and that the Government had failed to account for the killing of the other two. There had therefore been a substantive violation of Article 2 with regard to all three and, in the absence of an effective investigation, there had also been a procedural violation. In addition, the Court found that the mutilation of the body of one of the victims had caused anguish to his father which amounted to degrading treatment in respect of the latter.

A more general situation was the background to a group of cases against Russia in which double violations of Article 2 were found in respect of actions of the Russian armed forces in Chechnya. In *Khashiyev and Akayeva v. Russia*, the Court was faced with a similar problem to that in *Akkum and Others*, namely the difficulty of establishing who was actually responsible for the deaths of the applicants' relatives, whose bodies had been found in Grozny bearing gunshot wounds. On the basis of its assessment of the facts, it concluded that they had been killed by Russian servicemen and that the deaths could be attributed to the State. The two other cases, *Isayeva and Others v. Russia* and *Isayeva v. Russia*, concerned the indiscriminate bombing of, respectively, a civilian convoy and a village. The internal investigations had concluded that the actions of the pilots had been legitimate, in the first case because they had been under attack from the ground and in the second because a large group of illegal fighters had occupied the village and had refused to surrender. In both cases, the Court found that the respective operations had not been planned and executed with the requisite care for the lives of civilians.

A violation was also found on account of inadequate planning of a police operation in *Hamiyet Kaplan and Others v. Turkey*, while in *Kanlıbaş v. Turkey* the Court found that there had not been an effective investigation into the death of the applicant's brother in a clash between the PKK and security forces. This and the foregoing cases demonstrate that the actions of the military and security forces in responding to domestic conflict do not fall outside the scope of the Convention but can come under the scrutiny of the Court.

(iv) Discrimination

In several cases, the Court found for the first time that there had been a discriminatory aspect to the infliction of inhuman and degrading treatment. In the aforementioned case of *Nachova and Others v. Bulgaria*, the two victims of the fatal shooting were of Roma origin, and while the Grand Chamber did not find it established that racist attitudes had played a role in the incident as such, it did conclude that there had been a failure on the part of the authorities to investigate that allegation. A very similar approach was adopted in *Bekos and Koutropoulos v. Greece*, which concerned the ill-treatment of two Roma by the police, and also in *Moldovan and Others v. Romania*, in which the Court found that there had been discrimination on account of the applicants' Roma origins with regard to the length and outcome of domestic proceedings brought after their homes had been burned down by a mob, among whom there had been a number of police officers. As the events had occurred in 1993, prior to ratification of the Convention by Romania, they could not as such be examined by the Court. However, the Court considered that the responsibility of the State was engaged as regards the applicants' subsequent living conditions, in so far as, "having been hounded from their village and homes, the applicants had to live, and some of them still live, in crowded and improper conditions – cellars, hen-houses, stables, etc. – and frequently changed address, moving in with friends or family in extremely overcrowded conditions". It went on to conclude that the repeated failure of the authorities to put a stop

to breaches of the applicants' rights amounted to a serious and continuing violation of Article 8 of the Convention (private and family life and home). Moreover, it held that the fact that the applicants had been obliged to live in such conditions for more than ten years, together with the racial abuse to which they had been subjected, constituted an interference with their human dignity which amounted to "degrading treatment". There had therefore also been a violation of Article 3.

(v) Suicide

In two judgments, the responsibility of State authorities in relation to suicides was examined. The first, *Kılınç and Özsoy v. Turkey*, concerned a conscript with a history of mental illness. The Court, in examining the matter, reiterated that its role was to establish whether the authorities knew or ought reasonably to have known that there was a real and immediate risk of suicide and, in the affirmative, whether they had taken all steps that could reasonably be expected of them to avoid that risk¹. In that respect, it noted that it was undisputed that the individual concerned had had psychiatric problems and that various measures had had to be taken by the military authorities because of a deterioration in his condition, and it concluded that the authorities should have been aware of the risk. It further considered that the authorities had been negligent and had therefore failed to take sufficient steps to prevent the suicide.

The opposite conclusion was reached in *Trubnikov v. Russia*, concerning the suicide of a prisoner while he was being held in a punishment cell. Although the person concerned had had certain psychiatric problems and had previously harmed himself and attempted suicide while in the punishment cell, the Court noted that his condition had not been acute and had not been associated with a dangerous psychiatric illness and that no opinion had ever been expressed that he posed a suicide risk. Indeed, his state had consistently been described as stable, so that it had been difficult to predict any quick and drastic deterioration. In these circumstances, the Court considered that the authorities could not reasonably have foreseen his suicide. Moreover, there had been no "manifest omission on the part of the domestic authorities in providing medical assistance or in monitoring [the prisoner's] mental and emotional condition throughout his imprisonment which would have prevented them from making a correct assessment of the situation". The Court did, however, find that there had been a failure to conduct an effective investigation and furthermore that by refusing to submit the original medical file the State had failed to furnish all necessary facilities to the Court to enable it to establish the facts of the case.

Torture and inhuman or degrading treatment or punishment (Article 3)

(i) Ill-treatment of detainees and conditions of detention

Approximately twenty judgments dealing with ill-treatment of detainees in Turkey were delivered in 2005, reflecting a persistent problem, in particular with regard to periods spent in police custody. Several of the other judgments in which Article 3 issues arose related to conditions of detention, both on remand and following conviction, and in one case in a psychiatric institution (*Romanov v. Russia*). Problems in this area were identified in particular in Bulgaria and Russia, but there were also judgments relating to Moldova and individual cases concerning Estonia, Lithuania and Ukraine (in respect of which the same

1. See *Keenan v. the United Kingdom*, no. 27229/95, ECHR 2001-III.

matter had already been the subject of several judgments). Violations were found in virtually all of these cases. The Court regularly referred to the general reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and in certain cases it referred to the reports concerning the particular country as, for example, in *Kehayov v. Bulgaria*, *Alver v. Estonia*, *Ostrovar v. Moldova* and *Nevmerzhitsky v. Ukraine*. In this last case, the specific issue of how to react to a hunger strike, and in particular the use of force-feeding, arose, the Court concluding that the methods used (handcuffs, a mouth-widener and a special rubber tube), given the detainee's resistance and the absence of any medical necessity, amounted to torture. The Court also found that the failure to provide adequate medical assistance to the applicant amounted to degrading treatment. A similar conclusion was reached in that respect in *Sarban v. Moldova*, which concerned the inadequacy of medical treatment provided during detention on remand. Finally in this connection, mention may be made of *Mathew v. the Netherlands*, in which a combination of factors relating to the conditions of the applicant's detention in Aruba led the Court to the conclusion that there had been a violation of Article 3: solitary confinement for an excessive and unnecessarily protracted period, detention for at least seven months in a cell that failed to offer adequate protection against the elements, and detention in a location from which the applicant could gain not access to outdoor exercise and fresh air without unnecessary and avoidable physical suffering on account of a back problem. In this case, however, the Court did not find that there had been a violation on account of a denial of medical care. Moreover, it found no violation with regard to the use of physical force or with regard to the allegedly unsanitary conditions in which the applicant had been held. A further point of interest about this case is the indication given by the Court that in the absence of suitable accommodation in Aruba for prisoners "of the applicant's unfortunate disposition" – violent and dangerous – it would have been appropriate to transfer him to a suitable place of detention in one of the other constituent parts of the Contracting State, namely the Netherlands or the Netherlands Antilles. No attempt had been made to find such an alternative, despite a request to that effect by the applicant.

The health of detainees was the principal concern in a series of cases against Turkey, in which the Court had to consider whether the detention or threatened reincarceration of prisoners suffering from Wernicke-Korsakoff syndrome as a result of having gone on hunger strike constituted or would constitute a violation of Article 3. A number of cases were struck out for various reasons, while in the remainder the Court's conclusion hinged essentially on the available medical evidence, which led it to find in two cases that there had been no violation, whereas in several others it considered that detention was or would be incompatible with Article 3.

(ii) Solitary confinement

The use of solitary confinement, which was a feature of the judgment in *Mathew v. the Netherlands* mentioned above, was also the central element in two other judgments. In *Ramirez Sanchez v. France*, the applicant, better known as the terrorist "Carlos", complained that he had been kept in solitary confinement for over eight years. The Court accepted that the detention of "one of the world's most dangerous terrorists" posed serious problems for the French authorities and found it understandable that they should have considered it necessary to take extraordinary security measures. It also took account of the fact that the applicant had not been kept in complete sensory isolation or total social isolation: he had books, newspapers and a television, and enjoyed access to the exercise yard two hours a day and to a cardio-training room one hour a day. Moreover, while he

alleged that he was denied contact with other prisoners and with warders, he received twice weekly visits from a doctor, a monthly visit from a priest and very frequent visits from his fifty-eight lawyers, including one to whom he had become engaged and who had visited him more than 640 times over a period of four years and ten months. While the Court shared the concerns of the CPT as to the possible long-term effects of the applicant's social isolation, it found that the general and very special conditions in which the applicant was being held and the length of his confinement did not constitute inhuman or degrading treatment, having regard to his character and the unprecedented danger he posed. The Court thus held, by four votes to three, that there had been no violation of Article 3. The case was subsequently referred to the Grand Chamber, which delivered its judgment on 4 July 2006, confirming that Article 3 had not been breached.

A much shorter period of solitary confinement – just under one year – was in issue in *Rohde v. Denmark*, in which the Court held, again by four votes to three, that there had been no violation of Article 3. In reaching that conclusion, it referred to the views expressed by the CPT and took into account the specific conditions of the applicant's detention, as well as the effectiveness of the monitoring of the applicant's mental state.

(iii) Expulsion

As in previous years, several of the judgments concerning Article 3 of the Convention raised issues arising out of the expulsion of foreign nationals. In many of these cases, the applicant claims to be at risk because of his or her political activities in the country of origin and in such circumstances the Court seeks to establish whether there are substantial reasons for believing that the applicant runs a real and personal risk of being subjected to inhuman or degrading treatment by the authorities. It will not generally find a violation where the threat emanates from other sources¹ or where the applicant refers to the general situation in the country of origin, without substantiating any specific threat to him as an individual, for example on account of known dissident activities or previous incidents of detention and ill-treatment.

In *N. v. Finland*, concerning threatened deportation to the Democratic Republic of Congo (DRC), delegates of the Court took oral evidence in Finland. On the basis of its assessment of the evidence, the Court found that the applicant would be exposed to a real and personal risk in his country of origin, on account of his "specific activities as an infiltrator and informant in President Mobutu's special protection force, reporting directly to very senior-ranking officers close to the former President". Furthermore, with regard to the source of the danger, it added that "the risk of ill-treatment to which the applicant would be exposed if returned to the DRC at this moment in time might not necessarily emanate from the current authorities but from relatives of dissidents who may seek revenge on the applicant for his past activities". It pointed out in this connection that the fact that the applicant had been part of Mobutu's "inner circle" and had taken part in action against dissidents gave reason to believe that his situation was worse than that of most other former Mobutu supporters and that the authorities would not necessarily be able or willing to protect him. This was therefore an exception to the general principle that the threat must emanate from the authorities.

1. Although see, in this connection, *Ahmed v. Austria*, judgment of 17 December 1996, *Reports of Judgments and Decisions* 1996-VI, and also *H.L.R. v. France*, judgment of 29 April 1997, *Reports* 1997-III.

Said v. the Netherlands concerned the threatened deportation of the applicant to Eritrea, where he claimed that he would be exposed to a real risk of ill-treatment as a deserter from the army. The Court accepted, on the basis of the material before it, that the applicant had sufficiently substantiated his account to establish its credibility and, taking note of the type of inhuman treatment meted out to deserters according to public sources, ranging from “incommunicado detention to prolonged sun exposure at high temperatures and the tying of hands and feet in painful positions”, it concluded that there were substantial grounds for believing that the applicant would be exposed to a risk of treatment contrary to Article 3 if returned to his country of origin.

In *Bader and Kanbor v. Sweden*, the Court reached the conclusion that there were substantial grounds for believing that the first applicant would be exposed to a real risk of being executed and subjected to inhuman treatment if returned to Syria. The applicant had already been sentenced to death there and the Court considered that “the Swedish authorities would be putting the first applicant at serious risk by sending him back to Syria and into the hands of the Syrian authorities, without any assurance that he will receive a new trial and that the death penalty will not be sought or imposed”. It furthermore applied the principles developed in *Öcalan v. Turkey*, observing that the imposition of the death penalty after the flagrant denial of a fair trial “must give rise to a significant degree of added uncertainty and distress for the applicants as to the outcome of any retrial in Syria”.

By way of contrast, reference may be made to *Müslim v. Turkey*, which concerned the proposed deportation of the applicant, of Turkmen origin, to Iraq, where he had originally claimed to be at risk from the regime of Saddam Hussein. By the time of the Court’s examination of the case, however, that regime had been overthrown, and the Court therefore deemed it unnecessary to examine that aspect of the applicant’s complaint. It proceeded to consider whether the applicant might nevertheless be exposed to a risk if returned to post-war Iraq and in that respect concluded that the evidence before it as to the applicant’s past and the general conditions in the country did not establish that his personal situation was any worse than that of other members of the Turkmen minority or, indeed, of other people living in northern Iraq, which seemed to be less affected by the violence than other regions of the country.

Finally in this connection, mention may be made of the decision in *Hukić v. Sweden*, which concerned the deportation of a family of four to Bosnia and Herzegovina, where they claimed that they risked being persecuted by criminals and also maintained that their five-year-old son, who had severe Down’s syndrome, would not receive the same standard of care as he would in Sweden. The application was declared inadmissible, the Court reiterating in this latter respect that “aliens who are subject to deportation cannot in principle claim any entitlement to remain in the territory of a Contracting State in order to continue to benefit from medical, social or other forms of assistance provided by the deporting State”. Its conclusion that the boy’s condition could not be compared to a fatal illness and that specialised care was available in Bosnia and Herzegovina illustrates to some extent the limits on the applicability of Article 3 to expulsion cases.

(iv) Extradition

Similar issues may arise in connection with extradition, as in *Shamayev and Others v. Georgia and Russia*, in which the Court also took evidence through delegates. The thirteen applicants, of Chechen origin, had been arrested by Georgian border police and charged with crossing the border illegally, carrying offensive weapons and arms trafficking. Their

extradition had then been requested by the Russian authorities, on the ground that they were rebels who had fought in Chechnya. The Georgian authorities decided to extradite them and two days later five of the applicants were extradited to Russia; the others, some of whom were Georgian nationals, remained in detention in Georgia. The applicants made numerous complaints, in particular under Articles 2, 3 and 5 of the Convention, but as far as the extraditions as such were concerned the Court concluded that it had not been established beyond a reasonable doubt that at the time of the decision to extradite the five applicants there were serious and well-founded reasons to believe that extradition would expose them to a real and personal risk of inhuman or degrading treatment. However, it went on to find that enforcement of the extradition order in respect of one of the remaining applicants would constitute a violation of Article 3, in so far as in the intervening period there had emerged a new and extremely alarming phenomenon of persecution and killing of persons of Chechen origin who had lodged applications with the Court.

In *Mamatkulov and Askarov v. Turkey*, the Grand Chamber found that the applicants' extradition to Uzbekistan did not give rise to a breach of Article 3, since it was unable to conclude that at the date of extradition substantial grounds existed for believing that the applicants faced a real risk of treatment proscribed by Article 3. However, it held that Turkey's failure to comply with the Chamber's indication under Rule 39 of the Rules of Court not to extradite them pending its consideration of the merits of the Article 3 complaint breached Article 34 of the Convention. The Grand Chamber, like the Chamber, noted that it was prevented by the applicants' extradition to Uzbekistan from conducting a proper examination of their complaints and ultimately from protecting them, if need be, against potential violations of the Convention as alleged. As a result, the applicants had been hindered in the effective exercise of their right of individual application guaranteed by Article 34, which the applicants' extradition had rendered nugatory. This judgment marks a significant development in the Court's case-law as regards the nature and effects of Rule 39 measures¹.

Rule 39 is frequently relied on by applicants seeking to persuade the Court to intervene with the national authorities in order to stop their deportation and in 2005 an exceptionally large number of such requests were received. However, only in a small percentage of cases were interim measures indicated to Governments. The reason for refusal is often that the applicant has failed to substantiate a real and personal risk, as noted above. Moreover, Rule 39 is rarely applied outside the context of Article 3 expulsion cases, and in particular it is not in principle applied to expulsion cases which raise issues of family life under Article 8, in which the element of irreversibility of the situation is normally not present. That said, interim measures were indicated in *Eskinazi and Chelouche v. Turkey*, which concerned the decision of the Turkish authorities to send the second applicant, a five-year-old girl, to join her father in Israel, where a rabbinical court had given a decision in his favour. The application was subsequently declared inadmissible after a hearing.

Slavery, servitude and forced or compulsory labour (Article 4)

Cases raising issues under Article 4 of the Convention are rather few. *Siliadin v. France*, however, served as a reminder that although slavery has been abolished throughout Europe for many years the continent is not entirely free of this scourge, in so far as "domestic

1. See the Court's previous stance taken in *Cruz Varas and Others v. Sweden*, judgment of 20 March 1991, Series A no. 201.

slavery” appears to remain a widespread problem. The case thus raised the question of the extent of the State’s positive obligation to ensure that no one is kept in conditions of slavery or servitude by private individuals. The applicant was a girl from Togo who at the age of 15½ was taken to France to work for a French woman of Togolese origin until she had paid for her plane ticket. In fact, her passport was confiscated and she worked as an unpaid housemaid; she was not provided with any education or training. She subsequently went, with her father’s consent, to live with another family, for whom she similarly worked as a general housemaid, working seven days a week, starting at 7.30 a.m. Her duties included preparing breakfast, dressing the young children, taking them to nursery school or their recreational activities, looking after the baby, doing the housework and washing and ironing clothes. In the evening, she prepared dinner, looked after the older children and did the washing up before going to bed at about 10.30 p.m. She slept on a mattress on the floor in the baby’s room and had to look after him if he woke up.

After the applicant had worked for several years in these conditions, the Committee against Modern Slavery, alerted by a neighbour, reported the matter to the prosecuting authorities and criminal proceedings were brought against the couple. At first instance, they were convicted of obtaining the performance of services “without payment or in exchange for payment that is manifestly disproportionate to the amount of work carried out, by taking advantage of that person’s vulnerability or state of dependence”, but not of the alternative charge of subjecting an individual to working or living conditions incompatible with human dignity. On appeal, they were acquitted of both offences. Following the applicant’s appeal on points of law, the Court of Cassation quashed that judgment in respect of the civil claims only and the couple were ultimately ordered to pay the applicant compensation in respect of non-pecuniary damage.

The Court, referring to international materials relating to the prohibition of slavery and servitude, reached the conclusion that the notion of “positive obligations”, which it had applied in the context of several other Articles of the Convention (notably Articles 3 and 8) extended equally to Article 4. Thus, “Governments have positive obligations ... to adopt criminal-law provisions which penalise the practices referred to in Article 4 and to apply them in practice”. Similarly, observing that the rights expressed in Article 4 are non-derogable rights by virtue of Article 15 of the Convention, the Court concluded that “in accordance with contemporary norms and trends in this field, the member States’ positive obligations under Article 4 of the Convention must be seen as requiring the penalisation and effective prosecution of any act aimed at maintaining a person in such a situation”. As far as the applicant’s actual situation was concerned, the Court considered that it did not constitute slavery in the strict sense but that it could be classified as “servitude”, which it defined as “an obligation to provide one’s services that is imposed by the use of coercion”. The Court then went on to examine whether French law provided sufficient protection in that respect. It observed that French law did not criminalise slavery and servitude as such and that the provisions under which the couple had been prosecuted were more restrictive in dealing with exploitation in a more general sense. It concluded that French law at the material time had not provided effective protection against the actions of which the applicant had been a victim.

This is an important judgment, not only because it is one of the few dealing with the notions of slavery and servitude – institutions abolished long ago as unacceptable practices in civilised society – but also because it tackles a modern manifestation of a violation of a “core” human right. In an era when slavery as an officially condoned practice is a thing of

the past, the judgment underlines the responsibility of the State in protecting the vulnerable from unscrupulous private individuals.

Procedural safeguards (Articles 5, 6 and 7 of the Convention)

Lawful arrest and detention (Article 5)

(i) Unlawful detention

In *Öcalan v. Turkey*, the Grand Chamber considered the applicant's complaint that he had been unlawfully abducted in Kenya by Turkish authorities and flown back to Turkey in violation of Kenyan sovereignty and international law. The Grand Chamber observed that an arrest made by the authorities of one State on the territory of another State, without the consent of the latter, affected the person's individual right to security under Article 5 § 1. However, it considered that the applicant had not adduced evidence enabling concordant inferences to be drawn that Turkey had failed to respect Kenyan sovereignty or to comply with international law. It agreed with the Chamber's finding that, even though the applicant had not been arrested by the Kenyan authorities, the evidence before the Court indicated that Kenyan officials had played a role in separating the applicant from the Greek ambassador at whose residence he was staying and in transporting him to the airport immediately preceding his arrest on board the aircraft. Consequently, the applicant's arrest and his detention were in accordance with "a procedure prescribed by law" for the purposes of Article 5 § 1 of the Convention and there had been no violation of that provision.

A novel point concerning the lawfulness of detention arose in two judgments against Turkey, *Emrullah Karagöz v. Turkey* and *Dağ and Yaşar v. Turkey*, in which the applicants' detention on remand had been duly ordered by a judge but at the same time the judge had also authorised that they be handed back to the police for further questioning, by virtue of Legislative Decree no. 430. While there was therefore a valid detention order, the Court nevertheless considered that this way of proceeding circumvented the legislation relating to the maximum period of police custody. In both cases, the detention in the hands of the police had subsequently been prolonged without any legal basis, which the Court considered to be in itself contrary to the requirement of lawfulness in Article 5 § 1 of the Convention. Moreover, since the domestic-law provision in issue precluded any judicial review of the decision to return detainees to the police, the Court also found that Article 5 § 4 had been violated. It did not find it necessary to consider whether a new right to be brought promptly before a judge arose under Article 5 § 3. The provision was repealed in 2002 when the state of emergency in south-east Turkey was lifted but the issue may remain of importance to other States, in so far as it seems to relate to the extent to which a detainee, after having been "brought promptly before a judge", may be further questioned by the police.

Very few cases in the past have concerned the provision in Article 5 § 1 (e) permitting detention, *inter alia*, for the prevention of the spreading of infectious diseases. In *Enhorn v. Sweden*, the Court had to consider the compulsory placement of the applicant in hospital in order to prevent him infecting others with HIV. He had previously infected another man and when it was discovered that he had HIV the county medical officer issued a number of instructions to him under the Infectious Diseases Act in 1994. After the applicant had failed to report on a number of occasions, the medical officer asked the county administrative court to order his compulsory confinement. The court ordered his confinement for three

months and this was prolonged repeatedly for periods of six months over the next few years, although the applicant in fact absconded on several occasions, once for a period of two years. The county administrative court finally refused to prolong the order in December 2001 after the applicant had again absconded. The Court considered that the applicant's confinement fell within Article 5 § 1 (e) of the Convention, accepting that HIV could be regarded as an infectious disease within the meaning of that provision. It nevertheless found that there had been a violation of Article 5 § 1, considering that "the compulsory isolation of the applicant was not a last resort in order to prevent him from spreading the HIV virus because less severe measures had been considered and found to be insufficient to safeguard the public interest". The Court also took into account the length of the period in question (almost seven years, during which the applicant had actually been in detention for one and a half years) in concluding that a fair balance had not been struck. This approach, whereby the Court will examine whether a measure of detention was the only available option, had initially been developed in cases relating to detention on remand.

(ii) Review of the lawfulness of detention

In *Reinprecht v. Austria*, the Court had an opportunity to clarify the extent to which the guarantees of Article 6 apply to review of the lawfulness of detention, in respect of which Article 5 § 4 is the *lex specialis*. Over the years, the Court had in its case-law recognised the applicability of an increasing number of procedural guarantees which are not explicitly stated in the latter provision, such as the right to equality of arms and, in certain circumstances, the right to be legally represented. Indeed, in a series of judgments delivered in 2001, the Court had indicated clearly that "in view of the dramatic impact of deprivation of liberty on the fundamental rights of the person concerned, proceedings conducted under Article 5 § 4 of the Convention should in principle also meet, to the largest extent possible under the circumstances of an ongoing investigation, the basic requirements of a fair trial, such as the right to an adversarial procedure"¹. The position had nonetheless remained confused since *Aerts v. Belgium*², in which the Court had stated unequivocally that "the right to liberty, which was thus at stake, is a civil right", the implication of this statement being that all the guarantees of Article 6, which relates, *inter alia*, to the determination of "civil rights and obligations", must apply. In *Reinprecht*, this uncertainty has been removed and it is now clear that the full range of the guarantees under Article 6 does not extend to proceedings concerning the review of the lawfulness of detention. In that case, the applicant had complained about the absence of a public hearing, which is a specific right under Article 6 but, as the Court has now confirmed, is not necessarily guaranteed under Article 5 § 4. Referring to the different purposes of the guarantees of Articles 5 and 6, the Court found that this "difference of aims explains why Article 5 § 4 contains more flexible procedural requirements than Article 6 while being much more stringent as regards speediness". Thus, while there is a close link between Article 5 and the criminal aspect of Article 6, and certain procedural guarantees apply in the field of detention, as noted above, Article 5 § 4 "does not as a general rule require such a hearing to be public".

1. See *Garcia Alva v. Germany*, no. 23541/94, 13 February 2001; *Lietzow v. Germany*, no. 24479/94, ECHR 2001-I; and *Schöps v. Germany*, no. 25116/94, ECHR 2001-I.

2. Judgment of 30 July 1998, *Reports* 1998-V.

Right to a fair hearing (Article 6)

(i) Access to a court

Among the judgments dealing with access to a court issues under Article 6 of the Convention, several concerned the obstacles faced by applicants with insufficient means. In *Steel and Morris v. the United Kingdom*, the question was whether the statutory exclusion of defamation proceedings from the legal aid scheme constituted an unacceptable limitation on access to a court. The applicants had been sued by the McDonald's restaurant chain after they had distributed a leaflet highly critical of the company's policies. The applicants, whose income was minimal, were nevertheless refused legal aid on the basis of the statutory exception and represented themselves throughout the lengthy and complex proceedings, although they did receive some legal assistance as well as financial help from the public. McDonald's initially sought damages of up to 100,000 pounds sterling (GBP) and were ultimately awarded GBP 36,000 and GBP 40,000 against the two applicants respectively. While recognising that it "is not incumbent on the State to seek through the use of public funds to ensure total equality of arms between the assisted person and the opposing party, as long as each side is afforded a reasonable opportunity to present his or her case under conditions that do not place him or her at a substantial disadvantage *vis-à-vis* the adversary", the Court considered that "the disparity between the respective levels of legal assistance enjoyed by the applicants and McDonald's ... was of such a degree that it could not have failed, in this exceptionally demanding case, to have given rise to unfairness". It distinguished the earlier judgment in *McVicar v. the United Kingdom*¹, in which it had found no violation, as well as a previous decision of the European Commission of Human Rights rejecting an application brought by the same applicants at a much earlier stage of the domestic proceedings, at which time "the length, scale and complexity of the proceedings could not reasonably have been anticipated". Essentially, then, as the length and complexity of the case had increased, the imbalance between the legal assistance available to each of the parties had created "an unacceptable inequality of arms".

In three judgments against Poland, the issue was whether the level of court fees to be paid in order to pursue a civil action or appeal was excessive, a matter that had previously been addressed in *Kreuz v. Poland*². In *Podbielski and PPU Polpure v. Poland*, the Court emphasised in that respect that "restrictions which are of a purely financial nature and which ... are completely unrelated to the merits of an appeal or its prospects of success, should be subject to particularly rigorous scrutiny from the point of view of the interests of justice". It took into account the fact that the fees were not intended to protect the other party against irrecoverable costs (as in *Tolstoy Miloslavsky v. the United Kingdom*³) or to protect the system of justice against unmeritorious appeals, but seemed to be simply a source of income for the State. Taking into account the precarious financial situation the applicant's company was in at the relevant time, the Court concluded that the domestic courts had failed to secure a proper balance. Similarly, in *Jedamski and Jedamska v. Poland*, the Court considered that the judicial authorities had not properly assessed the proportionality of the amount of the court fees in relation to the ability of the applicants to pay them. In *Kniat v. Poland*, it also took into account an additional element, namely that the proceedings related to divorce rather than to a financial dispute.

1. No. 46311/99, ECHR 2002-III.

2. No. 28249/95, ECHR 2001-VI.

3. Judgment of 13 July 1995, Series A no. 316-B.

In *Roche v. the United Kingdom*, the Grand Chamber was confronted with the problem of the qualification to be given to a restriction in domestic law on the right of access to a court, namely whether it was substantive or procedural. The applicant, a former serviceman, was prevented by virtue of section 10 of the Crown Proceedings Act 1947 from bringing an action against the authorities for damage to his health allegedly caused by his participation in mustard and nerve gas tests conducted by the army when he was a serving soldier. According to section 10, if the Secretary of State so certified, the Crown could not be sued in tort in respect of the death or injury of a member of the armed forces arising in the course of duty. A certificate had been issued in the applicant's case, thereby barring a possible civil action. The Grand Chamber scrutinised the purport of section 10 in the light of the interpretation given to it by the domestic courts and found, by a majority, that the provision operated as a substantive limitation on the applicant's right of access to a court, and not as a procedural restriction, the justification of which had to be examined on the merits. In short, Parliament had never intended to give a cause of action against the Crown and no right had come into being. Consequently, in the absence of a substantive right under domestic law at the material time, Article 6 was not applicable.

(ii) Legislative intervention in pending court proceedings

In *Draon v. France* and *Maurice v. France*, the Grand Chamber was called upon to rule on the applicants' complaints that their rights under, *inter alia*, Article 6 had been breached on account of the retroactive effect of legislative measures on proceedings they had initiated against the State in order to recover compensation for pecuniary and non-pecuniary damage. In its previous case-law, the Court had found that the principle of the rule of law and the notion of a fair trial enshrined in Article 6 preclude any interference by the legislature – other than on compelling general interest grounds – with the administration of justice designed to influence the judicial determination of a dispute¹. In the instant cases, the Court considered that the issues raised primarily concerned the interference with the applicants' "possessions" within the meaning of Article 1 of Protocol No. 1, caused by the retroactive measures. It found a breach of that provision and concluded, by a majority, that no separate issue arose under Article 6.

(iii) Non-enforcement of court decisions

Mention has already been made of the large number of cases against Russia and Ukraine concerning non-enforcement of court decisions, and the same issue also arose in several judgments concerning Georgia, Greece, Moldova and Romania. The fact that similar issues had already been examined with regard to these States (other than Georgia) may be an indication that a more widespread problem exists. *Okyay and Others v. Turkey* also merits a particular mention in this connection, as it related to the failure of the administrative authorities to comply with court decisions ordering that operations at three thermal power plants be discontinued because of the adverse effect on the environment. It was thus a follow-up to the 2004 judgment in *Taşkın and Others v. Turkey*².

Also of interest is *Turczanik v. Poland*, which concerned the prolonged failure of a Bar Association to designate a location where the applicant could set up his practice,

1. See, for example, *Zielinski and Pradal and Gonzalez and Others v. France* [GC], nos. 24846/94 and 34165/96 to 34173/96, ECHR 1999-VII.

2. No. 46117/99, ECHR 2004-X. See also *Öçkan and Others v. Turkey*, no. 46771/99, 28 March 2006.

notwithstanding the repeated annulment of its decisions by the Supreme Administrative Court. While previous cases examined by the Court concerned non-compliance by domestic authorities, this case was different in that, as the Court observed in its judgment, the Bar Association was not considered to be an administrative authority under domestic law. However, since the decision in issue had an administrative character and clearly fell within the jurisdiction of the Supreme Administrative Court, the Court concluded that there had been a violation of Article 6 of the Convention. In *Fociac v. Romania*, this approach was taken a step further, as the non-enforcement was essentially due to the attitude of a private party, namely the applicant's former employer. The Court recognised in that respect that the State had an obligation to be diligent and to assist the claimant in securing enforcement of the court decision in his favour. However, having examined the steps taken by the authorities in the particular case, including the efforts of the bailiffs and the imposition of fines by the courts, the Court reached the conclusion that the State had done all that it could, so that the refusal of the employer to comply could not be attributed to it.

(iv) Legal certainty

Another problematic feature the Court has identified in the legal systems of certain former Soviet bloc countries is the possibility of reopening proceedings which had been definitively brought to a conclusion by a final and binding court judgment. This issue has arisen in a large group of judgments against Romania, commencing with *Brumărescu v. Romania*¹, and has also led to a series of judgments dealing with the procedure of "supervisory review" in Russia² and Ukraine³. In 2005 the Court delivered several judgments in which it examined a similar procedure in Moldova (see *Roşca v. Moldova*, *Popov v. Moldova (no. 2)* and *Asito v. Moldova*), while in *Salov v. Ukraine* a slightly different aspect of the matter was addressed. A first-instance court had decided to remit the criminal case against the applicant for further investigation, considering that there was insufficient evidence to convict him, but that decision had been quashed following supervisory review and the higher court had then instructed the first-instance court to decide on the basis of the evidence before it. The first-instance court had subsequently convicted the applicant on the basis of the same evidence it had previously considered insufficient. The Court, in addition to finding that there had been a breach of the principle of legal certainty, took the view that the directions given by the higher court to the first-instance court had left the latter with little choice as to how to dispose of the case and concluded on that basis that the court had not been independent and impartial.

(v) Notification issues

Problems arising out of notification of court proceedings came to light in several judgments. *Sukhorubchenko v. Russia* and *Strizhak v. Ukraine* concerned civil proceedings and in both the Court found that there had been a failure to ensure proper notification. In the former case, it considered that there had been "defective" notification of a decision to stay the proceedings indefinitely, with the consequence that the applicant had been prevented for a lengthy period from having his claim determined. In the latter case, the Court found that the Government had failed to provide evidence that notification of a hearing had ever been sent out and concluded that "the notification arrangements ... were not sufficiently ensured". In *Yakovlev v. Russia* the situation was even more striking, in that

1. [GC], no. 28342/95, ECHR 1999-VII.

2. See, for example, *Ryabykh v. Russia*, no. 52854/99, ECHR 2003-IX.

3. See, for example, *Tregubenko v. Ukraine*, no. 61333/00, 2 November 2004.

the party to an appeal hearing had received notification of the hearing four days after it had taken place. The Government in that case acknowledged that the applicant had effectively been deprived of an opportunity to attend the hearing.

A similar situation also arose in the criminal context in *Ziliberberg v. Moldova*, in which an appeal against the imposition of a fine in respect of an administrative offence had been dismissed *in absentia*, although notification of the appeal hearing had been posted to the applicant only the day before the hearing. The Court concluded that there had been a violation of Article 6, since the applicant had not had prior notice of the hearing and had therefore been unable to participate effectively in his criminal trial. In *Hermi v. Italy*, the problem was of a different nature but the conclusion was the same. The court of appeal had dismissed the applicant's appeal in his absence, after refusing his lawyer's request that he be present, on the ground that the applicant had not informed the authorities in advance that he wished to participate in the appeal proceedings. However, the Court did not agree that the applicant, a foreign national, had waived his right to be present, noting that the notice served on him had not been translated into either of the languages he claimed to understand and that it had not been established that he understood Italian sufficiently well. In any event, the Court pointed out that the applicant's lawyer had specifically requested that he be allowed to appear before the court. The case was subsequently referred to the Grand Chamber.

(vi) Self-incrimination

The question of self-incrimination, in particular in the context of road-traffic offences, has arisen in a number of recent cases. In *Rieg v. Austria*, concerning the conviction of a car owner for providing incomplete information about the identity of the driver at the time of a speeding offence, the Court, by five votes to two, followed the approach it had previously taken in *Weh v. Austria*¹ in finding that, in the absence of any proceedings against the applicant for the speeding offence as such, "the link between the applicant's obligation ... to disclose the identity of the driver of his car and possible criminal proceedings for speeding against him remains remote and hypothetical". However, it should be noted that several other cases raising related issues are pending and in the admissible cases of *Francis v. the United Kingdom* and *O'Halloran v. the United Kingdom* jurisdiction has been relinquished in favour of the Grand Chamber.

Self-incrimination was also in issue in *Shannon v. the United Kingdom*. The applicant had been required to attend an interview with financial investigators and to answer their questions. He had subsequently been charged with false accounting and conspiracy to defraud. He was once again required to attend an interview but refused to do so, as his lawyers had not received sufficient assurances that his replies would not be used in criminal proceedings against him, and was in that connection convicted and fined GBP 200. The principal proceedings were later discontinued. The facts differed from the somewhat similar case of *Saunders v. the United Kingdom*² in that the applicant's statements were never in fact used against him in criminal proceedings but the Court considered on the basis of more recent cases such as *Heaney and McGuinness v. Ireland*³ that the mere possibility of the statements being used was sufficient, so "there is no need for proceedings even to be

1. No. 38544/97, 8 April 2004.

2. Judgment of 17 December 1996, *Reports* 1996-VI.

3. No. 34720/97, ECHR 2000-XII.

brought for the right not to incriminate oneself to be in issue”. It held that there had been a breach of the right not to incriminate oneself.

(vii) Fair trial (criminal)

A number of miscellaneous issues which arose under the criminal aspect of Article 6 also merit a mention. Firstly, in *Guillemot v. France*, criminal proceedings had been brought against two parents whose child had died as a result of abuse. It was established that one or both of them had to be responsible for the abuse. The trial court convicted the wife and acquitted the husband. The former’s conviction was upheld on appeal, the husband having become a witness. The wife then appealed on points of law, maintaining in particular that the acquittal of her husband, which was final, meant that she was deprived of any possibility of establishing her innocence, in the light of the fact that it was clear that one of them had committed the abuse. The appeal was dismissed. The Court, examining the matter from the perspective of equality of arms, considered that the applicant had had the benefit of an adversarial procedure and had been able to contest the prosecution’s position as well as present her own. It concluded that there had been no violation.

An interesting point arose in *Goktepe v. Belgium*. The applicant had been prosecuted along with two others for robbery with violence resulting in the death of the victim. The questions that were put to the jury concerning, in particular, whether the aggravating circumstances of using violence or threats had been present, had not distinguished between the respective roles of the three co-accused. The applicant considered that this manner of proceeding had deprived him of an examination of his specific role in the affair, which he maintained had involved no violence on his part. The Court held that this failure to “individualise” the assessment of the involvement in the crime had deprived the applicant of a fair hearing under Article 6 of the Convention.

In another Belgian case, *Cottin v. Belgium*, the applicant, prosecuted for assault, complained that he had not been given the opportunity to be present or represented when a medical examination of one of the victims, ordered by the court, was carried out. The victim had been accompanied by his brother, also a civil party to the proceedings, as well as by a medical adviser. Taking into account the technical nature of the examination, the Court considered that the possibility of subsequently contesting the report before the judges was not sufficient to ensure fully adversarial proceedings and held that there had been a violation of Article 6.

(viii) Independence and impartiality

In *Öcalan v. Turkey*, the Grand Chamber confirmed its previous case-law to the effect that certain aspects of the status of military judges sitting as members of national security courts rendered their independence from the executive questionable¹. In *Öcalan* the applicant had been tried, convicted and sentenced to death by a national security court. The Grand Chamber found that it was understandable that the applicant – prosecuted for serious offences relating to national security – should have been apprehensive about being tried by a bench which included a regular army officer belonging to the military legal service. On that account he could legitimately have feared that the national security court might allow itself to be unduly influenced by considerations that had nothing to do with the nature of

1. See *Incal v. Turkey*, judgment of 9 June 1998, *Reports* 1998-IV.

the case. The Grand Chamber considered that this conclusion was not affected by the fact that the military judge had been replaced by a civilian judge before the verdict was delivered and in this connection it disapproved an earlier Chamber decision¹. However, in subsequent cases the Court has accepted that where the military judge was replaced after only procedural steps had been taken in the proceedings the problem of the independence and impartiality of the national security court no longer arose.

The opposite situation was in issue in *Graviano v. Italy*, in which the applicant complained that one of the appeal court judges had been replaced after the hearing of witnesses, and his requests for a rehearing of witnesses had been rejected, so that the new judge had participated in the decision without having personally heard the witnesses. The Court noted that in such circumstances it is normally appropriate for the witnesses to be reheard. However, it considered that there had been no violation in the particular case, taking into account the fact that the applicant had had an opportunity to have the witnesses questioned before the replacement of the judge, that he had not given any indication of how a rehearing would have brought new and pertinent elements and that the new judge had been able to read the records of the questioning of the witnesses.

A number of the 2005 judgments dealt with the impartiality of judges and in particular the situation where a judge had previously participated in the same proceedings or in separate proceedings which nevertheless were linked in some way to those before him. In *Jasiński v. Poland*, the Court applied the principle it had set out in *Hauschildt v. Denmark*², and held that there had been no violation where a trial judge had previously taken decisions concerning the detention on remand of the accused. While in *Hauschildt* such decisions had entailed an assessment that essentially addressed the merits of the prosecution – leading the Court to find a violation – this was not the situation in *Jasiński*. In *Indra v. Slovakia*, a Constitutional Court judge had previously acted as a judge in a lower court in related proceedings. The Court considered that fears as to a lack of impartiality were justified in those circumstances, since the issue before the court might have involved a reconsideration of the decision in which the judge had previously participated. Other cases concerned judges whose prior involvement had been in a different capacity. In *Mežnarić v. Croatia*, a Constitutional Court judge had represented one of the parties at an early stage in the same proceedings, several years before, subsequently being replaced by his daughter. The Court held that there had been a violation of Article 6 § 1: while the involvement had been both minor and remote in time, and the dual function had related to different legal issues, the Court gave decisive weight to the fact that the person concerned had acted in two different capacities in the same proceedings. In *Steck-Risch and Risch v. Liechtenstein*, however, the Court considered that the connection was not sufficiently strong to affect the judge's impartiality. In that case, a Constitutional Court judge was a partner in a law firm with an appeal court judge who had taken part in the decision that had been referred to the Constitutional Court. In finding no violation, the Court relied on the fact that the "partnership" related only to the sharing of premises and did not involve any professional or financial interdependence or relationship of subordination.

Chmelíř v. the Czech Republic concerned, *inter alia*, the impartiality of a judge against whom an accused had brought separate civil proceedings arising out of the same case. The applicant had appealed to the High Court against his conviction for several offences. He

1. See *İmrek v. Turkey* (dec.), no. 57175/00, 28 January 2003.

2. Judgment of 24 May 1989, Series A no. 154.

had then applied for the withdrawal of the President of the High Court, M.V., claiming that they had had intimate relations some years before. The request was refused. The applicant subsequently brought an action against M.V. for protection of his personality rights, alleging that he had suffered non-pecuniary damage because M.V. had obliged him to attend a hearing despite having been informed of an anonymous threat concerning the presence of explosives on the court premises. At the same time, the applicant, referring to these proceedings, again sought M.V.'s withdrawal from the appeal in the criminal case. This request was also unsuccessful. In the meantime, M.V. had imposed a fine on the applicant for contempt of court, referring to the false allegations in the original withdrawal request, which he considered to be "an insolent and unprecedented attack". He warned the applicant that a similar attack could in future be classified as a criminal offence. The Court found that in the circumstances there had been a violation of Article 6. It noted that the civil and criminal proceedings had overlapped for seven months and that in those circumstances it could not be ruled out that the applicant, in the context of the criminal proceedings, might have had reason to fear that M.V. continued to see him as an adversary. Furthermore, any such fears were exacerbated by the imposition of a fine on the applicant. The Court considered that "the reasoning of that decision suggests that the president of the division was unable sufficiently to distance himself from the comments made about him". According to the Court, "it would be academic to claim that the judge was acting without any personal interest and was simply defending the court's authority and status ... his own perception and assessment of the facts and his own judgment were involved in the process of determining whether the court had been insulted in that specific case". The Court also referred to the severity of the fine in concluding that the judge had overreacted to the applicant's conduct and that there had been a violation of Article 6 § 1.

It may be observed that, in relation to the power of courts to ensure the proper conduct of their proceedings, the Court stressed that it had "no intention of depriving courts in Contracting States of the possibility of imposing disciplinary penalties on litigants for the purpose of protecting the interests of justice". This point was subsequently in issue in the Grand Chamber case of *Kyprianou v. Cyprus*, which concerned the imposition by a court of a summary punishment of five days' imprisonment on a lawyer appearing before it in a criminal trial. The punishment was in response to allegedly insulting remarks made by the lawyer to the bench. The Grand Chamber found that in the circumstances there had been a breach of both the objective and subjective requirements of impartiality. As to the objective test, the Grand Chamber noted that the same judges had taken the decision to prosecute, tried the issues arising from the applicant's conduct, determined his guilt and imposed the sanction. It considered that this confusion of roles would obviously prompt objectively justified fears as to the impartiality of the court. As to the subjective test, the Grand Chamber found that the judges had not succeeded in detaching themselves sufficiently from the situation that arose – for example, they had acknowledged that they had been deeply insulted as persons when sentencing the applicant.

(ix) Presumption of innocence

The Court has found in a number of cases in the past that the right to the presumption of innocence is violated when a court's decision casts doubt on an acquittal. For example, in numerous Austrian cases it has held that the refusal of compensation, following a final acquittal, in respect of time spent in detention on remand, on the ground that suspicion had

not been dissipated, is incompatible with the presumption of innocence¹. Indeed, more recently the Court held that even when the comments of a court in a decision given in separate civil proceedings is inconsistent with an acquittal in criminal proceedings, Article 6 § 2 is violated². The idea behind this approach is that an acquittal should have the effect of establishing the innocence of the accused, so that any official decision or statement which casts doubt on the correctness of the acquittal must be regarded as contrary to the presumption of innocence. In *Capeau v. Belgium*, the Court took this a step further, considering that there had been a breach of the presumption of innocence even where the proceedings against the applicant had simply been discontinued and there had been no final acquittal. The applicant had been refused compensation by the Unwarranted Pre-trial Detention Appeals Board, on the basis of a legislative provision which required that a person against whom proceedings had been discontinued must, in order to qualify for compensation, establish his innocence by adducing factual evidence or submitting legal argument to that effect. Earlier case-law of the Court had indicated that affirmations of a mere “state of suspicion” following termination of criminal proceedings would not fall foul of the presumption of innocence, whereas a statement expressing the view that the person was “guilty” would constitute a breach of Article 6 § 2³. In *Capeau*, the Court took the view that “[r]equiring a person to establish his or her innocence, which suggests that the court regards that person as guilty, is unreasonable and discloses an infringement of the presumption of innocence”. It thus equated such a requirement to an affirmation of guilt rather than to a mere assertion that a “state of suspicion” remained.

(x) Defence rights

Among the many complaints raised by the applicant under Article 6 in *Öcalan v. Turkey* were the compatibility with the Convention of his lack of access to a lawyer over a seven-day period when he was in police custody, his inability to consult with his lawyers while in prison without being overheard by officials, restrictions on the number and length of visits by his lawyers and his difficulties in obtaining access to documents in his case file with a view to the preparation of his defence. Bearing in mind its established case-law on these various points⁴ and having regard to the facts as alleged, the Grand Chamber found that the overall effect of these difficulties so restricted the rights of the defence that the principle of a fair trial guaranteed by Article 6 had been contravened. It concluded that there had been a breach of Article 6 § 1 taken in conjunction with Article 6 § 3 (b) and (c).

The Court has developed extensive case-law on the right of an accused to question or have questioned the witnesses against him and a number of judgments delivered in 2005 are of relevance in that context. *Mayali v. France* concerned the applicant’s conviction for sexual assault of a cellmate, on the basis of the victim’s statements to the police and the reports of an expert who had examined both the applicant and the victim. The victim had not appeared at the trial, claiming that he could not face it, and could not be traced for the appeal hearing. Moreover, the third cellmate could not be traced either. The Court observed

1. See, in particular, *Sekanina v. Austria*, judgment of 25 August 1993, Series A no. 266-A, and also *Rushiti v. Austria*, no. 28389/95, 21 March 2000.

2. See *Y. v. Norway*, no. 56568/00, ECHR 2003-II.

3. See *Adolf v. Austria*, judgment of 26 March 1982, Series A no. 49; *Minelli v. Switzerland*, judgment of 25 March 1983, Series A no. 62; *Lutz v. Germany*, judgment of 25 August 1987, Series A no. 123; and, more recently, *Marziano v. Italy*, no. 45313/99, 28 November 2002.

4. See, for example, *Imbrioscia v. Switzerland*, judgment of 24 November 1993, Series A no. 275, and *Brennan v. the United Kingdom*, no. 39846/98, ECHR 2001-X.

that it had already held that it may be justified to take special measures to protect the victim in cases relating to sexual crimes¹ but observed that in the case before it the victim, although young and “weak”, was not a minor. Taking into account the fact that the court of appeal had, prior to deciding to proceed to judgment, indicated the importance of hearing the two witnesses, and further observing that the evidence of the victim was of a decisive nature since the issue of consent was crucial, the Court concluded that there had been a violation of Article 6 §§ 1 and 3 (d) of the Convention. Similar considerations were relied on in *Bocos-Cuesta v. the Netherlands*, in which the domestic courts had refused an accused’s request to hear four young victims of sexual abuse who had given evidence to the police. In this connection, the Court noted that the accused was not provided with “an opportunity to follow the manner in which the children were heard by the police, for instance by watching this in another room via technical devices, nor was he then or later provided with an opportunity to have questions put to them”. It added: “Furthermore, as the children’s statements to the police were not recorded on videotape, neither the applicant nor the trial court judges were able to observe their demeanour under questioning and thus form their own impression of their reliability.” The Court further considered that the reasons for refusing to hear the children, namely that they should not be forced to relive “a possibly very traumatic experience”, were not supported by any concrete evidence such as an expert opinion and were thus insufficiently substantiated.

Also in connection with the right to have witnesses questioned, the Court found in *Taal v. Estonia* that the fact that neither the accused, charged with threatening to blow up a supermarket, nor his representative had been able to question any of the witnesses at any stage of the proceedings, together with the fact that none of the witnesses had ever been examined by the courts constituted a violation of Article 6 §§ 1 and 3 (d). The same conclusion was reached in similar circumstances in *Mild and Virtanen v. Finland*, the Court observing that “the fact that every reasonable effort to obtain [two witnesses’] attendance was not made and the fact that there was no provision of law on the basis of which they could have been brought to court made it impossible for the applicants to examine them”. In both cases, the statements of the witnesses taken at the pre-trial stage had been relied on, and this was also a central consideration in *Bracci v. Italy*, in which the Court found a violation in respect of the failure to hear a witness with regard to one offence but no violation in respect of a similar failure with regard to a second offence, for which other important evidence had been put before the trial court.

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

Private and family life, home and correspondence (Article 8)

(i) Physical integrity

The physical integrity of the individual is one of the central features of the right to respect for private life and two interesting cases were examined in 2005 in which this issue was addressed. Firstly, in its judgment in *Storck v. Germany*, the Court found a violation of Article 8 in that medical treatment had been administered to the applicant against her will during her compulsory psychiatric detention. As the detention during the period in question

1. See *S.N. v. Sweden*, no. 34209/96, ECHR 2002-V, and also *P.S. v. Germany*, no. 33900/96, 20 December 2001.

had not been ordered by a court, as required by the domestic law, the interference with the right to respect for private life was not in accordance with the law. On the same basis, the Court found a violation of Article 5 § 1, the applicant's detention not having been "in accordance with a procedure prescribed by law". An interesting aspect of this case was that the applicant's confinement had taken place in a private clinic. The Court considered that the State was nevertheless responsible, both on account of the involvement of the police in taking the applicant to the clinic and on account of its positive obligation to "protect the liberty of its citizens" *vis-à-vis* third parties¹. In that respect, it pointed out unequivocally that "the State remained under a duty to exercise supervision and control over private psychiatric institutions".

The second case, *Jalloh v. Germany*, related to the forced administration of an emetic to make the applicant regurgitate a small bag which police officers had seen him swallowing and which they suspected contained drugs. The applicant, a foreign national, had been held down by four police officers while a doctor inserted a tube up his nose and administered a solution which caused him to vomit the bag, containing a small amount of cocaine. The application, declared partly admissible in 2004, was referred to the Grand Chamber in early 2005 under the relinquishment procedure and a hearing on the merits was held later in the year. The Grand Chamber delivered its judgment on the merits on 11 July 2006, holding by a majority that there had been a violation of Article 3 of the Convention and that it was not necessary to examine separately the complaint under Article 8.

Mention has already been made of *Roche v. the United Kingdom*, in which the Grand Chamber examined the applicant's argument that the respondent State, by continuously failing to comply with his requests for information about his participation in nerve and mustard gas tests when he was serving in the army had failed to protect his right to respect for his private and family life. The Grand Chamber found that the issue of access to information, which could have allayed the applicant's fear about the possible health risks to which he was exposed, was sufficiently closely linked to his private life as to raise an issue under Article 8. Building on its earlier case-law², the Grand Chamber observed that a positive obligation arose to provide an effective and accessible procedure enabling the applicant to have access to all relevant and appropriate information. It further noted that, in circumstances such as those in the applicant's case, this was an obligation of disclosure not requiring the individual to litigate to obtain it. Since the obligation had not been fulfilled in the applicant's case, the Grand Chamber found unanimously that there had been a breach of Article 8.

(ii) Sexual conduct

K.A. and A.D. v. Belgium raised the issue of the extent to which acts of sado-masochism ought to be protected by the right to respect for private life. In this respect, it resembled the earlier judgment in *Laskey, Jaggard and Brown v. the United Kingdom*³, in which the Court had found no violation of Article 8. In *K.A. and A.D.*, the Court accepted the findings of the domestic courts to the effect that the applicants had failed to respect their undertakings to intervene and stop the treatment – which was extreme in nature – as soon as the "victim" no

1. See *Riera Blume and Others v. Spain*, no. 37680/97, ECHR 1999-VII.

2. See *Gaskin v. the United Kingdom*, judgment of 7 July 1989, Series A no. 160; *Guerra and Others v. Italy*, judgment of 19 February 1998, *Reports* 1998-I; and *McGinley and Egan v. the United Kingdom*, judgment of 9 June 1998, *Reports* 1998-III.

3. Judgment of 19 February 1997, *Reports* 1997-I.

longer consented. Indeed, the applicants had lost control of the situation and the violence had escalated in such a way that even they had admitted that they did not know how it might end. The Court concluded that there had been no violation of Article 8, the convictions having been justified for the protection of the rights of others, taking into account the fact that the victim's consent was open to question.

(iii) Environmental issues

The Court has on several occasions in the past examined the relationship between serious environmental pollution and the right to respect for private and family life and the home¹. In the most recent judgment in this line of cases, *Fadeyeva v. Russia*, the Court confirmed its approach to such situations in finding that there had been a violation of Article 8 of the Convention. The applicant and her family had their home in the “sanitary security zone” around the largest iron smelter in Russia, within which zone it was considered that the effects of pollution could be excessive. Although in theory residential accommodation was not permitted within the zone, thousands of people actually lived there. While it had been established that pollution levels were indeed unacceptable, the applicant's attempts to secure resettlement had been unsuccessful, there being no priority for persons living within a sanitary security zone. Although the smelter had been privatised, the Court noted that the State had authorised its continued operation and found that “although the polluting plant in issue operated in breach of domestic environmental standards, there is no information that the State designed or applied effective measures which would take into account the interests of the local population, affected by the pollution, and which would be capable of reducing the industrial pollution to acceptable levels”.

(iv) Secret surveillance and searches

On numerous occasions in the past the Court has found a violation of the right to respect for private life and/or the home or correspondence on account of the absence of a sufficient legal basis satisfying the requirements of accessibility and foreseeability. In other words, it has concluded that the interference in question was not “in accordance with the law” within the meaning of Article 8 of the Convention. Thus, for example, it has held that the legal basis for censoring detainees' correspondence has been inadequate in a number of different countries, including the United Kingdom, Italy, Romania, Poland, Latvia, Ukraine and France. In 2005 the Court also found a violation on this basis in respect of Moldova in *Ostrovar v. Moldova*. The lack of an adequate legal basis has in the past led to the finding of a violation in respect of secret surveillance and similar infringements of privacy² and in 2005 the Court reached the same conclusion in several judgments: *Sciaccia v. Italy* (photographing an individual under house arrest and making the photograph available to the press), *Vetter v. France* (interception of conversations by means of a listening device installed on private property), *Wisse v. France* (interception and recording of conversations

1. See, in particular, *López Ostra v. Spain*, judgment of 9 December 1994, Series A no. 303-C, but also, with regard to noise pollution, *Hatton and Others v. the United Kingdom* [GC], no. 36022/97, ECHR 2003-VIII, and *Moreno Gómez v. Spain*, no. 4143/02, ECHR 2004-X.

2. See, for example, *Malone v. the United Kingdom*, judgment of 2 August 1984, Series A no. 82; *Halford v. the United Kingdom*, judgment of 25 June 1997, Reports 1997-III; *Kopp v. Switzerland*, judgment of 25 March 1998, Reports 1998-II; *Huvig v. France*, judgment of 24 April 1990, Series A no. 176-B; *Kruslin v. France*, judgment of 24 April 1990, Series A no. 176-A; and *Valenzuela Contreras v. Spain*, judgment of 30 July 1998, Reports 1998-V.

between a detainee and his family), *Ağaoğlu v. Turkey* (interception of telephone calls) and *Antunes Rocha v. Portugal* (security checks). In *Matheron v. France*, which concerned the use in criminal proceedings of the transcripts of recordings of telephone conversations which had been made in the context of separate proceedings, the Court observed that it had already accepted that the law introduced in response to the earlier judgments in *Huvig* and *Kruslin* satisfied the requirements of Article 8¹. However, it concluded that there had nevertheless been a violation because the reasoning of the Court of Cassation, to the effect that it was not for the trial court to assess the lawfulness of decisions taken in a different set of proceedings, had resulted in the applicant being deprived of the protection provided by the law, so that there had been no “effective control” in respect of the recordings.

Failure to comply with the requirements of national law also led to the finding of a violation in a case concerning a search of the applicant’s home by the police (*L.M. v. Italy*), while two further cases concerned searches of business or professional premises. In *Buck v. Germany*, the Court reiterated, with reference in particular to the judgments in *Niemietz v. Germany*² and *Société Colas Est and Others v. France*³, that the term “home” is to be construed “as including also the registered office of a company run by a private individual and a juristic person’s registered office, branches and other business premises” and found that there had been an interference in respect of the search of the applicant’s business premises as well as in respect of the search of his home. It went on to find that, in the special circumstances of the case, in particular the fact that the search had been ordered in connection with a minor speeding offence purportedly committed by the applicant’s son, the interference had been disproportionate. In the same way, the Court held in *Sallinen and Others v. Finland* that the search of the first applicant’s law office as well as of his home, together with the seizure of computer hard disks for copying, constituted an interference with his right to respect for his home and his correspondence. Considering that the search and seizure had been carried out without proper safeguards, the Court concluded that the interference was not “in accordance with the law” and that there had therefore been a violation of Article 8.

(v) Residence and freedom of movement (Article 2 of Protocol No. 4)

In *Sisojeva and Sisojev v. Latvia*, the applicants complained under Article 8 that the Latvian authorities’ refusal to regularise their residence in Latvia breached their right to respect for their private and family life. Mr Sisojev, who had been a soldier in the Soviet army, had been stationed in Latvia in 1968 and had remained there until he was demobilised in 1989. His wife had gone to Latvia in 1969 and their daughter had been born there. Following the break-up of the Soviet Union and the restoration of Latvia’s independence in 1991, the applicants, who had previously been Soviet nationals, became stateless. The Court held by a majority that there had been a breach of Article 8: the authorities’ refusal to provide the applicants with a permanent residence permit had interfered with their right to respect for their private life, having regard to the length of time they had spent in Latvia and the extent of their social and economic ties with that country. Furthermore, no weighty reasons had been adduced as to why a permit could not be granted to the applicants. The case is now pending before the Grand Chamber.

1. See *Lambert v. France*, judgment of 24 August 1998, *Reports* 1998-V.

2. Judgment of 16 December 1992, Series A no. 251-B.

3. No. 37971/97, ECHR 2002-III.

Several judgments dealt with freedom of movement. In *İletmiş v. Turkey*, the applicant, a Turkish national living in Germany, had been arrested in February 1992 during a visit to his family in Turkey, and his passport had been confiscated. He had been released after seven days in custody but his passport had not been returned to him until after he had eventually been acquitted in July 1999. During the criminal proceedings he had been unable to leave Turkey. Although Turkey has not ratified Protocol No. 4 to the Convention, Article 2 of which guarantees freedom of movement (§ 1), and more specifically the right to leave any country, including one's own (§ 2), the Court proceeded to examine the matter under Article 8 of the Convention and found that the confiscation of the applicant's passport and the refusal to return it to him during the lengthy proceedings constituted an interference with his right to respect for private life. Indeed, the Court went so far as to affirm that "the applicant's right to freedom of movement ... is, in this case, an aspect of his right to respect for his private life". In that respect, it took into account the fact that the applicant had lived in Germany for many years and that his wife and children also lived there. It concluded that there was no justification for the lengthy deprivation of the applicant's right to leave the country.

The other cases in which this kind of issue arose were dealt with under the more classic provisions of Protocol No. 4 to the Convention concerning freedom of movement. *Fedorov and Fedorova v. Russia* and *Antonenkov and Others v. Ukraine* both concerned preventive measures applied in the context of criminal proceedings. In the first case, criminal proceedings had been brought against the applicants, a married couple, in September 1996 and February 1998 respectively, and in both instances this had been accompanied by a prohibition on leaving their place of residence without special permission. This measure remained in force until their acquittal in August 2002. Although this judgment was later quashed and the criminal proceedings were resumed, the preventive measure was not renewed during the subsequent proceedings. The Court distinguished the situation from that in *Luordo v. Italy*¹ and a series of similar cases in which the obligation imposed on bankrupts not to leave their place of residence, when applied for an excessively lengthy period of time, had been found to be in breach of the right to freedom of movement. The Court relied on three arguments in that respect. Firstly, it referred to the fact that criminal proceedings were involved: "[I]t is not in itself questionable that the State may apply various preventive measures restricting the liberty of an accused in order to ensure the efficient conduct of a criminal prosecution, including a deprivation of liberty. In the Court's view, an obligation not to leave the area of one's residence is a minimal intrusive measure involving a restriction of one's liberty." Secondly, the Court pointed out that the measure had not been maintained automatically throughout the proceedings, not having been renewed after the initial acquittal. Finally, it observed that the measure had been applied for under six years and four and a half years respectively, considerably less than the fourteen years and eight months in *Luordo* and similar or even longer periods in other Italian bankruptcy cases. The Court then went on to examine whether the applicants had requested to leave their place of residence during the periods in question but found no evidence that they had submitted such requests to the authorities other than on two occasions when the first applicant had in fact been granted permission. It therefore reached the conclusion that the restriction on the applicants' freedom of movement had not been disproportionate.

In the similar case of *Antonenkov and Others*, the applicants had given undertakings not to leave their place of residence without the permission of the investigator or trial judge

1. No. 32190/96, ECHR 2003-IX.

while criminal proceedings against them were pending. The obligation had remained in force for five years and three months. The Court followed the same approach as in *Fedorov and Fedorova* and, noting that one of the applicants had been granted permission to leave his place of residence on two occasions, held that there had been no violation of Article 2 of Protocol No. 4.

Finally in this connection, mention may be made of *Timishev v. Russia*, in which a Russian national of Chechen origin was not allowed to cross from one Russian Republic (Ingushetia) to another (Kabardino-Balkaria), on the basis of an oral instruction issued by the deputy head of the public safety police of the Kabardino-Balkaria Ministry of the Interior to refuse entry to Chechens travelling by private car. The Court considered that in these circumstances the interference with the applicant's freedom of movement was not in accordance with the law. Furthermore, it found that the application of the measure to persons of Chechen origin constituted discriminatory treatment which had no justification and therefore concluded that there had been a violation of Article 14 of the Convention taken in conjunction with Article 2 of Protocol No. 4.

(vi) Paternity

The Court has dealt with several cases raising issues related to the establishment of paternity of children. In 1984, in *Rasmussen v. Denmark*¹, it had found that there had been no violation of Article 14 taken in conjunction with Article 8 where a man's right to contest his paternity of a child born during his marriage was subject to time-limits, whereas his former wife was entitled to institute paternity proceedings at any time, while in *Kroon and Others v. the Netherlands*² it had found a violation of Article 8 in so far as the law did not allow the mother and biological father of a child born while the former's marriage to another man subsisted to contest the husband's paternity, in view of the legal presumption that a child born within wedlock was the child of the husband, who alone could challenge paternity. By contrast, in *Yousef v. the Netherlands*³, the Court had found that there was not simply a formal reason for denying recognition of paternity; rather, the applicant had wished to disrupt his daughter's existing family situation and in those circumstances the Netherlands courts had correctly put the child's best interests first, so that there had been no violation of Article 8. Finally, in *Mikulić v. Croatia*⁴, the issue had been whether the authorities had taken adequate measures to ensure the applicant's right to establish paternity of a child, and the Court had concluded that there had been a violation of Article 8 in that respect.

The two judgments in which this kind of issue arose in 2005 were *Shofman v. Russia* and *Znamenskaya v. Russia*. In the first of these two cases, the applicant complained about the effect of a one-year limitation on contesting paternity, running from the date on which the person concerned learned or should have learnt of the registration of the birth. He had believed that he was the father of a child born during his marriage and had been registered as such but after a divorce had been granted it was established that he could not in fact be the father. Nevertheless, the courts held that the time-limit provided for by the law applicable at the relevant time (and subsequently amended) precluded him from challenging paternity. The Court, referring to a comparative study, observed that most

1. Judgment of 28 November 1984, Series A no. 87.

2. Judgment of 27 October 1994, Series A no. 297-C.

3. No. 33711/96, ECHR 2002-VIII.

4. No. 53176/99, ECHR 2002-I.

States had a time-limit of between six months and two years and observed that it had previously held that a time-limit was in principle justified “by the desire to ensure legal certainty in family relations and to protect the interests of the child”. However, it considered that the essential point was rather the date from which the period was calculated and pointed out that in the case before it there was an important difference, namely that the applicant had not suspected that he was not the father until after the time-limit had actually expired, at which time he had acted promptly. In those circumstances, the Court considered that a fair balance had not been struck.

Znamenskaya raised somewhat different questions and related rather to the position of the mother, who had given birth to a still-born child a few months after her divorce. Her former husband had been registered as the father but the applicant claimed that the true father was a man with whom she had been living for several years as man and wife and who had died a short time after the birth while in detention. The courts refused to examine the applicant’s request that this man be recognised as the father and that the child’s patronym and surname be amended accordingly, as the child had not acquired civil rights. The Court, noting that paternity was not disputed and that recognition of paternity would not have imposed any obligations on anyone, considered that there were no interests conflicting with those of the applicant and observed that the domestic courts had not referred to any legitimate or convincing reasons for maintaining the status quo. Moreover, the Government had accepted that the courts had erred in their assessment of the situation. The Court therefore concluded that, as in *Kroon and Others*, cited above, a legal presumption had been allowed to prevail over biological and social reality, “without regard to both established facts and the wishes of those concerned and without actually benefiting anyone”, which was not compatible with the obligation to secure effective respect for private and family life.

(vii) Enforcement of custody and access

In recent years, there has been a noticeable increase in the number of cases concerning the adequacy of the measures taken by the domestic courts and authorities to ensure effective exercise of a parent’s custody or access rights¹, an issue which has arisen in a range of countries and has often had a transfrontier element involving application of the Hague Convention. This phenomenon continued to generate cases in 2005, including the following judgments: *Zawadka v. Poland*, *Siemianowski v. Poland*, *Bove v. Italy* and *Reigado Ramos v. Portugal*, all of which concerned the right of access of fathers to their children, *H.N. v. Poland*, which concerned court decisions ordering the return of a child to its father, *Karadžić v. Croatia*, concerning the adequacy of the measures taken by the Croatian authorities to return a child to its mother in Germany, and *Monory v. Romania and Hungary*, concerning, *inter alia*, the adequacy of the measures taken by the Romanian authorities to secure the return of a child to its father, who had been awarded joint custody. The Court found a violation in each of these cases, except *Siemianowski*, in which it took into account in particular the fact that the applicant had not been completely deprived of access during the period in question.

1. See, in particular, *Ignaccolo-Zenide v. Romania*, no. 31679/96, ECHR 2000-I; *Sylvester v. Austria (no. 1)*, nos. 36812/97 and 40104/98, 24 April 2003; *Iglesias Gil and A.U.I. v. Spain*, no. 56673/00, ECHR 2003-V; *Maire v. Portugal*, no. 48206/99, ECHR 2003-VII; *Hansen v. Turkey*, no. 36141/97, 23 September 2003; *Kosmopoulou v. Greece*, no. 60457/00, 5 February 2004; and *Voleský v. the Czech Republic*, no. 63627/00, 29 June 2004.

(viii) Prison visits

Two judgments dealt with the right of prisoners to maintain contact with members of their families. In *Bagiński v. Poland*, although the applicant's mother had been allowed to visit him during the investigation, her requests were refused after the trial started and she was not permitted to visit him during a seventeen-month period. The applicant's brother had been allowed to visit him on only two occasions during that same period. The Court held that there had been a violation of Article 8. *Schemkamper v. France* raised the different question of whether the applicant should have been allowed out of prison for eight days to visit his father, who had suffered several heart attacks. The judge had refused the applicant's request on the ground that he had only served a relatively short period of his twenty-year sentence. The Court, noting that the applicant's parents had visited him some twenty times over the following few months, held that there had not been a violation of Article 8.

(ix) Expulsion

In *Üner v. the Netherlands* the Court had to consider whether the applicant's exclusion from the territory of the respondent State for a period of ten years breached his right to respect for family life. The applicant had arrived in the Netherlands at the age of 12 with his mother and two brothers to join his father. He had later obtained a permanent residence permit. He had begun a relationship with a Netherlands national and in 1992 the couple had had a son. The applicant had been convicted of manslaughter and assault in 1994 and sentenced to seven years' imprisonment. Another son had been born to the couple when the applicant was in prison. In 1997 the applicant had been given a ten-year exclusion order and the following year he had been deported to Turkey. Both his sons have Netherlands nationality and neither they nor his partner speak Turkish. The Chamber found, by a majority, in application of the *Boultif v. Switzerland* principles¹, that there had been no breach of Article 8 in the circumstances, considering that the decision of the authorities of the respondent State had struck a fair balance between the interests at stake. The case is pending before the Grand Chamber.

(x) Discrimination

Discrimination issues have already been examined in the context of Articles 2 and 3 of the Convention. One further case in which Article 14 was of particular relevance is *Rainys and Gasparavičius v. Lithuania*, in which two former officers of the Soviet Secret Service complained that they had been dismissed from their jobs in the private sector and had thereafter been excluded from obtaining employment in certain private sector spheres. They alleged that these measures had been taken on account of their views but the Court followed its conclusion in *Sidabras and Džiautas v. Lithuania*² and held that the application of the employment restrictions under the KGB Act did not encroach upon the right to freedom of expression. It thus found no violation of Article 10, either alone or taken in conjunction with Article 14. It did, however, find that there had been a violation of Article 14 taken in conjunction with Article 8, not only in respect of the restriction on employment in certain private sector spheres (which it had examined in *Sidabras and Džiautas*) but also in respect of the applicants' actual dismissal.

1. No. 54273/00, ECHR 2001-IX.

2. Nos. 55480/00 and 59330/00, ECHR 2004-VIII.

Freedom of religion (Article 9)

One of the most emotive issues dealt with by the Court in 2005 concerned the wearing of the Islamic headscarf by Muslim women. The European Commission of Human Rights had a number of years ago declared inadmissible two applications brought against Turkey by young women students who had objected to being obliged to provide their university with identity photographs showing them with their heads uncovered¹, and the Court itself had previously rejected an application by a schoolteacher in Switzerland who had complained about not being allowed to wear the headscarf in school². In that respect, the Court had emphasised a teacher's position of authority and influence, especially in the primary school context. The case of *Leyla Şahin v. Turkey* concerned a different aspect of the matter, namely the prohibition issued by Istanbul University on wearing the headscarf at lectures, courses and tutorials. The applicant, a medical student, was refused access to lectures and examinations and was later suspended for participating in a demonstration against the instruction. Her attempts to challenge the rules in the administrative courts were unsuccessful.

In its judgment, the Grand Chamber placed great emphasis on the importance of secularism in the Turkish constitutional system in reaching the conclusion that there had been no violation of either Article 9 of the Convention or of Article 3 of Protocol No. 1. It affirmed that the "notion of secularism [is] consistent with the values underpinning the Convention" and accepted that "upholding that principle, which is undoubtedly one of the fundamental principles of the Turkish State which are in harmony with the rule of law and respect for human rights, may be considered necessary to protect the democratic system in Turkey". Referring to the judgment in *Refah Partisi (the Welfare Party) and Others v. Turkey*³, which concerned the banning of a pro-Islamic political party, the Grand Chamber stated: "An attitude which fails to respect that principle will not necessarily be accepted as being covered by the freedom to manifest one's religion and will not enjoy the protection of Article 9 of the Convention." The Grand Chamber furthermore endorsed the Chamber's reference to the importance of gender equality, stressing that "there must be borne in mind the impact which wearing such a symbol, which is presented or perceived as a compulsory religious duty, may have on those who choose not to wear it", as well as to the political significance the headscarf had taken on in Turkey and the existence of extremist political movements there. Indeed, the very specific Turkish context was an important factor in the Court's consideration of the case.

As to the proportionality of the measure, the Court took into account the fact that practising Muslim students were free, "within the limits imposed by the constraints of educational organisation", to manifest their religion in accordance with habitual forms of Islamic observance, as well as the fact that the university authorities had sought through continued dialogue to avoid barring access to the university to students wearing the Islamic headscarf. On that basis, it found that the interference was justified and proportionate. It may be noted that this approach has subsequently been extended to a prohibition on the

1. See *Karaduman v. Turkey*, no. 16278/90, and *Bulut v. Turkey*, no. 18783/91, Commission decisions of 3 May 1993, unreported.

2. *Dahlab v. Switzerland* (dec.), no. 42393/98, ECHR 2001-V.

3. [GC], nos. 41340/98, 41342/98, 41343/98 and 41344/98, ECHR 2003-II.

wearing of the Islamic headscarf by both pupils in secondary schools and university teachers¹.

Freedom of expression (Article 10)

(i) Defamation

As in past years, a considerable proportion of the judgments dealing with freedom of expression related to defamation, and in particular defamation of public officials. A history of personal antagonism was the background to the case in *Pakdemirli v. Turkey*, which concerned the defamation of the President of Turkey by a member of parliament and former minister. The Court found a violation of Article 10, as it did in *Turhan v. Turkey* and *Biol v. Turkey*, which both concerned defamation of ministers. Two Ukrainian cases may also be mentioned in this context: in *Ukrainian Media Group v. Ukraine* damages had been awarded against the applicant newspaper in respect of articles that were held to have defamed certain politicians, while in *Salov v. Ukraine* the applicant had been convicted of disseminating false information about a presidential candidate – namely that he had died – immediately prior to the elections. The Court, while agreeing that the statement had been false, noted that it had not been produced or published by the applicant himself but had been referred to by him in conversations with others as a personalised assessment of factual information, the veracity of which he doubted, and that the domestic courts had failed to prove that the applicant was intentionally trying to deceive voters. The Court observed: “Article 10 of the Convention as such does not prohibit discussion or dissemination of information received even if it is strongly suspected that this information might not be truthful. To suggest otherwise would deprive persons of the right to express their views and opinions about statements made in the mass media and would thus place an unreasonable restriction on the freedom of expression.” The Court also took into account the very limited circulation of the statement and in particular the severity of the penalty imposed – five years’ imprisonment, suspended for two years, a fine and the consequent annulment of the applicant’s practising certificate – in concluding that there had been a violation of Article 10.

In *Sokolowski v. Poland*, the applicant had been convicted after a private prosecution had been brought against him by a local councillor who considered that he had been defamed in his role as a member of the electoral commission. *Grinberg v. Russia* related to defamation of a regional governor, while *Saviçchi v. Moldova* concerned defamation of a police officer. Violations were found in each of these cases and also in *Urbino Rodrigues v. Portugal*, which arose out of a dispute between two journalists. The applicant had published an article critical of a local politician with regard to his role as local education coordinator and another journalist had then written an article in response, attacking the applicant’s writings. This had led the applicant to publish a reply critical of the other journalist, as a result of which he had been convicted of defamation.

In the context of defamation, mention should also be made of *Independent News & Media PLC and Independent Newspapers (Ireland) Ltd v. Ireland*, which raised the issue of the level of damages awarded in respect of defamation. The award made against the applicant companies had been three times higher than any previous award made by the Irish

1. See *Köse and Others v. Turkey* (dec.), no. 26625/02, 24 January 2006, and *Kurtulmuş v. Turkey* (dec.), no. 65500/01, 24 January 2006.

Supreme Court and the case thus raised issues similar to those previously examined by the Court in *Tolstoy Miloslavsky v. the United Kingdom*¹, which however the Court distinguished, finding that “having regard to the particular circumstances of the present case, notably the measure of appellate control, and the margin of appreciation accorded to a State in this context”, it had not been demonstrated that there were “ineffective or inadequate safeguards against a disproportionate award of the jury”.

(ii) Freedom of expression and religious sensibilities

Another topical issue was raised in *I.A. v. Turkey*, which concerned the conviction of a publisher in 1996 for blasphemy. The domestic court had relied on a report submitted by a panel of experts in finding that the book in question, *The Forbidden Verses*, contained passages blasphemous of Allah, Islam, Mohammed and the Koran. It had sentenced the applicant to two years’ imprisonment and payment of a fine but had commuted the sentence to a global fine of approximately 16 United States dollars. The European Court, while repeating its case-law that the protection offered by Article 10 extends to information and ideas which shock, offend or disturb and that those who choose to manifest their religious beliefs “must tolerate and accept the denial by others of their religious beliefs and even the propagation by others of doctrines hostile to their faith”², also reiterated that “the manner in which religious beliefs and doctrines are opposed or denied is a matter which may engage the responsibility of the State, notably its responsibility to ensure the peaceful enjoyment of the right guaranteed under Article 9 to the holders of those beliefs and doctrines” and that the duties and responsibilities inherent in the exercise of freedom of expression include “an obligation to avoid as far as possible expressions that are gratuitously offensive to others and thus an infringement of their rights, and which therefore do not contribute to any form of public debate capable of furthering progress in human affairs”. On that basis, it observed that the statements in the book in issue were not merely insulting but constituted a slanderous attack on Mohammed which, notwithstanding Turkey’s strong attachment to secularism, practising Muslims could legitimately regard as an unjustified and offensive attack on them. Noting that the copies of the book had not been seized and that the sanction imposed on the applicant was very modest, the Court concluded, by four votes to three, that his conviction was not a disproportionate measure.

A different situation arose in *Paturel v. France*, in which the applicant had been convicted of defaming an anti-sect association in his book, *Sectes, religions et libertés publiques*. The Court, disagreeing with the assessment made by the domestic courts, considered that the passages in question were value judgments rather than factual assertions and that there was a sufficient factual basis for them, despite the domestic courts having taken the view that the numerous documents submitted by the applicant were not relevant. The Court moreover rejected the domestic courts’ reliance on the applicant’s own membership of the Jehovah’s Witnesses – which they had regarded as underlying his personal animosity towards the anti-sect association – as an important element. It concluded that the approach of the domestic courts, requiring that the applicant prove his allegations while refusing to admit as evidence the documents he had produced, together with the reference to his supposed partiality on account of his own loyalties, fell outside the margin of appreciation, so that there had been a violation of Article 10 of the Convention.

1. Judgment of 13 July 1995, Series A no. 316-B.

2. See *Otto-Preminger-Institut v. Austria*, judgment of 20 September 1994, Series A no. 295-A.

(iii) Contempt of court

The key issues raised under Article 6 by *Kyprianou v. Cyprus* have been summarised above. The applicant also alleged that the five-day term of imprisonment imposed on him for contempt of court breached his right to freedom of expression guaranteed by Article 10. The Grand Chamber, by a majority, agreed. It found, *inter alia*, that, in the circumstances, the custodial penalty was disproportionately severe on the applicant and was capable of having a “chilling effect” on the performance by lawyers of their duties as defence counsel.

Freedom of peaceful assembly and freedom of association (Article 11)

(i) Prohibition of associations

The number of cases relating to Article 11 is normally relatively small and in 2005 there were only around a dozen judgments in which the rights guaranteed by that provision were in issue. As far as freedom of association is concerned, two further judgments dealt with the dissolution of political parties in Turkey (*Democracy and Change Party and Others v. Turkey* and *Emek Partisi and Şenol v. Turkey*), and in line with previous case-law in that respect the Court held that in the absence of any indication of support for the use of violence by the parties, their dissolution could not be regarded as necessary in a democratic society. In *IPSD and Others v. Turkey* it reached the same conclusion with regard to an association whose aim was to bring together those in a situation of poverty in order to enlighten them as to their interests.

In the same way, the Court held in *Partidul Comunistilor (Nepeceristi) and Ungureanu v. Romania* that the refusal to register the applicant association, the “Party of communists who have not been members of the Romanian Communist Party” was disproportionate, notwithstanding the historical background, in so far as the domestic courts had not shown how the applicant association’s programme and constitution were contrary to the country’s constitutional and legal order or to the fundamental principles of democracy, and it could not be said that the programme concealed different objects and intentions, since the refusal of registration had prevented the applicant association from taking any action. A further judgment of this kind was given in *The United Macedonian Organisation Ilinden – PIRIN and Others v. Bulgaria*, concerning the dissolution of an association considered to be unconstitutional¹.

(ii) Freedom of assembly

Judgment was also delivered in another case brought partly by the same applicant association, namely *The United Macedonian Organisation Ilinden and Ivanov v. Bulgaria*, which however concerned the other aspect of Article 11, that of freedom of peaceful assembly. The case is one of several raising similar issues, that is the refusal of the authorities to allow the applicant association’s members and supporters to hold meetings in the period 1998-2003². Despite the Government’s assertion that following the judgment in *Stankov and the United Macedonian Organisation Ilinden* in 2001 the authorities had taken measures to ensure the exercise of the applicants’ freedom of assembly, the Court

1. See also *The United Macedonian Organisation Ilinden and Others v. Bulgaria*, no. 59491/00, 19 January 2006, concerning the refusal to register the same association.

2. See *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, nos. 29221/95 and 29225/95, ECHR 2001-IX.

perceived no material difference in the case before it, noting that, with a few exceptions, “the authorities persisted in their efforts to impede the holding of the commemorative events which Ilinden sought to organise, much as they had during the period 1994-97, when they had ‘adopted the practice of imposing sweeping bans on Ilinden’s meetings’” and further observing that “the authorities’ justification for so doing was substantially the same as in *Stankov and the United Macedonian Organisation Ilinden* and thus insufficient to make the impugned measures necessary in a democratic society”. The Court further observed that on one occasion when the authorities had not interfered with the applicants’ freedom of assembly, they had “appeared somewhat reluctant to protect the members and followers of Ilinden from a group of counter-demonstrators”, resulting in some of the participants being subjected to physical violence¹. In this respect, the Court held that the authorities had failed to discharge their positive obligation to take reasonable measures to protect the participants.

In another related case, *Ivanov and Others v. Bulgaria*, concerning the banning of two rallies involving the same association, the Court similarly found a violation of Article 11, stating with regard to the necessity of the prohibition: “Even if it was not unreasonable for the authorities to suspect that certain leaders of [the United Macedonian Organisation] Ilinden – PIRIN (which was later declared unconstitutional ...), or small groups which had developed from it, harboured separatist views and had a political agenda that included the notion of autonomy for the region of Pirin Macedonia or even secession from Bulgaria and could hence expect that separatist slogans would be broadcast by some participants during the planned rallies, such a probability could not *per se* justify their banning.”

The activities of a Macedonian minority association were also at the origin of an application against Greece, *Ouranio Toxo and Others v. Greece*. One of the applicants, a political party, had opened an office in the town of Florina and had put up a sign with its name (which means “rainbow”) in both Greek and Macedonian. This had led to a series of disturbances. Both the local religious authorities and the municipal council had instigated demonstrations against the opening of the office and the police had removed the sign, on the order of the local prosecutor. After the applicants had put up a new one, a crowd (among which there were local officials) had gathered outside the office and shouted insults and threats. During the night, the mob had broken into the office, assaulted members of the association and caused considerable damage. The police had refused to intervene and no action had been taken against any of the participants, although members of the party had been prosecuted for incitement to breach of the peace. In finding that there had been a violation of Article 11 of the Convention, the Court emphasised the responsibility of State authorities to defend and promote the values inherent in a democratic system, such as pluralism, tolerance and social cohesion. In that respect, it considered that the local authorities had exacerbated the situation and that the police had failed to take adequate measures to avoid or at least minimise the violence.

(iii) Trade unions

As far as trade union activities are concerned, a group of Turkish cases (*Aydın and Others v. Turkey*, *Bulğa and Others v. Turkey* and *Akat v. Turkey*) concerned the transfer of public employees from one place of employment to another. The applicants alleged that

1. See the earlier case of *Plattform “Ärzte für das Leben” v. Austria*, judgment of 21 June 1988, Series A no. 139.

they had been transferred because of their trade union activities. The Court observed that the applicants' terms of employment foresaw the possibility of such transfer and noted that the applicants remained members of their respective unions and could continue their activities in their new positions. It considered that the authorities had acted in the interests of good administration and within their margin of appreciation, so that the substance of the right to form and join trade unions had not been infringed and there had been no violation of Article 11.

Right to marry and found a family (Article 12)

Cases raising issues under Article 12 of the Convention are rather rare and *B. and L. v. the United Kingdom* presented the Court with a novel question, namely whether the prohibition on marriage between former parent-in-law and son- or daughter-in-law violated that provision. The first applicant wished to marry the second applicant, who had previously been married to his son (who was still alive), and they lived together with the second applicant's child (the first applicant's grandchild). The Court, observing that there was no law preventing the couple from having an extra-marital relationship, that a report had recommended removing the ban and that exceptions had been made to it in the past, concluded that there had been a violation of the right to marry.

Right to education (Article 2 of Protocol No. 1)

Prior to the previously discussed case of *Leyla Şahin v. Turkey*, there had been some doubt about whether the right to education extended to higher education. The Grand Chamber resolved this issue in affirming that "it is clear that any institutions of higher education existing at a given time come within the scope of the first sentence of Article 2 of Protocol No. 1, since the right of access to such institutions is an inherent part of the right set out in that provision". However, it found in the light of the same considerations as led it to hold that there had been no violation of Article 9 that there had been no violation of Article 2 of Protocol No. 1 either.

Electoral rights (Article 3 of Protocol No. 1)

Another Grand Chamber judgment, *Hirst v. the United Kingdom (no. 2)*, examined the disenfranchisement of all convicted prisoners in the United Kingdom. The Court took into account a comparative study of the legal systems of member States in reaching the conclusion that the prohibition, which it considered to be of a "blanket" nature (that is to say, applying to all persons serving a prison sentence following conviction, whether for life or for a few days), could not be justified.

Another interesting judgment relating to election rights was *Py v. France*, which concerned the requirement of ten years' residence in New Caledonia in order to be registered to vote in elections for its Congress. The case firstly raised the question whether the Congress could be considered part of the "legislature" within the meaning of Article 3 of Protocol No. 1, and in that respect, on the basis of an analysis of its role and powers, the Court concluded that it was "an institution with a decisive role to play, depending on the issues being dealt with, in the legislative process in New Caledonia" and was thus "sufficiently involved in this specific legislative process to be regarded as part of the 'legislature' of New Caledonia for the purposes of Article 3 of Protocol No. 1". The Court then went on to observe that both the former Commission and the Court itself had "taken the view that having to satisfy a residence or length-of-residence requirement in order to

have or exercise the right to vote in elections is not, in principle, an arbitrary restriction of the right to vote". It further considered that the residence requirement in the particular case pursued a legitimate aim, namely to ensure that voters have a sufficiently strong tie to the territory. As to proportionality, the Court recognised that the restriction might appear to be disproportionate, taking into account that the period corresponded to two mandates of a member of Congress. However, it then had regard to whether there were "local requirements" within the meaning of Article 56 of the Convention, as well as to France's declaration at the time of ratification, and considered that there were special circumstances, namely the fact that New Caledonia is in a transitional phase prior to acquiring full sovereignty and the contribution the ten-year requirement had made to alleviating the conflict there. The Court furthermore referred to the views expressed by the United Nations Human Rights Committee in this respect in concluding that "the history and status of New Caledonia are such that they may be said to constitute 'local requirements' warranting the restrictions imposed on the applicant's right to vote".

Property rights (Article 1 of Protocol No. 1)

Several of the Grand Chamber judgments delivered in 2005 concerned property rights under Article 1 of Protocol No. 1 and certain other cases of this kind were referred to the Grand Chamber. This seems to be an indication of the increasing complexity of the questions that are being raised under that provision.

(i) Rent control

Hutten-Czapska v. Poland concerned the manner in which the rent-control legislation of the respondent State operated so as to prevent the applicant and other landlords in a similar situation from receiving rent reasonably commensurate with the general costs of maintaining the properties they let to tenants. After finding that the applicant was required to bear a disproportionate and excessive burden and for that reason there had been a breach of Article 1 of Protocol No. 1, the Court went on to note that the violation had its origin in a systemic problem connected with the malfunctioning of domestic legislation. On that account, as in the earlier case of *Broniowski v. Poland*¹, it applied the "pilot judgment" procedure, directing that the respondent State must take appropriate measures to redress the systemic violation. The case was subsequently referred to the Grand Chamber, which in a judgment of 19 June 2006 in essence endorsed the findings of the Chamber.

(ii) "Legitimate expectation"

In its judgment in *Kopecký v. Slovakia* in 2004², the Grand Chamber had sought to clarify the scope of the notion of a "legitimate expectation". The approach adopted in that judgment was followed in several other cases before the Grand Chamber in 2005. In the above-mentioned cases in *Draon v. France* and *Maurice v. France* it had to rule on whether legislative measures amending, with retroactive effect, the law on compensation in the area of medical negligence had deprived the applicants of their "possessions" within the meaning of Article 1 of Protocol No. 1. Before the measures had come into force the applicants had initiated proceedings against hospital authorities, relying on the law as it stood and had already obtained provisional awards in their favour. The Grand Chamber

1. [GC], no. 31443/96, ECHR 2004-V.

2. [GC], no. 44912/98, ECHR 2004-IX.

found that, having regard to the settled case-law of the domestic courts, the applicants had a claim in respect of which they could legitimately expect to obtain compensation for damage at the level and in accordance with the law as it stood before the adoption of the retroactive measures. Both applicants therefore enjoyed “possessions” and Article 1 of Protocol No. 1 was as a result applicable. The Grand Chamber found a violation in both cases on the ground that the result of the measures was to deprive the applicants, without sufficient compensation, of a substantial portion of the damages they had claimed, thus making them bear an individual and excessive burden. The authorities had not therefore struck a fair balance.

(iii) Restitution of property

Numerous cases of refusal of restitution of previously nationalised property to the original owners (or, often, their successors) in applications concerning former Soviet bloc countries have been examined by the Court over the last few years. In *Străin and Others v. Romania*, a variation on this theme was presented, the applicants’ property having been unlawfully nationalised and sold to a third party while restitution proceedings were under way. This unlawfulness, combined with the absence of any compensation whatsoever, was enough for the Court to find a violation. In another Romanian case, *Păduraru v. Romania*, concerning deprivation of property as a result of the sale to third parties of property that had previously been nationalised, the Court examined the matter from the point of view of the State’s positive obligation to react speedily and coherently to a problem of general concern and concluded that the State had failed to fulfil that obligation, thus disrupting the requisite fair balance.

In the decision in *Von Maltzan and Others v. Germany*, the applicants had been refused restitution, or adequate compensation in lieu, in respect of the expropriation of their ancestors’ property in the former German Democratic Republic (GDR). The Grand Chamber found, by a majority, that the applicants did not have “possessions” at the time of the reunification of Germany and no legitimate expectation that they would have their property restored to them or be paid compensation commensurate with its value. In this connection the applicants had relied in particular on a Joint Declaration of the Federal Republic of Germany (FRG) and the GDR adopted on the eve of reunification in support of their argument that they had “possessions”. However, in declaring that their complaint was incompatible *ratione materiae* with the Convention, the Grand Chamber found, among other things, that the German Government, at the time of reunification, had deliberately left open both the question as to the actual principle of compensation payments and the question of the amount. The applicants’ belief that the laws then in force would be changed to their advantage could not be regarded as a form of legitimate expectation. It reiterated that there is a difference between a mere hope, however understandable that hope may be, and a legitimate expectation, which must be of a more concrete nature and be based on a legal provision or have a solid basis in the domestic case-law.

Like *Von Maltzan and Others*, *Jahn and Others v. Germany* also had its origin in the unique context of German reunification. Pursuant to a 1990 land-reform law adopted by the parliament of the GDR in 1990, the applicants had become the owners of property in their capacity as heirs of the so-called “new settled farmers” who had obtained land for agricultural use in 1946 in the Soviet-occupied zone of Germany. The 1990 law was incorporated into the legal order of the reunified German State. In 1992, a new land-reform law was enacted which resulted in the applicants having to assign their property to the tax authorities without obtaining any compensation. The Grand Chamber, by a majority, found

that a number of exceptional circumstances could be identified which served to justify the expropriation of the applicants' property in the absence of any compensation (for example, the 1990 law was passed by a parliament that had not been democratically elected and during a transitional period between two regimes that was inevitably marked by upheavals and uncertainties; the FRG parliament could not be deemed to have been unreasonable in considering that it had a duty to correct the effects of the 1990 law for reasons of social justice). There had therefore been no violation of Article 1 of Protocol No. 1.

(iv) Impoundment in application of a European Community regulation

Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland concerned the seizure by the Irish authorities of an aircraft leased from Yugoslav Airlines. The seizure was made pursuant to a European Community Council regulation which, in turn, had implemented the United Nations sanctions regime against the former Federal Republic of Yugoslavia. The Court of Justice of the European Communities, in a preliminary ruling requested by the Irish Supreme Court, found that the aircraft was covered by the said regulation. The Grand Chamber addressed the applicant's argument that it had had to bear an excessive burden resulting from the manner in which the State had applied the sanctions regime and that it had suffered significant financial loss. The Grand Chamber found, unanimously, that there had been no breach of Article 1 of Protocol No. 1. The interference with the applicant's property right was effected pursuant to the respondent State's obligation to comply with Community law, in itself a legitimate aim. As to the Convention-compatibility of the measure, it found that the protection of fundamental rights by Community law can be considered to be, and to have been at the relevant time, "equivalent" to that of the Convention system. A presumption therefore arose that Ireland had not departed from the requirements of the Convention when it implemented legal obligations flowing from its membership of the European Community. In the circumstances of the case, that presumption was not rebutted since it could not be said that the level of protection of the applicant's property rights was manifestly deficient. The impugned impoundment was therefore justified.

(v) Occupation of property

A further case which raised new and important legal issues and which has also been referred to the Grand Chamber is *J.A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd v. the United Kingdom*, which concerned the loss of ownership of land by virtue of adverse possession. The applicant company owned twenty-three hectares of agricultural land which was occupied by neighbouring proprietors under a grazing agreement. Although notice to vacate had been served on them on expiry of the agreement, as the applicant company intended to seek planning permission to develop the land, they had continued to use it for grazing without the owners' permission and had eventually claimed that they had obtained title to the land by virtue of adverse possession for the statutory twelve-year period. This claim was ultimately upheld by the House of Lords, despite the expression of reservations about the fairness of the outcome. The law had been amended in the meantime to require anyone claiming title by adverse possession to give notice to the owner. In a Chamber judgment, the Court, by a majority of four to three, considered that the applicant company had been deprived of its possessions and, while recognising that the compulsory transfer of property from one individual to another may be in the public interest, the lack of compensation combined with the lack of procedural guarantees – no requirement of notification – had imposed an individual and excessive burden that upset the fair balance

between the public interest and the applicant company's right to peaceful enjoyment of its possessions.

N.A. and Others v. Turkey raised somewhat similar issues, in so far as the applicants were deprived of their title to property without compensation, although the legal basis for the interference was quite different and the deprivation was in favour of the State. The applicants had inherited the title to property which had been registered in the name of a private individual in the 1950s. They had thereafter paid the taxes on the property and in 1986 had obtained a certificate from the authorities with a view to constructing a hotel. However, the State Treasury then brought proceedings against them and succeeded in having their title annulled on the ground that the land formed part of the coastal belt and could not be held in private ownership. The title was consequently registered in the name of the State and the demolition of the hotel was ordered. The applicants' action for damages was dismissed on the ground that the State was not responsible for their losses, since their title had been void from the outset. The Court again accepted that the deprivation of property was in the public interest but held that the absence of any compensation whatsoever upset the fair balance, so that there had been a violation of Article 1 of Protocol No. 1.

In its 1996 judgment on the merits in *Loizidou v. Turkey*¹, the Court had concluded that the denial of access to the applicant's property in northern Cyprus, which she had been obliged to abandon in 1974, was imputable to Turkey and that there had been a violation of her right to the peaceful enjoyment of her possessions. As discussions on execution of that judgment continued for several years without any concrete result, the Court again took up its examination of a large number of follow-up cases (approximately 1,400) and in December 2005 it delivered a judgment in *Xenides-Arestis v. Turkey*. Applying the *Loizidou* judgment, it found that there had been a violation of Article 1 of Protocol No. 1 but it also found a violation of Article 8 of the Convention, in so far as the applicant had been denied access to her home in Famagusta (unlike Mrs Loizidou, who had not had a "home" in northern Cyprus²). More importantly, the Court went on to indicate, under Article 46 of the Convention, that the respondent State "must introduce a remedy which secures genuinely effective redress for the Convention violations identified in the instant judgment in relation to the present applicant as well as in respect of all similar applications pending before it" and specified that the remedy should be introduced within three months of the delivery of the judgment, with redress being afforded within three months thereafter. This indication was further evidence of the Court's increasing willingness to identify the general measures a State ought to take in order to comply with its judgment and, although the judgment is not a "pilot judgment" in the strict sense, it forms part of a group of judgments in which the Court has significantly developed its role in relation to the execution of judgments.

(vi) Trade marks

Anheuser-Busch Inc. v. Portugal raised novel issues relating to the registration of trade marks and has been referred to the Grand Chamber. In its judgment, the Chamber, after holding an oral hearing, held by four votes to three that there had been no violation of Article 1 of Protocol No. 1. The applicant company's "Budweiser" trade mark was

1. Judgment of 18 December 1996, *Reports* 1996-VI.

2. See *Demades v. Turkey*, no. 16219/90, 31 July 2003.

registered in Portugal in 1995, following the cancellation, as a result of a court decision, of the registration of the appellation of origin “Budweiser Bier” by a Czechoslovak company. In further proceedings, the court of appeal ordered the cancellation of the applicant company’s trade mark, on the basis of a 1986 agreement between Portugal and Czechoslovakia. The Supreme Court upheld that decision, considering in particular that the appellation of origin “Ceskebudejovicky Budvar”, which translated into German as “Budweis” or “Budweiss”, indicated a product from the České Budějovice region and was therefore protected by the agreement. The Chamber, while recognising that the initial registration of its trade mark had conferred on the applicant company a pecuniary interest which “benefited from a degree of legal protection”, found that the company’s position in law was not sufficiently strong to amount to a “legitimate expectation”, since only final confirmation of the registration, in the absence of objections, could ensure materialisation of the property right. In reaching this conclusion, the Chamber observed: “[W]hile it is clear that a trade mark constitutes a ‘possession’ within the meaning of Article 1 of Protocol No. 1, this is only so after final registration of the mark, in accordance with the rules in force in the State concerned. Prior to such registration, the applicant does, of course, have a hope of acquiring such a ‘possession’, but not a legally-protected legitimate expectation.” It therefore concluded that Article 1 of Protocol No. 1 was not applicable.

(vii) Benefits and pensions

In its admissibility decision in *Stec and Others v. the United Kingdom*, the Grand Chamber had the opportunity to clarify the case-law on the applicability of Article 1 of Protocol No. 1 to non-contributory welfare benefits. The applicants had argued that the conditions governing entitlement to the non-contributory benefits in issue in their cases were discriminatory on grounds of sex since the right to continue to receive the benefits was linked to the pensionable age in the United Kingdom, namely sixty for a woman and sixty-five for a man. To be able to rely on Article 14 of the Convention, they had to persuade the Grand Chamber that, notwithstanding the non-contributory nature of the benefits, they had a proprietary interest which attracted the applicability of Article 1 of Protocol No. 1. The Grand Chamber noted in this connection that if a Contracting State had in force legislation providing for the payment as of right of a welfare benefit – whether conditional or not on the prior payment of contributions – that legislation had to be regarded as generating a proprietary interest falling within the ambit of Article 1 of Protocol No. 1 for persons satisfying its requirements. It added that, although that provision did not include the right to receive a social security payment of any kind, if a State did decide to create a benefits scheme, it had to do so in a manner that was compatible with Article 14. The merits of the applicants’ cases were considered separately in the light of the parties’ further written submissions and in a judgment delivered on 12 April 2006 the Grand Chamber found by a majority that there had been no breach of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1.

Although the Convention does not guarantee any right to a pension of a particular amount, the Court has recognised that a pension claim can constitute a “possession” within the meaning of Article 1 of Protocol No. 1 if it is established by a final and enforceable court decision. In *Solodiyuk v. Russia*, the Court found that the applicants’ entitlement to receive their pension in the month for which it was due was established by law and had been indirectly confirmed by court decisions. However, during an eleven-month period, payment of the pensions had been delayed for up to four months, at a time when inflation was very unstable and resulted in a significant loss of purchasing power, and in the Court’s view that had imposed an individual and excessive burden on the applicants.

Conclusion

2005 saw not only a large increase in the total number of judgments delivered by the Court but also, and perhaps more significantly, a noticeable increase in the number of cases raising complex and important legal issues. This evolution is an indication of the rich variety of legal questions the Court is being called upon to address and is reflected in numerous important developments in its case-law. Many of the Court's judgments have a wide impact in the social, economic and political spheres as well as in purely legal terms and its recent willingness to indicate the general measures which are required to remedy a systemic problem has clearly enhanced its role as a guarantor of fundamental rights and freedoms throughout Europe.

**X. SUBJECT MATTER
OF JUDGMENTS DELIVERED BY THE COURT
IN 2005**

**SUBJECT MATTER OF JUDGMENTS
DELIVERED BY THE COURT IN 2005**

A. Subject matter of selected judgments, by Convention Article

Article 2

Cases concerning the right to life

Disappearances and effectiveness of investigations (*Türkoğlu v. Turkey*, no. 34506/97; *Akdeniz v. Turkey*, no. 25165/94; *Toğcu v. Turkey*, no. 27601/95; *Taniş and Others v. Turkey*, no. 65899/01; *Özgen and Altındağ v. Turkey*, no. 38607/97; *Nesibe Haran v. Turkey*, no. 28299/95)

Abduction and killing of applicant's brother and effectiveness of investigation (*Koku v. Turkey*, no. 27305/95)

Killing of applicant's relative by unidentified perpetrators after being taken into custody and effectiveness of investigation (*Süheyla Aydın v. Turkey*, no. 25660/94; *Çelikkilek v. Turkey*, no. 27693/95; *Yasin Ateş v. Turkey*, no. 30949/96)

Failure to prevent murder of member of parliament's son in parliamentary accommodation compound and effectiveness of investigation (*Güngör v. Turkey*, no. 28290/95)

Shooting by military police of two unarmed Roma conscripts who had escaped from detention imposed for being absent without leave, and lack of effective investigation (*Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98)

Fatal shootings by police and effectiveness of investigations (*Bubbins v. the United Kingdom*, no. 50196/99; *Ramsahai v. the Netherlands*, no. 52391/99)

Shooting of demonstrators by the police and effectiveness of investigation (*Şimşek and Others v. Turkey*, nos. 35072/97 and 37194/97)

Shooting of Greek Cypriot by Turkish soldiers in buffer zone and effectiveness of investigation (*Kakoulli v. Turkey*, no. 38595/97)

Killing of applicant's husband in northern Cyprus, allegedly by Turkish and/or "TRNC" agents, and effectiveness of the investigation (*Adalı v. Turkey*, no. 38187/97)

Shooting of detainee accompanying police to home of another suspect (*Gezici v. Turkey*, no. 34594/97)

Killing of applicants' relatives following an attack on the civilian vehicle in which they were being transported under police guard, and effectiveness of investigation (*Belkıza Kaya and Others v. Turkey*, nos. 33420/96 and 36206/97)

Killings by security forces and effectiveness of investigations (*Menteşe and Others v. Turkey*, no. 36217/97; *Fatma Kaçar v. Turkey*, no. 35838/97; *Diındar v. Turkey*, no. 26972/95)

Killing of applicants' relatives and wounding of two applicants by village guards, and effectiveness of investigation (*Acar and Others v. Turkey*, nos. 36088/97 and 38417/97)

Death of relatives of applicants during military operation (*Akkum and Others v. Turkey*, no. 21894/93)

Killing of applicants' relatives during police operation and effectiveness of investigation (*Hamiyet Kaplan and Others v. Turkey*, no. 36749/97)

Killings by soldiers (*Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00), bombing of civilian convoy (*Isayeva and Others v. Russia*, nos. 57947/00, 57948/00 and 57949/00) and bombing of village (*Isayeva v. Russia*, no. 57950/00), all in Chechnya

Effectiveness of investigation into death of applicant's brother in clash between PKK and security forces (*Kanlıbaş v. Turkey*, no. 32444/96)

Failure of authorities to protect the life of a journalist, and effectiveness of investigation (*Gongadze v. Ukraine*, no. 34056/02)

Suicide of conscript with history of depression (*Kılınç and Özsoy v. Turkey*, no. 40145/98)

Suicide in prison and effectiveness of investigation (*Trubnikov v. Russia*, no. 49790/99)

Death in custody and effectiveness of investigation (*Kişmir v. Turkey*, no. 27306/95; *H.Y. and Hü.Y. v. Turkey*, no. 40262/98; *Akdoğan v. Turkey*, no. 46747/99)

Death of detainee during transfer to another prison following disturbance and effectiveness of investigation (*Demir and Aslan v. Turkey*, no. 34491/97)

Threat of implementation of the death penalty (*Öcalan v. Turkey* [GC], no. 46221/99)

Article 3

Cases concerning physical integrity

Imposition of death penalty following an unfair trial, and threat of implementation of death penalty (*Öcalan v. Turkey* [GC], no. 46221/99)

Abduction and ill-treatment, allegedly by State agents or with their collusion, and effectiveness of investigation (*Ay v. Turkey*, no. 30951/96)

Ill-treatment of two Roma on arrest and in custody (*Bekos and Koutropoulos v. Greece*, no. 15250/02)

Ill-treatment in custody (*Sunal v. Turkey*, no. 43918/98; *Biyan v. Turkey*, no. 56363/00; *Gültekin and Others v. Turkey*, no. 52941/99; *Dalan v. Turkey*, no. 38585/97; *Hasan Kılıç v. Turkey*, no. 35044/97; *Karakaş and Yeşilirmak v. Turkey*, no. 43925/98; *S.B. and H.T. v. Turkey*, no. 54430/00; *Soner Önder v. Turkey*, no. 39813/98; *Dizman v. Turkey*, no. 27309/95; *Frik v. Turkey*, no. 45443/99; *Sevgin and İnce v. Turkey*, no. 46262/99; *Baltaş v. Turkey*, no. 50988/99; *Karayığit v. Turkey*, no. 63181/00; *Cangöz v. Turkey*, no. 28039/95; *Günaydın v. Turkey*, no. 27526/95; *Orhan Aslan v. Turkey*, no. 48063/99; *Hüsniye Tekin v. Turkey*, no. 50971/99; *Afanasyev v. Ukraine*, no. 38722/02)

Ill-treatment and conditions of detention in transit area of an airport (*Mogoş v. Romania*, no. 20420/02)

Ill-treatment of detainees prior to court hearing on their complaints about earlier ill-treatment in custody (*Zülcihan Şahin and Others v. Turkey*, no. 53147/99)

Solitary confinement of convicted terrorist for over eight years (*Ramirez Sanchez v. France*, no. 59450/00; the case was referred to the Grand Chamber)

Solitary confinement for over eleven months during detention on remand (*Rohde v. Denmark*, no. 69332/01)

Conditions of detention on remand (*Kehayov v. Bulgaria*, no. 41035/98; *Mayzit v. Russia*, no. 63378/00; *Novoselov v. Russia*, no. 66460/01; *Labzov v. Russia*, no. 62208/00; *Fedotov v. Russia*, no. 5140/02; *Khudoyorov v. Russia*, no. 6847/02; *Becciev v. Moldova*, no. 9190/03; *Alver v. Estonia*, no. 64812/01)

Conditions of detention (*Karalevičius v. Lithuania*, no. 53254/99; *Ostrovar v. Moldova*, no. 35207/03; *I.I. v. Bulgaria*, no. 44082/98; *Georgiev v. Bulgaria*, no. 47823/99)

Conditions of detention, force-feeding of detainee on hunger strike and adequacy of medical treatment provided (*Nevmerzhitsky v. Ukraine*, no. 54825/00)

Conditions of detention – detention in allegedly unsanitary conditions, solitary confinement and unwillingness to transfer to suitable detention facilities, lack of protection against weather and climate, difficulty of obtaining fresh air and exercise – and alleged use of physical force and denial of medical care (*Mathew v. the Netherlands*, no. 24919/03)

Conditions of detention in psychiatric institution (*Romanov v. Russia*, no. 63993/00)

Inadequacy of medical assistance during detention on remand (*Sarban v. Moldova*, no. 3456/05)

Detention and/or threatened recall to prison of person suffering from Wernicke-Korsakoff syndrome (*Uyan v. Turkey*, no. 7454/04; *Sinan Eren v. Turkey*, no. 8062/04; *Tekin Yıldız v. Turkey*, no. 22913/04; *Kuruçay v. Turkey*, no. 24040/04; *Gürbüz v. Turkey*, no. 26050/04; and *Balyemez v. Turkey*, no. 32495/03; three judgments striking out applications raising this issue were also delivered)

Living conditions of Roma families following destruction of their homes by a mob, and racist remarks by authorities dealing with their claims (*Moldovan and Others v. Romania*,

nos. 41138/98 and 64320/01; see also *Moldovan and Others v. Romania* (friendly settlement))

Extradition to Uzbekistan (*Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99; the case also raised the issue of the Turkish Government's failure to comply with an interim measure indicated by the Court)

Extradition or threatened extradition from Georgia to the Russian Federation and ill-treatment of certain applicants in detention (*Shamayev and Others v. Georgia and Russia*, no. 36378/02)

Threatened expulsion to Eritrea (*Said v. the Netherlands*, no. 2345/02)

Threatened expulsion to Syria, where one of the applicants had been sentenced to death (*Bader and Kanbor v. Sweden*, no. 13284/04)

Threatened expulsion to Iraq, and absence of social and financial assistance for refugee (*Muslim v. Turkey*, no. 53566/99)

Threatened expulsion to the Democratic Republic of Congo (*N. v. Finland*, no. 38885/02)

Article 4

Case concerning the prohibition of slavery and forced labour

Adequacy of legal provisions aimed at preventing "domestic slavery" (*Siliadin v. France*, no. 73316/01)

Article 5

Cases concerning the right to liberty and security

Detention of soldier on the basis of disciplinary punishment imposed by his superior officer (*A.D. v. Turkey*, no. 29986/96)

Lawfulness of continuing detention on basis of conviction *in absentia*, following refusal to reopen the proceedings, and lack of possibility of contesting the lawfulness of the detention (*Stoichkov v. Bulgaria*, no. 9808/02)

Lawfulness of arrest and detention by Turkish security forces in Kenya and absence of possibility of obtaining review of lawfulness of detention (*Öcalan v. Turkey*, no. 46221/99)

Arrest and detention for nineteen hours following refusal to leave site of a prohibited gathering (*Epple v. Germany*, no. 77909/01)

Continued detention after expiry of statutory maximum period and delay in implementing order to release from detention (*Picaro v. Italy*, no. 42644/02)

Sixty-three-day delay in release from detention (*Asenov v. Bulgaria*, no. 42026/98)

Authorisation by judges of return of detainees to police station for questioning after ordering detention on remand, and absence of possibility of seeking review (*Emrullah Karagöz v. Turkey*, no. 78027/01; *Dağ and Yaşar v. Turkey*, no. 4080/02)

Compulsory isolation of HIV-infected person on ground of risk of transmitting the virus to others (*Enhorn v. Sweden*, no. 56529/00)

Lawfulness of confinement in private psychiatric clinic (*Storck v. Germany*, no. 61603/00)

Lawfulness of detention in psychiatric institution (*Schenkel v. the Netherlands*, no. 62015/00)

Continued psychiatric detention due to practical impossibility of fulfilling conditions imposed for conditional release (*Kolanis v. the United Kingdom*, no. 517/02)

Lawfulness and length of detention with a view to extradition (*Bordovskiy v. Russia*, no. 49491/99)

Lawfulness of detention with a view to expulsion, despite quashing of expulsion order (*Zečiri v. Italy*, no. 55764/00)

Length of detention pending expulsion and length of time taken to decide on requests for release (*Singh v. the Czech Republic*, no. 60538/00)

Role of prosecutor in ordering/confirming detention (*Salov v. Ukraine*, no. 65518/01)

Absence of possibility to apply for release from psychiatric detention (*Gorshkov v. Ukraine*, no. 67531/01)

Lack of public hearing in proceedings relating to pre-trial detention (*Reinprecht v. Austria*, no. 67175/01)

Article 6

Cases concerning the right to a fair trial

Unavailability of legal aid to defend defamation action (*Steel and Morris v. the United Kingdom*, no. 68416/01)

Exclusion of claims against the State for injuries sustained during military service (*Roche v. the United Kingdom* [GC], no. 32555/96)

Parliamentary immunity attaching to defamatory statements by member of parliament (*Ielo v. Italy*, no. 23053/02)

Access to a court to challenge seizure and confiscation of CDs recorded by right-wing bands (*Linnekogel v. Switzerland*, no. 43874/98)

Lack of access to a court due to high level of court fees (*Podbielski and PPU Polpure v. Poland*, no. 39199/98; *Kniat v. Poland*, 71731/01; *Jedamski and Jedamska v. Poland*, no. 73547/01)

Effectiveness of access to a court to challenge application of increased security measures to prisoners (*Musumeci v. Italy*, no. 33695/96; *Bifulco v. Italy*, no. 60915/00; *Gallico v. Italy*, no. 53723/00; *Manuele Salvatore v. Italy*, no. 42285/98)

Dismissal of appeal by Supreme Court on basis of date of service of appeal court's judgment being different from that indicated by lower court (*Mikulová v. Slovakia*, no. 64001/00) and dismissal of appeal as out of time, although it had been sent by registered mail prior to expiry of the time-limit (*Hornáček v. Slovakia*, no. 65575/01)

Refusal to allow third party to join administrative proceedings (*Budmet Sp. z o.o. v. Poland*, no. 31445/96)

Application to pending court proceedings of new legislation precluding parents from claiming certain damages in respect of disabilities not detected during pregnancy due to negligence (*Draon v. France* [GC], no. 1513/03; *Maurice v. France* [GC], no. 11810/03)

Quashing of final and binding judgments (*Roşca v. Moldova*, no. 6267/02; *Popov v. Moldova (no. 2)*, no. 19960/04) and power of Prosecutor General to intervene in civil proceedings (*Asito v. Moldova*, no. 40663/98)

Arbitrary interpretation by the courts of provisions relating to restitution of property, lack of oral hearing before the Constitutional Court and lack of sufficient time to prepare arguments, and excessive burden of proof (*Blücher v. the Czech Republic*, no. 58580/00)

Failure to ensure proper notification of decision to stay civil proceedings indefinitely (*Sukhorubchenko v. Russia*, no. 69315/01)

Denial of possibility for party to attend hearing in civil proceedings, as a result of late service of summons (*Yakovlev v. Russia*, no. 72701/01)

Dismissal of cassation appeal on account of failure to notify absent parties, resident abroad, within ninety-day time-limit (*Kaufmann v. Italy*, no. 14021/02)

Fairness of criminal proceedings and of parallel proceedings which the applicant joined as a party seeking damages, in particular the refusal to deal with them together (*Berkouche v. France*, no. 71047/01)

Impossibility for unrepresented civil party to criminal proceedings to have access to the file during the preliminary investigation, access being limited to lawyers (*Frangy v. France*, no. 42270/98; *Menet v. France*, no. 39553/02)

Absence of accused from appeal hearing, notification sent to him in prison not having been translated (*Hermi v. Italy*, no. 18114/02; the case is now pending before the Grand Chamber)

Conviction for drug dealing as a result of police stratagem, and supervisory review of conviction effected in absence of applicant and counsel (*Vanyan v. Russia*, no. 53203/99)

Imposition of fine on owner of car for providing incomplete information when required to disclose who was driving when car exceeded speed limit (*Rieg v. Austria*, no. 63207/00)

Self-incrimination – obligation to answer questions put by financial investigator (*Shannon v. the United Kingdom*, no. 6563/03)

Failure to hear accused before their criminal conviction (*Ilişescu and Chiforec v. Romania*, no. 77364/01)

Non-disclosure to appellant in criminal proceedings of a letter submitted to the court of appeal by his wife, retracting a previous statement (*M.S. v. Finland*, no. 46601/99)

Non-disclosure to party of submissions made to Constitutional Court by lower court and by the other party (*Milatová and Others v. the Czech Republic*, no. 61811/00)

Absence of opportunity for accused to be represented during medical examination of victim (*Cottin v. Belgium*, no. 48386/99)

Refusal to try applicant in summary proceedings, resulting in deprivation of remission of one-third of sentence (*Fera v. Italy*, no. 45057/98)

Conviction for robbery with violence without any distinction between co-accused who used violence and those who did not (*Goktepe v. Belgium*, no. 50372/99)

Conviction on appeal of mother of child who died as a result of abuse by one or both parents, the father having previously been acquitted by the trial court (*Guillemot v. France*, no. 21922/03)

Refusal of oral hearing in administrative proceedings in which the case was examined at only one instance (*Miller v. Sweden*, no. 55853/00)

Absence of public hearing in disciplinary proceedings against lawyer (*Hurter v. Switzerland*, no. 53146/99)

Lack of procedural rules governing examination by Court of Cassation of criminal charges against government ministers and absence of legal basis for examination by Court of Cassation of criminal charges against accused who were not government ministers (*Claes and Others v. Belgium*, nos. 46825/99, 47132/99, 47502/99, 49010/99, 49104/99, 49195/99 and 49716/99)

Failure of authorities to comply with court decisions ordering cessation of operations at three thermal power plants on account of effect on environment (*Okay and Others v. Turkey*, no. 36220/97)

Delay by authorities in complying with court decision concerning restitution of property (*Užkurėlienė and Others v. Lithuania*, no. 62988/00)

Failure of authorities to pay sums awarded by final and binding court judgment (*Tunç v. Turkey*, no. 54040/00)

Non-enforcement of judgments ordering payment of compensation by State authorities (*Iza Ltd and Makrakhidze v. Georgia*, no. 28537/02; *Amat-G Ltd and Mebagishvili v. Georgia*, no. 2507/03)

Prolonged non-enforcement of eviction order on account of refusal to grant police assistance (*Matheus v. France*, no. 62740/00)

Prolonged failure of Bar Association to designate location for applicant's practice, notwithstanding repeated annulment of its decisions by Supreme Administrative Court (*Turczanik v. Poland*, no. 38064/97)

Repeated refusal of employer to comply with binding court judgments (*Fociac v. Romania*, no. 2577/02)

Adequacy of measures taken by authorities to secure enforcement of court decision ordering private person to conclude contract (*Ghibuși v. Romania*, no. 7893/02)

Independence and impartiality of maritime chambers (*Brudnicka and Others v. Poland*, no. 54723/00)

Impartiality of lay assessors nominated respectively by medical associations and social insurance boards to sit on regional appeals commission (*Thaler v. Austria*, no. 58141/00)

Impartiality of appeal court judge against whom accused had brought separate civil proceedings (*Chmelíř v. the Czech Republic*, no. 64935/01)

Impartiality of judge who had been involved ten years earlier in an action arising out of the same facts (*Indra v. Slovakia*, no. 46845/99)

Impartiality of Constitutional Court judge who was a partner in a law firm with a judge of the Administrative Court (*Steck-Risch and Risch v. Liechtenstein*, no. 63151/00)

Impartiality of Constitutional Court judge who had acted as legal representative of the opposing party earlier in the proceedings (*Mežnarić v. Croatia (no. 1)*, no. 71615/01)

Impartiality of trial judge who had previously taken several decisions concerning pre-trial detention (*Jasiński v. Poland*, no. 30865/96)

Lack of impartiality of court imposing sanction of detention on lawyer for contempt of court (*Kyprianou v. Cyprus [GC]*, no. 73797/01)

Refusal of courts to institute criminal proceedings for defamation, on the ground that the applicant had committed offences in question, although he had previously been acquitted or proceedings were still pending (*Diamantides v. Greece (no. 2)*, no. 71563/01)

Refusal of compensation for detention on remand, following discontinuation of criminal proceedings, on the ground of failure to provide proof of innocence (*Capeau v. Belgium*, no. 42914/98)

Refusal of compensation for detention on remand, following discontinuation of criminal proceedings, on the ground of remaining suspicion (*A.L. v. Germany*, no. 72758/01)

Conviction *in absentia* (*R.R. v. Italy*, no. 42191/02)

Conviction *in absentia* and without any legal representation of accused serving a prison sentence abroad (*Mariani v. France*, no. 43640/98)

Impossibility for lawyer to represent accused who had been deported and was prohibited from returning (*Harizi v. France*, no. 59480/00)

Denial of access to lawyer during initial period of custody, supervision of subsequent consultations with lawyers and restrictions on visits by lawyers, and restrictions on access to file (*Öcalan v. Turkey* [GC], no. 46221/99)

Holding of certain trial hearings and examination of witnesses in absence of accused's lawyer (*Balliu v. Albania*, no. 74727/01)

Refusal to rehear witnesses following replacement of a judge (*Graviano v. Italy*, no. 10075/02)

Use at trial of incriminatory statements obtained from applicant during interrogation and in absence of lawyer, and lack of procedural guarantees to contest the reliability of those statements at trial (*Kolu v. Turkey*, no. 35811/97)

Absence of opportunity to question victim of alleged sexual abuse in a prison cell, or a third cellmate (*Mayali v. France*, no. 69116/01)

Refusal to allow defence counsel to examine witnesses against accused during trial, on grounds of their age and the nature of their testimony, relating to charges of sexual assault and acts of indecency on children (*Bocos-Cuesta v. the Netherlands*, no. 54789/00)

Refusal to allow accused to examine witnesses against him during his trial (*Taal v. Estonia*, no. 13249/02)

Conviction on the basis of witness statements that accused had no opportunity to challenge (*Mild and Virtanen v. Finland*, nos. 39481/98 and 40227/98)

Absence of opportunity for accused to examine a witness against him during his trial (*Bracci v. Italy*, no. 36822/02)

Article 8

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

Legislation precluding parents from claiming certain damages in respect of disabilities not detected during pregnancy due to negligence (*Draon v. France* [GC], no. 1513/03; *Maurice v. France* [GC], no. 11810/03)

Administration of medical treatment without consent during psychiatric confinement (*Storck v. Germany*, no. 61603/00)

Absence of effective procedure for obtaining disclosure of information about tests carried out on servicemen (*Roche v. the United Kingdom* [GC], no. 32555/96)

Failure of authorities to take adequate measures to protect applicant from effects of severe pollution in vicinity of steelworks (*Fadeyeva v. Russia*, no. 55723/00)

Conviction for sado-masochistic acts (*K.A. and A.D. v. Belgium*, nos. 42758/98 and 45558/99)

Confiscation of passport and refusal to return it during lengthy criminal proceedings (*İletmiş v. Turkey*, no. 29871/96)

Absence of legal basis for taking photograph of person placed under house arrest and making it available to the press for publication (*Sciacca v. Italy*, no. 50774/99)

Adequacy of legal basis for security checks (*Antunes Rocha v. Portugal*, no. 64330/01)

Absence of legal basis for interception of conversation by means of listening device installed on private property (*Vetter v. France*, no. 59842/00)

Adequacy of legal basis for interception of telephone calls (*Ağaoğlu v. Turkey*, no. 27310/95)

Absence of legal basis for interception and recording of conversations between detainee and members of his family (*Wisse v. France*, no. 71611/01)

Use in criminal proceedings of transcripts of telephone conversations recorded in context of separate criminal proceedings (*Matheron v. France*, no. 57752/00)

Refusal of courts to establish paternity of still-born child and change surname and patronym from that of mother's former husband (*Znamenskaya v. Russia*, no. 77785/01)

Impossibility of refuting paternity after expiry of one-year time-limit from date of registration, notwithstanding evidence of DNA testing (*Shofman v. Russia*, no. 74826/01)

Prolonged refusal of authorities to regularise family's stay in Latvia, notwithstanding length of time spent there and close links with the country (*Sisojeva and Sisojev v. Latvia*, no. 60654/00; the case is now pending before the Grand Chamber)

Failure of courts to decide on request for deprivation of parental rights and request for adoption (*Z.M. and K.P. v. Slovakia*, no. 50232/99)

Suspension of right of access to child (*Süß v. Germany*, no. 40324/98)

Adequacy of measures taken by Romanian authorities to secure return of child to its father, who had joint custody (*Monory v. Romania and Hungary*, no. 71099/01)

Adequacy of measures taken by Croatian authorities to return child to its mother in Germany (*Karadžić v. Croatia*, no. 35030/04)

Adequacy of measures taken to enforce fathers' right of access to children (*Zawadka v. Poland*, no. 48542/99; *Siemianowski v. Poland*, no. 45972/99; *Bove v. Italy*, no. 30595/02; *Reigado Ramos v. Portugal*, no. 73229/01) and to enforce court decisions ordering return of children to their fathers (*H.N. v. Poland*, no. 77710/01)

Denial of visits to prisoner by mother and brother (*Bagiński v. Poland*, no. 37444/97)

Refusal to allow prisoner to visit sick parent (*Schemkamper v. France*, no. 75833/01)

Expulsion of foreigner following convictions, resulting in separation from wife and children (*Üner v. the Netherlands*, no. 46410/99; the case is now pending before the Grand Chamber)

Expulsion of foreign national after lengthy period of residence (*Keles v. Germany*, no. 32231/02)

Refusal to allow daughter to join parent in country where latter was legally resident (*Tuquabo-Tekle and Others v. the Netherlands*, no. 60665/00)

Denial of access to home in northern Cyprus (*Xenides-Arestis v. Turkey*, no. 46347/99)

Failure of authorities to ensure adequate living conditions for Roma families whose homes were burned in 1993 by a mob including police officers (*Moldovan and Others v. Romania*, nos. 41138/98 and 64320/01; see also *Moldovan and Others v. Romania* (friendly settlement))

Adequacy of measures taken to return flat to tenants after unlawful occupation by third party during their absence (*Novoseletskiy v. Ukraine*, no. 47148/99)

Lawfulness of search of home (*L.M. v. Italy*, no. 60033/00)

Search of lawyer's office and seizure of privileged material (*Sallinen and Others v. Finland*, no. 50882/99)

Search of business premises and home and seizure of documents in context of proceedings against applicant's son for a speeding offence (*Buck v. Germany*, no. 41604/98)

Article 9

Case concerning freedom of religion and belief

Prohibition on wearing of Muslim headscarf in university (*Leyla Şahin v. Turkey* [GC], no 44774/98)

Article 10

Cases concerning freedom of expression

Conviction of union members for making statement to the press without prior authorisation (*Karademirci and Others v. Turkey*, nos. 37096/97 and 37101/97)

Imposition of sanction of five days' imprisonment on lawyer for contempt of court (*Kyprianou v. Cyprus* [GC], no. 73797/01)

Awards of damages for defamation of the President (*Pakdemirli v. Turkey*, no. 35839/97) and of a government minister (*Turhan v. Turkey*, no. 48176/99), and conviction for insulting government ministers in a speech (*Birol v. Turkey*, no. 44104/98)

Awards of damages against newspaper in respect of articles defaming politicians (*Ukrainian Media Group v. Ukraine*, no. 72713/01)

Award of damages for defamation of regional governor in newspaper (*Grinberg v. Russia*, no. 23472/03)

Conviction for defamation (*Sokołowski v. Poland*, no. 75955/01)

Conviction for disseminating false information about presidential candidate prior to election (*Salov v. Ukraine*, no. 65518/01)

Award of damages against journalist for defamation of police officer (*Savițchi v. Moldova*, no. 11039/02)

Conviction of journalist for defamation of another journalist (*Urbino Rodrigues v. Portugal*, no. 75088/01)

High level of damages awarded for defamation (*Independent News & Media PLC and Independent Newspapers (Ireland) Ltd v. Ireland*, no. 55120/00)

Conviction of publisher in respect of novel found to be insulting to Islam (*İ.A. v. Turkey*, no. 42571/98)

Award of damages against a Jehovah's Witness for defamation of another religious association (*Paturel v. France*, no. 54968/00)

Seizure of publication and order for publishing house to pay compensation to politician in respect of remarks published in book review (*Wirtschafts-Trend Zeitschriften-Verlags GmbH v. Austria*, no. 58547/00)

Conviction and award of damages for defamation, and injunction against magazine for publishing story on cohabitee of indicted politician (*Wirtschafts-Trend Zeitschriften-Verlagsgesellschaft mbH v. Austria* (no. 3), nos. 66298/01 and 15653/02)

Conviction of journalists for publishing extracts from court file during investigation (*Tourancheau and July v. France*, no. 53886/00)

Article 11

Cases concerning freedom of association

Refusal to register a communist party (*Partidul Comunistilor (Nepeceristi) and Ungureanu v. Romania*, no. 46626/99)

Incitement of public by local officials to attack offices of a political party of Macedonian minority, and failure of police to intervene (*Ouranio Toxo and Others v. Greece*, no. 74989/01)

Refusal to authorise representatives of a political party to visit area under state of emergency (*Güneri and Others v. Turkey*, nos. 42853/98, 43609/98 and 44291/98)

Transfer of civil servants, allegedly on account of trade union activities (*Aydın and Others v. Turkey*, no. 43672/98; *Bulğa and Others v. Turkey*, no. 43974/98; *Akat v. Turkey*, no. 45050/98)

Interference with attempts to hold political rallies and events, and failure to respect positive obligation to allow freedom of assembly (*The United Macedonian Organisation Ilinden and Ivanov v. Bulgaria*, no. 44079/98), and prohibition of political rally (*Ivanov and Others v. Bulgaria*, no. 46336/99)

Dissolution of association as unconstitutional (*The United Macedonian Organisation Ilinden – PIRIN and Others v. Bulgaria*, no. 59489/00)

Dissolution of association on the ground of threat to State (*IPSD and Others v. Turkey*, no. 35832/97)

Article 12

Case concerning the right to marry and found a family

Prohibition on marriage between father-in-law and daughter-in-law while either of their former spouses still alive (*B. and L. v. the United Kingdom*, no. 36536/02)

Article 14

Cases concerning the prohibition of discrimination

Failure to investigate possible racist motives for shooting (*Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98)

Failure to investigate possible racist motives behind ill-treatment (*Bekos and Koutropoulos v. Greece*, no. 15250/02)

Dismissal of former KGB officers from employment in the private sector and exclusion from employment in certain private sector spheres (*Rainys and Gasparavičius v. Lithuania*, nos. 70665/01 and 74345/01)

Discrimination, on account of Roma origins, in dealing with claims (*Moldovan and Others v. Romania*, nos. 41138/98 and 64320/01; see also *Moldovan and Others v. Romania* (friendly settlement))

Denial of child benefit to foreigners not in possession of unlimited residence permits (*Niedzwiecki v. Germany*, no. 58453/00; *Okpisz v. Germany*, no. 59140/00)

Discrimination on account of Chechen origin (*Timishev v. Russia*, nos. 55762/00 and 55974/00)

Unavailability of tax relief on maintenance payments made by unmarried father to his child (*P.M. v. the United Kingdom*, no. 6638/03)

Article 1 of Protocol No. 1

Cases concerning the right of property

Annulment by Supreme Court of right of former officers in the Yugoslav army to purchase housing at a reduced rate (*Veselinski v. "the former Yugoslav Republic of Macedonia"*, no. 45658/99; *Djidrovski v. "the former Yugoslav Republic of Macedonia"*, no. 46447/99)

Successive rent-control schemes resulting in rent levels insufficient to cover landlords' obligation to maintain their property (*Hutten-Czapska v. Poland*, no. 35014/97; the case was referred to the Grand Chamber)

Obligation on applicants who had inherited land to reassign it to tax authorities without compensation (*Jahn and Others v. Germany* [GC], nos. 46720/99, 72203/01 and 72552/01)

Impoundment of aircraft leased from Yugoslav Airlines, by virtue of European Community regulation implementing United Nations sanctions against the former Federal Republic of Yugoslavia (*Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], no. 45036/98)

Imposition of restrictions on fishing (*Alatulkkila and Others v. Finland*, no. 33538/96)

Withdrawal of business licences by customs authorities (*Rosenzweig and Bonded Warehouses Ltd v. Poland*, no. 51728/99)

Lack of sufficient safeguards in procedure leading to revocation of bank licence (*Capital Bank AD v. Bulgaria*, no. 49429/99)

Refusal of court to annul sale of unlawfully nationalised property to third party during restitution proceedings (*Străin and Others v. Romania*, no. 57001/00)

Annulment of registration as practising lawyer (*Buzescu v. Romania*, no. 61302/00)

Refusal to register car purchased at auction organised by local tax office, on ground of unknown origin (*Sildedzis v. Poland*, no. 45214/99)

Annulment of title to property situated on foreshore and demolition of hotel being constructed there, without compensation (*N.A. and Others v. Turkey*, no. 37451/97)

Demolition of illegally built storage facility (*Saliba v. Malta*, no. 4251/02)

Cancellation of registration of trade mark on basis of treaty entered into after initial registration request (*Anheuser-Busch Inc. v. Portugal*, no. 73049/01)

Failure or lengthy delay by authorities in fulfilling obligation to provide flats in compensation for expropriation (*Kirilova and Others v. Bulgaria*, nos. 42908/98, 44038/98, 44816/98 and 7319/02)

Failure of authorities to comply with court judgment awarding payment of sums (*Tütüncü and Others v. Turkey*, no. 74405/01)

Regular late payment of monthly pension, resulting in loss of value due to inflation (*Solodyuk v. Russia*, no. 67099/01)

Denial of statutory benefits as result of retroactive application of legislation (*Kechko v. Ukraine*, no. 63134/00)

Lack of legal basis for forfeiture of applicant's car in connection with her husband's conviction for fraud (*Frizen v. Russia*, no. 58254/00), and lack of legal basis for forfeiture of money smuggled into Russia on behalf of the applicant by a third person (*Baklanov v. Russia*, no. 68443/01)

Loss of ownership of land as a result of adverse possession (*J.A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd v. the United Kingdom*, no. 44302/02)

Deprivation of property following sale to third parties of property which had previously been nationalised (*Păduraru v. Romania*, no. 63252/00)

Lengthy delay in fixing and paying compensation for expropriation (*Mason and Others v. Italy*, no. 43663/98; *Capone v. Italy (no. 1)*, no. 62592/00)

Article 2 of Protocol No. 1

Case concerning the right to education

Suspension of student from university on account of refusal to remove Muslim headscarf for lectures (*Leyla Şahin v. Turkey [GC]*, no. 44774/98)

Article 3 of Protocol No. 1

Cases concerning the right to free elections

Requirement of ten years' residence in New Caledonia in order to be registered to vote in elections for its Congress (*Py v. France*, no. 66289/01)

Disenfranchisement of convicted prisoners (*Hirst v. the United Kingdom (no. 2)* [GC], no. 74025/01)

Article 2 of Protocol No. 4

Cases concerning principally freedom of movement

Lengthy prohibition on leaving place of residence without permission during criminal proceedings (*Fedorov and Fedorova v. Russia*, no. 31008/02; *Antonenkov and Others v. Ukraine*, no. 14183/02)

Refusal to allow applicants to cross from one region of Russia to another, on account of their Chechen origin (*Timishev v. Russia*, nos. 55762/00 and 55974/00; *Gartukayev v. Russia*, no. 71933/01)

Article 2 of Protocol No. 7

Case concerning principally the right to appeal in criminal matters

Absence of possibility to appeal against administrative sanction imposed for contempt of court (*Gurepka v. Ukraine*, no. 61406/00)

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

219 cases concerned the length of civil or administrative proceedings in Greece (84 judgments¹, including one striking-out judgment), Slovakia (22 judgments), Turkey (17 judgments²), Poland (15 judgments³), the Czech Republic and Hungary (13 judgments each), Croatia and Russia (10 judgments each⁴), Austria and France (6 judgments each), Belgium (4 judgments, including 1 friendly settlement), Ukraine (4 judgments), Germany (3 judgments, including 1 striking-out judgment), Bulgaria and "the former Yugoslav Republic of Macedonia" (2 judgments each), Finland, Luxembourg, Romania, Slovenia and Sweden (1 judgment each⁵), the Netherlands (1 striking-out judgment), Denmark and the United Kingdom (1 friendly settlement each)

1 In two judgments, no violation was found.

2. In two judgments, no violation was found.

3. In one judgment, no violation was found.

4. In one of the judgments concerning Croatia, no violation was found.

5. In the judgment concerning Romania, no violation was found.

55 cases concerned the length of criminal proceedings in France (6 judgments¹), Turkey (6 judgments, including 1 friendly settlement), Greece and Finland (5 judgments each²), Austria and the Czech Republic (4 judgments each, including 1 friendly settlement each), Belgium (4 judgments³), Poland (3 judgments), Germany, Hungary, Portugal, Romania and the United Kingdom (2 judgments each⁴), Bulgaria, Croatia, Ireland, Slovakia, Switzerland and Ukraine (1 judgment each⁵), Denmark and Lithuania (1 striking-out judgment each)

156 cases concerned the non-enforcement of court decisions in Ukraine (100 judgments⁶), Russia (37 judgments⁷), Romania (8 judgments, including 1 friendly settlement), Greece (6 judgments) and Moldova (5 judgments)

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

42 cases concerned the lack of independence and impartiality of national security courts in Turkey⁸ (see the leading judgments *Incal v. Turkey*, judgment of 9 June 1998, *Reports* 1998-IV, and *Çıraklar v. Turkey*, judgment 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 18 other judgments

26 cases (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 hostility⁹; Article 10 alone was in issue in a further 7 cases (including 1 friendly settlement)

37 cases (including 2 striking-out judgments) concerned the validation of the unlawful occupation of property on the basis of a principle of “indirect expropriation” (see *Carbonara and Ventura v. Italy*, no. 24638/94, ECHR 2000-VI)

17 cases concerned the length of detention on remand (7 concerning Poland, 6 concerning Turkey, 2 concerning France, 1 concerning the Czech Republic and 1 friendly settlement concerning Estonia); this issue also arose in a further 9 judgments concerning

1. Three of the judgments concerned the effect of the length with regard to civil parties.
2. In one judgment concerning Finland, no violation was found; in one judgment concerning Greece, which concerned the effect of the length with regard to the civil party, no violation was found.
3. Two of the judgments concerned the effect of the length with regard to civil parties.
4. In the judgment concerning Germany, no violation was found. Both judgments concerning Portugal concerned the effect of the length with regard to civil parties.
5. The judgment concerning Ukraine concerned the effect of the length with regard to the civil party.
6. In 42 judgments, violations of both Article 6 § 1 and Article 1 of Protocol No. 1 were found, in 23 judgments a violation of Article 6 § 1 alone was found, in 16 judgments violations of Articles 6 § 1 and 13 were found, in 3 judgments a violation of Article 1 of Protocol No. 1 alone was found and in 16 judgments violations of all three provisions were found.
7. In all of these judgments, violations of both Article 6 § 1 and Article 1 of Protocol No. 1 were found, either separately or together. However, in one judgment, there was a partial finding of no violation. Violations were also found in two further judgments which did not deal exclusively with this issue.
8. In two of these, the length of the proceedings was also in issue.
9. Violations of both Article 6 and Article 10 were found in all but one case, 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. In one case, a violation was also found on account of the length of the criminal proceedings.

Turkey, 7 judgments concerning Bulgaria, 5 judgments each concerning Poland and Russia and 1 judgment each concerning Estonia, Germany, Malta and Ukraine

16 cases (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 cases concerned various aspects of the right to an adversarial procedure and equality of arms in proceedings before the Court of Cassation and the *Conseil d'Etat* in France, in particular the non-disclosure of the report of the *conseiller rapporteur* (see the leading judgments *Reinhardt and Slimane-Kaïd v. France*, 31 March 1998, *Reports* 1998-II; *Slimane-Kaïd v. France (no. 1)*, no. 48943/99, 25 January 2000; *Kress v. France* [GC], no. 39594/98, ECHR 2001-VI; and *Meftah and Others v. France* [GC], nos. 32911/96, 35237/97 and 34595/97, ECHR 2002-VII)

13 cases (including 1 friendly settlement) 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)

9 cases concerned supervisory review of final and binding court decisions, 6 in Russia (see the leading judgment *Ryabykh v. Russia*, no. 52854/99, ECHR 2003-IX) and 3 in Ukraine (see *Tregubenko v. Ukraine*, no. 61333/00, 2 November 2004); the issue also arose in 2 further cases

5 cases concerned access to the Constitutional Court in the Czech Republic (see *Zvolský and Zvolská v. the Czech Republic*, no. 46129/99, ECHR 2002-IX, and *Běleš and Others v. the Czech Republic*, no. 47273/99, ECHR 2002-IX)

3 cases 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. 47273/99, ECHR 2003-I)

3 cases (including 1 striking-out judgment) 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)

2 cases 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)

2 cases concerned the effect of the excessive length of bankruptcy proceedings in Italy on property rights and 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

1. In a further case, *Sgattoni v. Italy*, no. 77132/01, the Court found no violation (Article 1 of Protocol No. 1).

2 cases (both friendly settlements) concerned detention for failure to pay a community charge and absence of legal aid in the United Kingdom (see *Benham v. the United Kingdom*, judgment of 10 June 1996, *Reports* 1996-III); 2 further cases raised similar issues in connection with non-payment of local taxes and court-imposed fines

2 cases concerned the dissolution of political parties in Turkey (see *United Communist Party of Turkey and Others v. Turkey*, judgment of 30 January 1998, *Reports* 1998-I, and *Socialist Party and Others v. Turkey*, judgment of 25 May 1998, *Reports* 1998-III)

2 cases 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)

1 case concerned the striking out of a cassation appeal on the ground of the appellant's failure to implement the judgment appealed against (see *Annoni di Gussola and Others v. France*, nos. 31819/96 and 33293/96, ECHR 2000-XI)

1 case concerned a presumption of benefit accruing from expropriation (see *Katkaridis and Others v. Greece*, judgment of 15 November 1996, *Reports* 1996-V)

1 case concerned the independence and impartiality of prison governors acting as the adjudicating body in prison disciplinary proceedings, and the refusal to allow legal representation in such proceedings (see *Ezeh and Connors v. the United Kingdom*, nos. 39665/98 and 40086/98, 15 July 2002)

1 case concerned non-communication of the submissions of the Principal Public Prosecutor at the Court of Cassation (see *Göç v. Turkey* [GC], no. 36590/97, ECHR 2002-V); the same issue arose in 3 further cases

1 case 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)

In addition, a number of cases dealt at least in part with issues in respect of which the Court has already established clear principles in its case-law: 18 judgments concerning the failure to bring detainees promptly before a judge in Turkey, 10 judgments concerning the scope of review of the lawfulness of detention and/or equality of arms in proceedings relating to such review in Bulgaria, 10 judgments concerning censorship of prisoners' correspondence (4 in respect of Italy, 3 in respect of Poland, 2 in respect of Lithuania, and 1 in respect of Moldova), 8 judgments concerning the role of investigators and prosecutors in ordering detention in Bulgaria¹, 3 judgments concerning failure to give reasons for refusal of compensation for detention on remand in Greece², and 2 judgments concerning the ordering of detention on remand by prosecutors in Poland³.

1. See *Nikolova v. Bulgaria* [GC], no. 31195/96, ECHR 1999-II.

2. See *Georgiadis v. Greece*, judgment of 29 May 1997, *Reports* 1997-III.

3. See *Niedbata v. Poland*, no. 27915/95, 4 July 2000.

C. Friendly-settlement judgments

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

Deprivation of property on account of annulment of gift of land (*Netolický and Netolická v. the Czech Republic*, no. 55727/00)

Absence of public delivery of judgment by higher courts (*Šoller v. the Czech Republic*, no. 48577/99)

Lawfulness of detention on remand and statements made by police officer allegedly in breach of the presumption of innocence (*Florică v. Romania*, no. 49781/99)

Ill-treatment in detention (*Constantin v. Romania*, no. 49145/99, and *Bozkurt v. Turkey*, no. 35851/97)

Confiscation of copies of a newspaper (*Taniyan v. Turkey*, no. 29910/96)

Lack of access to a court in connection with pension rights (*Toimi v. Sweden*, no. 55164/00)

Fairness of civil proceedings and adequacy of compensation for expropriation (*Viaropoulos and Viaropoulou v. Greece*, no. 19437/02)

Lack of access to a court to contest a decision of the Civil Aviation Authority, classification of the applicant as a security risk and withdrawal of his access card for sensitive areas of an airport (*Jonasson v. Sweden*, no. 59403/00)

Lack of access to a court to bring action for damages in respect of contamination with hepatitis C (*Quillevère v. France*, no. 61104/00)

Failure of authorities to prevent death of applicant's son in drowning accident, and contradictory conclusions of courts in similar cases (*Cruz da Silva Coelho v. Portugal*, no. 9388/02)

Ill-treatment by police, lawfulness of detention and failure to bring detainee promptly before a judge (*Velcea v. Romania*, no. 60957/00)

Refusal to allow delegation of a local branch of a political party to visit area under state of emergency (*Abdulkadir Aydın and Others v. Turkey*, no. 53909/00)

D. Judgments striking applications out of the list of cases

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

Threatened expulsion to Iran (*Razaghi v. Sweden*, no. 64599/01)

Lawfulness of expulsion (*Szyszkowski v. San Marino*, no. 76966/01)

Failure to review lawfulness of detention (*Falkovych v. Ukraine*, 64200/00)

Length of time taken to decide on request for release from psychiatric detention (*Duveau and Assante v. France*, no. 77403/01)

Exequatur of foreign judgment granting divorce on basis of unilateral repudiation by husband (*D.D. v. France*, no. 3/02)

Refusal of court to call witness requested by accused (*Ivanoff v. Finland*, no. 48999/99)

Refusal of residence permit on account of conviction for minor offence, residence permits having been granted to the applicant's husband and children (*Yuusuf v. the Netherlands*, no. 42620/02)

Opening of detainee's correspondence, including correspondence with his lawyer and the Court (*Meriakri v. Moldova*, no. 53487/99)

E. Other judgments

8 judgments concerning just satisfaction (3 concerning Romania, including 1 striking-out judgment, and 1 each concerning Germany, Greece, Poland, Slovakia and Turkey, the judgments concerning Germany, Poland and Slovakia being friendly-settlement judgments) and 2 judgments concerning revision (1 concerning Austria and 1 concerning Germany) were delivered.

*
* *

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 272 judgments, in 221 of which it was the sole issue, while in a further 53 the only additional issue was the availability of an effective remedy under Article 13. Violations were found in all but 15 of the cases in which the merits were addressed.

3. Almost 600 out of the 1,105 judgments delivered (over 54%) concerned five groups of cases dealing exclusively with the following issues: the length of court proceedings (including the question of effective remedies), the non-enforcement of binding court decisions, delays in payment of compensation for expropriation in Turkey, the independence and impartiality of national security courts in Turkey (alone or in combination with infringements of the right to freedom of expression), and the use of "indirect expropriation" in Italy. Compared to 2004, the first, third and fourth categories continued to generate large numbers of judgments, while the second and fifth categories showed significant increases; conversely, the numbers relating to two previous high-count groups of cases – *Immobiliare Saffi* and *Kutić*-type cases – fell in 2005.

The judgments referred to under B, C, D and E above, totalling 734, account for over 66% of those delivered in 2005.

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

Turkey	290	(26.24%)
Ukraine	120	(10.86%)
Greece	105	(9.50%)
Russia	83	(7.50%)
Italy	79	(7.15%)

The figures in brackets indicate the percentage of the total number of judgments delivered in 2005. These five States accounted for over 60% of the judgments.

5. All judgments and admissibility decisions (other than those taken 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>).

**XI. 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 2005**

**CASES ACCEPTED FOR REFERRAL
TO THE GRAND CHAMBER
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WAS RELINQUISHED BY A CHAMBER
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A. Cases accepted for referral to the Grand Chamber

In 2005 the five-member panel of the Grand Chamber (Article 43 § 2 of the Convention and Rule 24 § 5 of the Rules of Court) held six meetings (on 2 February, 30 March, 6 June, 6 July, 12 October and 30 November) 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 183 cases, 104 of which were submitted by the respective Governments (in 2 cases both the Government and the applicant submitted requests).

The panel accepted referral requests in the following cases:

Scordino v. Italy (no. 1), no. 36813/97
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
Giuseppe Mostacciuolo v. Italy (no. 2), no. 65102/01
Achour v. France, no. 67335/01
Sejdovic v. Italy, no. 56581/00
Ramirez Sanchez v. France, no. 59450/00
Hutten-Czapska v. Poland, no. 35014/97
Üner v. the Netherlands, no. 46410/99
Sisojeva and Sisojev v. Latvia, no. 60654/00
Hermi v. Italy, no. 18114/02

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

First Section

The Section took no decision to relinquish cases to the Grand Chamber.

Second Section

Martinie v. France, no. 58675/00
Association SOS Attentats and de Boëry v. France, no. 76642/01

Third Section

Jalloh v. Germany, no. 54810/00

Marković and Others v. Italy, no. 1398/03

Fourth Section

Jussila v. Finland, no. 73053/01

XII. STATISTICAL INFORMATION

STATISTICAL INFORMATION¹

Judgments delivered in 2005	
Grand Chamber	12 (16)
Section I	294 (304)
Section II	377 (392)
Section III	194 (205)
Section IV	196 (247)
Sections in former compositions	32 (34)
Total	1,105 (1,198)

Type of judgment²					
	Merits	Friendly settlement	Striking out	Other	Total
Grand Chamber	11 (15)	0	0	1	12 (16)
Former Section I	5	0	0	1	6
Former Section II	7 (8)	1 (2)	0	0	8 (10)
Former Section III	14	0	3	1	18
Former Section IV	0	0	0	0	0
Section I	284 (294)	7	2	1	294 (304)
Section II	358 (372)	13 (14)	5	1	377 (392)
Section III	173 (184)	12	5	4	194 (205)
Section IV	188 (239)	4	3	1	196 (247)
Total	1,040 (1,131)	37 (39)	18	10	1,105 (1,198)

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 heading "former Sections" refers to Sections in their composition prior to 1 November 2004.

Decisions adopted in 2005		
I. Applications declared admissible		
Grand Chamber		1 (2)
Section I		300 (307)
Section II		335 (350)
Section III		205 (214)
Section IV		159 (163)
Total		1,000 (1,036)
II. Applications declared inadmissible		
Grand Chamber		1 (3)
Section I	Chamber	72 (73)
	Committee	6,811
Section II	Chamber	105 (106)
	Committee	5,968
Section III	Chamber	151
	Committee	5,284
Section IV	Chamber	164 (167)
	Committee	8,297
Total		26,853 (26,860)
III. Applications struck out		
Section I	Chamber	64
	Committee	67
Section II	Chamber	128
	Committee	110
Section III	Chamber	68 (91)
	Committee	121
Section IV	Chamber	52 (53)
	Committee	118
Total		728 (752)
Total number of decisions (excluding partial decisions)		28,581 (28,648)

Applications communicated in 2005	
Section I	614
Section II	1,039
Section III	575
Section IV	614
Total number of applications communicated	2,842

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

	1955-1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	Total
Applications lodged	54,401	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	44,128	41,510 (prov.)	386,196
Applications allocated to a decision body	17,568	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	35,402	201,072
Decisions taken	15,465	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	28,648	145,706
Applications declared inadmissible or struck out	14,636	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	27,612	135,004
Applications declared admissible	821	217	189	218	582	807	624	703	762	731	1,086	739	578	753	830	1,036	10,676
Applications terminated by a decision to reject in the course of the examination of the merits	8	1	0	1	1	0	0	1	0	0	0	0	5	1	1	0	19
Judgments delivered by the Court	235	72	81	60	50	56	72	106	105	177	695	889	844	703	718	1,105	5,968

XIII. 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		
	2003	2004	2005	2003	2004	2005	2003	2004	2005	2003	2004	2005	2003	2004	2005
Albania	24	28	52	17	13	40	11	12	17	1	-	11	1	1	-
Andorra	2	3	8	2	1	5	1	-	2	-	-	-	1	-	-
Armenia	89	122	340	67	96	110	28	24	62	1	2	21	-	-	1
Austria	445	421	418	324	304	301	401	253	208	71	7	31	19	21	29
Azerbaijan	266	251	172	238	151	175	45	200	120	3	15	5	-	-	3
Belgium	216	247	283	117	125	169	118	135	192	11	19	18	12	11	9
Bosnia & Herzegovina	94	221	212	59	137	210	-	46	70	-	5	1	-	-	1
Bulgaria	700	986	927	517	739	821	293	298	344	37	57	73	26	34	30
Croatia	878	696	685	664	697	553	349	580	477	38	59	39	25	13	24
Cyprus	44	65	72	36	47	66	11	2	49	5	2	16	4	-	8
Czech Republic	941	1,406	1,369	629	1,064	1,264	280	399	420	16	91	141	7	41	30
Denmark	142	129	94	73	86	72	65	88	86	4	8	9	6	-	2
Estonia	178	186	204	131	138	164	138	70	82	5	4	5	1	4	-
Finland	285	313	270	260	244	244	97	191	256	11	27	23	12	15	11
France	2,904	3,025	2,826	1,481	1,737	1,827	1,451	1,678	1,441	89	105	192	89	70	60
Georgia	44	60	91	35	47	72	24	17	48	6	7	9	1	1	5
Germany	1,935	2,562	2,164	998	1,527	1,582	461	914	1,386	17	16	22	10	10	4
Greece	480	405	425	354	274	369	171	253	349	72	96	54	26	34	93
Hungary	499	589	635	330	397	647	293	337	220	25	12	50	15	15	16
Iceland	17	10	7	10	6	6	5	6	9	-	-	1	1	-	-
Ireland	76	64	62	29	32	45	31	16	36	2	1	3	2	-	1
Italy	1,848	1,867	1,186	1,351	1,480	848	1,009	1,178	839	89	228	146	16	95	39
Latvia	312	332	318	133	195	234	152	115	92	10	14	9	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		
	2003	2004	2005	2003	2004	2005	2003	2004	2005	2003	2004	2005	2003	2004	2005
Liechtenstein	5	5	2	3	5	3	3	2	6	-	-	1	1	1	-
Lithuania	485	465	266	355	451	266	199	586	444	21	6	27	5	3	13
Luxembourg	58	40	50	21	12	28	28	3	16	5	2	5	2	1	2
Malta	19	14	11	4	8	13	-	4	12	3	3	6	1	3	3
Moldova	357	441	583	238	344	594	105	79	302	64	53	46	2	38	12
Monaco	-	-	2	-	-	1	-	-	-	-	-	-	-	-	-
Netherlands	451	553	511	278	350	412	235	339	440	19	58	23	7	11	7
Norway	74	110	73	51	82	57	62	44	53	3	3	13	1	-	-
Poland	5,359	5,796	4,744	3,658	4,321	4,571	1,702	2,344	6,466	123	66	190	83	54	37
Portugal	243	175	287	148	115	221	252	102	117	8	18	19	5	10	7
Romania	4,282	3,988	3,820	2,165	3,225	3,110	700	1,200	2,036	57	65	158	22	22	43
Russia	6,062	7,855	8,781	4,738	5,835	8,088	3,206	3,704	5,262	169	232	341	15	64	110
San Marino	2	5	2	2	-	4	2	5	2	2	1	-	3	1	-
Serbia & Montenegro	101	615	629	-	452	660	-	-	384	-	1	5	-	-	-
Slovakia	539	484	478	349	403	444	277	353	283	8	63	59	28	12	24
Slovenia	265	303	347	251	271	347	60	198	131	86	128	43	3	2	1
Spain	604	690	634	455	423	493	377	204	426	12	8	7	6	3	2
Sweden	436	524	587	257	398	448	303	366	391	13	25	38	5	8	5
Switzerland	273	311	296	162	203	232	108	170	178	6	15	10	1	4	6
“Former Yugoslav Republic of Macedonia”	148	148	234	98	115	220	57	51	62	1	11	15	-	-	6
Turkey	2,944	3,930	2,244	3,558	3,679	2,489	1,632	1,817	1,366	357	740	538	142	172	241
Ukraine	2,287	2,265	2,457	1,858	1,538	1,870	1,665	1,246	1,698	158	141	269	6	31	133
United Kingdom	1,396	1,423	1,652	685	745	1,007	865	721	732	86	25	150	134	20	18
Total	38,810	44,128	41,510	27,189	32,512	35,402	17,272	20,350	27,612	1,714	2,439	2,842	753	830	1,036

Evolution of cases – Judgments

State	Judgments (Chamber and Grand Chamber)			Judgments (final – after referral to Grand Chamber)			Judgments (friendly settlements)			Judgments (striking out)		
	2003	2004	2005	2003	2004	2005	2003	2004	2005	2003	2004	2005
Albania	-	1	1	-	-	-	-	-	-	-	-	-
Andorra	-	1	-	-	-	-	-	-	-	-	-	-
Armenia	-	-	-	-	-	-	-	-	-	-	-	-
Austria	17	14	20	-	-	-	2	1	1	-	1	-
Azerbaijan	-	-	-	-	-	-	-	-	-	-	-	-
Belgium	7	11	13	-	-	-	1	1	1	-	3	-
Bosnia and Herzegovina	-	-	-	-	-	-	-	-	-	-	-	-
Bulgaria	11	26	22	-	-	1	-	1	-	-	-	-
Croatia	6	12	25	-	-	-	-	21	1	-	-	-
Cyprus	2	2	-	-	1	1	-	-	-	-	-	-
Czech Republic	5	27	29	-	-	-	1	1	4	-	-	-
Denmark	2	1	1	-	1	-	-	1	1	-	-	1
Estonia	3	1	4	-	-	-	-	-	-	-	-	-
Finland	3	12	12	-	-	-	2	-	1	-	-	-
France	83	70	57	-	-	-	7	4	1	-	-	2
Georgia	-	1	3	-	-	-	-	-	-	-	1	-
Germany	9	6	12	2	-	1	1	-	-	-	-	1
Greece	23	35	102	-	-	-	3	-	1	-	-	1
Hungary	13	20	16	-	-	-	2	-	-	1	-	-
Iceland	2	2	-	-	-	-	-	-	-	-	-	-
Ireland	2	2	3	-	-	-	-	-	-	-	-	-
Italy	107	37	70	1	-	-	29	7	7	4	-	2
Latvia	1	3	1	-	-	-	-	-	-	-	-	-

Evolution of cases – Judgments (continued)

State	Judgments (Chamber and Grand Chamber)			Judgments (final – after referral to Grand Chamber)			Judgments (friendly settlements)			Judgments (striking out)		
	2003	2004	2005	2003	2004	2005	2003	2004	2005	2003	2004	2005
Liechtenstein	-	1	1	-	-	-	-	-	-	-	-	-
Lithuania	3	1	4	-	-	-	1	1	-	-	-	1
Luxembourg	4	1	1	-	-	-	-	-	-	-	-	-
Malta	1	1	2	-	-	-	-	-	-	-	-	-
Moldova	-	10	13	-	-	-	-	-	-	-	-	1
Monaco			-			-			-			-
Netherlands	7	9	8	-	-	-	-	1	-	-	-	2
Norway	5	-	-	-	-	-	-	-	-	-	-	-
Poland	43	74	48	-	1	-	22	4	-	2	-	-
Portugal	16	5	7	-	-	-	1	2	3	-	-	-
Romania	25	11	24	-	1	-	-	3	5	3	-	1
Russia	5	15	82	-	-	-	-	-	-	-	-	-
San Marino	3	2	-	-	-	-	1	-	-	-	-	1
Serbia and Montenegro		-	-		-	-		-	-		-	-
Slovakia	19	12	28	-	1	-	8	1	-	-	-	-
Slovenia	-	-	1	-	-	-	-	-	-	-	-	-
Spain	9	6	-	-	-	-	-	-	-	-	-	-
Sweden	3	1	4	-	-	-	-	5	2	-	-	1
Switzerland	1	-	5	-	-	-	-	-	-	-	-	-
“Former Yugoslav Republic of Macedonia”	-	-	4	-	-	-	-	-	-	-	-	-
Turkey	76	156	276	1	2	3	44	10	6	1	3	3
Ukraine	6	14	119	-	-	-	-	-	-	-	-	1
United Kingdom	20	18	14	2	1	1	3	4	3	-	-	-
Total	542	621	1,032	6	8	7	128	68	37	11	8	18

Evolution of cases – Judgments (continued)

State	Judgments (just satisfaction)			Judgments (preliminary objections)			Judgments (interpretation)			Judgments (revision)		
	2003	2004	2005	2003	2004	2005	2003	2004	2005	2003	2004	2005
Albania	-	-	-	-	-	-	-	-	-	-	-	-
Andorra	-	-	-	-	-	-	-	-	-	-	-	-
Armenia	-	-	-	-	-	-	-	-	-	-	-	-
Austria	-	1	-	-	-	-	-	-	-	-	-	1
Azerbaijan	-	-	-	-	-	-	-	-	-	-	-	-
Belgium	-	-	-	-	-	-	-	-	-	-	-	-
Bosnia and Herzegovina	-	-	-	-	-	-	-	-	-	-	-	-
Bulgaria	-	-	-	-	-	-	-	-	-	-	-	-
Croatia	-	-	-	-	-	-	-	-	-	-	-	-
Cyprus	1	-	-	-	-	-	-	-	-	-	-	-
Czech Republic	-	-	-	-	-	-	-	-	-	-	-	-
Denmark	-	-	-	-	-	-	-	-	-	-	-	-
Estonia	-	-	-	-	-	-	-	-	-	-	-	-
Finland	-	-	-	-	-	-	-	-	-	-	-	-
France	2	-	-	-	-	-	-	-	-	2	1	-
Georgia	-	-	-	-	-	-	-	-	-	-	-	-
Germany	-	-	1	-	-	-	-	-	-	-	-	1
Greece	2	4	1	-	-	-	-	-	-	-	1	-
Hungary	-	-	-	-	-	-	-	-	-	-	-	-
Iceland	-	-	-	-	-	-	-	-	-	-	-	-
Ireland	-	-	-	-	-	-	-	-	-	-	-	-
Italy	2	3	-	-	-	-	-	-	-	5	-	-
Latvia	-	-	-	-	-	-	-	-	-	-	-	-

Evolution of cases – Judgments (continued)

State	Judgments (just satisfaction)			Judgments (preliminary objections)			Judgments (interpretation)			Judgments (revision)		
	2003	2004	2005	2003	2004	2005	2003	2004	2005	2003	2004	2005
Liechtenstein	-	-	-	-	-	-	-	-	-	-	-	-
Lithuania	-	-	-	-	-	-	-	-	-	-	-	-
Luxembourg	-	-	-	-	-	-	-	-	-	-	-	-
Malta	-	-	-	-	-	-	-	-	-	-	-	-
Moldova	-	-	-	-	-	-	-	-	-	-	-	-
Monaco	-	-	-	-	-	-	-	-	-	-	-	-
Netherlands	-	-	-	-	-	-	-	-	-	-	-	-
Norway	-	-	-	-	-	-	-	-	-	-	-	-
Poland	-	-	1	-	-	-	-	-	-	-	-	-
Portugal	-	-	-	-	-	-	-	-	-	-	-	-
Romania	-	3	3	-	-	-	-	-	-	-	1	-
Russia	-	-	-	-	-	-	-	-	-	-	-	-
San Marino	-	-	-	-	-	-	-	-	-	-	-	-
Serbia and Montenegro	-	-	-	-	-	-	-	-	-	-	-	-
Slovakia	-	-	1	-	-	-	-	-	-	-	-	-
Slovenia	-	-	-	-	-	-	-	-	-	-	-	-
Spain	-	-	-	-	-	-	-	-	-	-	-	-
Sweden	-	-	-	-	-	-	-	-	-	-	-	-
Switzerland	-	-	-	-	-	-	-	-	-	-	-	-
“Former Yugoslav Republic of Macedonia”	-	-	-	-	-	-	-	-	-	-	-	-
Turkey	-	-	1	1	-	1	-	-	-	-	-	-
Ukraine	1	-	-	-	-	-	-	-	-	-	-	-
United Kingdom	-	-	-	-	-	-	-	-	-	-	-	-
Total	8	11	8	1	-	1	-	-	-	7	3	2

Violations by Article and by country 1999-2005

1999-2005	Judgments finding at least one violation				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	
	Friendly settlements, striking out judgments				Right to life - deprivation of life													Right to free elections									
	Judgments finding no violation				Lack of effective investigation													Right to education									
	Other judgments*				Inhuman or degrading treatment or punishment													Right to property									
	Right to life - deprivation of life				Prohibition of torture													Right to a fair trial									
	Lack of effective investigation				Prohibition of slavery/forced labour													Right to liberty and security									
	Right to life - deprivation of life				Lack of effective investigation													No punishment without law									
	Lack of effective investigation				Right to respect for private and family life													Length of proceedings									
	Lack of effective investigation				Freedom of thought, conscience and religion													Right to a fair trial									
	Lack of effective investigation				Freedom of expression and association													Right to a fair trial									
	Lack of effective investigation				Freedom of assembly and association													Right to a fair trial									
	Lack of effective investigation				Right to an effective remedy													Right to a fair trial									
	Lack of effective investigation				Prohibition of discrimination													Right to a fair trial									
	Lack of effective investigation				Protection of property													Right to a fair trial									
	Lack of effective investigation				Right to education													Right to a fair trial									
	Lack of effective investigation				Other Articles of the Convention													Right to a fair trial									
	Lack of effective investigation				Right not to be tried or punished twice													Right to a fair trial									
	Lack of effective investigation				Right to free elections													Right to a fair trial									
	Lack of effective investigation				Right to property													Right to a fair trial									
	Lack of effective investigation				Right to education													Right to a fair trial									
	Lack of effective investigation				Other Articles of the Convention													Right to a fair trial									
	Lack of effective investigation				Right not to be tried or punished twice													Right to a fair trial									
	Lack of effective investigation				Right to free elections													Right to a fair trial									
	Lack of effective investigation				Right to property													Right to a fair trial									
	Lack of effective investigation				Right to education													Right to a fair trial									
	Lack of effective investigation				Other Articles of the Convention													Right to a fair trial									
Albania	1	1									1																2
Andorra	1		1																	1							2
Armenia																											0
Austria	91	7	17	5						1	34	42		5		11			1	7					3		120
Azerbaijan																											0
Belgium	46	5	9							2	20	31		2		1			2							1	60
Bosnia-Herzegovina																											0
Bulgaria	66	2	3		5	4		8	3		85	7	29		2	2	1	4		14	2	4					71
Croatia	51	3	25									24	25		4				9								79
Cyprus	14	1	3	2				2		1	5	7				1			1	2	2		1		1	1	20
Czech Republic	69	2	7							6	18	46							8	1	2						78
Denmark	3	5	10							1		1		1													18
Estonia	8	2	1					1		3	2	1	3														11
Finland	35	6	6					1			14	11		6		3			1		2						47
France	344	42	48	11		1	1	4		1	16	110	220	1	9		6	1		12	7	9				3	445
Georgia	4		1					2		3	1	2							3		2				1		5
Germany	47	12	5	2						9	7	19		12		1				8	1						66
Greece	205	6	18	17	1	1		3	1	3	43	149		2	2	1	1		43	2	35						246
Hungary	53	2	6					1	1	3	1	48															61
Iceland	4		2							1	2										1						6
Ireland	7	4	1							2	4	4							3								12
Italy	1,168	21	330	26				1	1	14	181	906		29		1	3		10		205		2		10		1,545
Latvia	7		1					1		2	2	1		3		1	1						2				8
Liechtenstein	3									1	1					1			1								3

Violations by Article and by country 1999-2005 (continued)

1999-2005	Number of judgments																										
	Judgments finding a violation	Judgments finding at least one violation	Friendly-settlements, striking-out judgments	Right to life - deprivation of life	Lack of effective investigation	Inhuman or degrading treatment or punishment	Prohibition of torture	Prohibition of effective investigation	Right to liberty and security	Right to a fair trial	No punishment without law	Freedom of thought, conscience and religion	Freedom of expression and association	Freedom of assembly and right to marry	Prohibition of effective remedy	Protection of property	Right to education	Right to free elections	Other Articles of the Convention	Right not to be tried or punished twice							
Lithuania	17	2	4					2		14	4	4	5				2	1					23				
Luxembourg	9		1									7	2	2									10				
Malta	6	1								6	1	1											7				
Moldova	24		1				2	7		7	15	1	2	1	3		2		14			1	25				
Monaco																							0				
Netherlands	30	11	11	1		1	1	3		6	6	5	8	1		1	2						53				
Norway	7	2									5				3								9				
Poland	211	11	39	2				1		61	12	159	18	3		7		6			1		263				
Portugal	70	1	54	1						2	2	58	3	2			1	6					126				
Romania	88	4	13	8			1	3	3	5	105	6	9	3	1	2	2	57			1		113				
Russia	101	2		2	3	4	4	12	1	23	51	29	6	1	1	11	1	52	1		8		105				
San Marino	8		2								7	2		1				1					10				
Serbia-Montenegro																							0				
Slovak Republic	69	4	19	1						8	8	51		3		5		2					93				
Slovenia	3	1	1					1		2		2	1		1								5				
Spain	19	6	1	1					1	1	6	6	1	3	1								27				
Sweden	10	4	13		1			1		1	5	3				1		2					27				
Switzerland	18	5	2							4	8	3	3	1									25				
"Former Yugoslav Republic of Macedonia"	4	1	1									2				1		2					6				
Turkey	764	20	188	4	41	68	6	67	7	112	261	79	4	20	1	88	11	88	2	271	1	1	26	976			
Ukraine	139	1	2	1	1	1	1	9	2	5	103	20	7	2	2		38		76		1		2	143			
United Kingdom	131	20	28	4	1	7		6		38	58	16	29	2	1	3	20	3	2		3		1	183			
Sub Total	3,955	217	874	88	53	87	16	136	20	1	448	1,134	1,996	9	191	9	143	24	3	285	43	755	2	10	3	56	5134**
Total:	5,134**																										

* Other judgments: just satisfaction, revision judgments, preliminary objections and lack of jurisdiction.

** Including three judgments which concern two countries: Moldova and Russia, Georgia and Russia, and Romania and Hungary.

Violations by Article and by country 2005

2005	Judgments finding at least one violation				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	
	Judgments finding no violation				Other Articles of the Convention														Number of judgments								
	Friendly settlements				Other Articles of the Convention														Number of judgments								
	Out judgments				Other Articles of the Convention														Number of judgments								
	Right to life - deprivation of life				Other Articles of the Convention														Number of judgments								
	Lack of effective investigation				Other Articles of the Convention														Number of judgments								
	Inhuman or degrading treatment or punishment				Other Articles of the Convention														Number of judgments								
	Lack of effective investigation				Other Articles of the Convention														Number of judgments								
	Prohibition of torture				Other Articles of the Convention														Number of judgments								
	Right to liberty and security				Other Articles of the Convention														Number of judgments								
	Prohibition of slavery/forced labour				Other Articles of the Convention														Number of judgments								
	Right to a fair trial				Other Articles of the Convention														Number of judgments								
	No punishment without law				Other Articles of the Convention														Number of judgments								
	Right to respect for family life				Other Articles of the Convention														Number of judgments								
	Freedom of religion				Other Articles of the Convention														Number of judgments								
	Freedom of thought, conscience and religion				Other Articles of the Convention														Number of judgments								
	Freedom of expression				Other Articles of the Convention														Number of judgments								
	Freedom of association				Other Articles of the Convention														Number of judgments								
	Right to an effective remedy				Other Articles of the Convention														Number of judgments								
	Right to marry				Other Articles of the Convention														Number of judgments								
	Prohibition of discrimination				Other Articles of the Convention														Number of judgments								
	Protection of property				Other Articles of the Convention														Number of judgments								
	Right to education				Other Articles of the Convention														Number of judgments								
	Right to free elections				Other Articles of the Convention														Number of judgments								
	Other Articles of the Convention				Other Articles of the Convention														Number of judgments								
	Right not to be tried or punished twice				Other Articles of the Convention														Number of judgments								
Albania		1																								1	
Andorra																											0
Armenia																											0
Austria	18	2	1	1								4	9				2			1	3					22	
Azerbaijan																											0
Belgium	12	1	1									6	7														14
Bosnia-Herzegovina																											0
Bulgaria	23				1	1		2			30	4	10					3		4	1	2				23	
Croatia	24	1	1									13	10		1					4						26	
Cyprus	1											1					1									1	
Czech Republic	28	1	4								3	10	15							4						33	
Denmark		1	2																							3	
Estonia	4							1			3	1														4	
Finland	10	2	1					1				3	5		1											13	
France	51	6	3						1	3	35	13		3		1				2		3			1	60	
Georgia	3							2			2		2							3		2			1	3	
Germany	10	3	1	2							3		3		3						2					16	
Greece	100	1	2	2				1	1			11	90					1		34	1	4				105	
Hungary	17										1		16													17	
Iceland																										0	
Ireland	1	2											1							1						3	
Italy	67	3	9								7	19			9					2		49			2	79	
Latvia	1														1											1	
Liechtenstein	1											1														1	

Violations by Article and by country 2005 (continued)

2005	Judgments finding at least one violation				Friendly settlements, out judgments		Right to life - deprivation of life		Lack of effective investigation or punishment		Right to liberty and security		No punishment without law		Freedom of religion and belief		Freedom of expression		Right to an effective remedy		Protection of property		Right to education		Other Articles of the Convention		Number of judgments	
	Judgments finding at least one violation	Friendly settlements, out judgments	Right to life - deprivation of life	Other judgments*	Lack of effective investigation or punishment	Right to liberty and security	No punishment without law	Freedom of religion and belief	Freedom of expression	Right to an effective remedy	Protection of property	Right to education	Other Articles of the Convention	Number of judgments	Number of judgments	Number of judgments												
Lithuania	3	1	1						1		2																5	
Luxembourg	1												1															1
Malta	1	1									1		1															2
Moldova	13		1						3		4	8	1		2		1			1			7					14
Monaco																												0
Netherlands	7	1	2			1	1	1			3	1			1													10
Norway																												0
Poland	44	4		1							16	5	20		6		1						3			1		49
Portugal	6	1	3								1		1		2		1						2					10
Romania	21	3	6	3				1				16	4		2				1			2	10					33
Russia	81	1		1	3	4		7	1		11	45	21		3		1				7	1	48	1		4		83
San Marino			1																									1
Serbia-Montenegro																												0
Slovak Republic	28			1								4	24								3							29
Slovenia	1												1								1							1
Spain																												0
Sweden	4		3		1			1			1	1	1															7
Switzerland	5											4	1															5
"Former Yugoslav Republic of Macedonia"	4												2								1		2					4
Turkey	270	9	9	2	15	26		27	1		49	93	32	1	3		39	6		36		65				10	290	
Ukraine	119		1		1	1	1	3			5	89	18		1		2			33		67				2	120	
United Kingdom	15		3								8	8	2		1		1		1	1	1	1	1		1		18	
Sub Total	994	45	55	13	21	33	2	51	3	1	153	382	311	1	41	0	50	11	1	138	12	265	1	1	0	21	1,105**	
Total:	1,105**																											

* Other judgments: just satisfaction, revision and preliminary objections.

** Including two judgments which concern two countries: Georgia and Russia, and Romania and Hungary.

Judgments 2005

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	-	-	-	-	-	-	-
Armenia	-	-	-	-	-	-	-
Austria	18	2	1	-	-	1	22
Azerbaijan	-	-	-	-	-	-	-
Belgium	12	1	1	-	-	-	14
Bosnia and Herzegovina	-	-	-	-	-	-	-
Bulgaria	23	-	-	-	-	-	23
Croatia	24	1	1	-	-	-	26
Cyprus	1	-	-	-	-	-	1
Czech Republic	28	1	4	-	-	-	33
Denmark	-	1	1	1	-	-	3
Estonia	4	-	-	-	-	-	4
Finland	10	2	1	-	-	-	13
France	51	6	1	2	-	-	60
Georgia	3	-	-	-	-	-	3
Germany	10	3	-	1	1 ¹	1	16
Greece	100	2	1	1	1	-	105
Hungary	17	-	-	-	-	-	17
Iceland	-	-	-	-	-	-	-
Ireland	1	2	-	-	-	-	3
Italy	67	3	7	2	-	-	79
Latvia	1	-	-	-	-	-	1
Liechtenstein	1	-	-	-	-	-	1
Lithuania	3	1	-	1	-	-	5
Luxembourg	1	-	-	-	-	-	1
“Former Yugoslav Republic of Macedonia”	4	-	-	-	-	-	4
Malta	1	1	-	-	-	-	2
Moldova	13	-	-	1	-	-	14
Netherlands	7	1	-	2	-	-	10
Norway	-	-	-	-	-	-	-
Poland	44	4	-	-	1 ¹	-	49
Portugal	6	1	3	-	-	-	10
Romania	21	3	5	1	3	0	33 ²
Russia	81	2	-	-	-	-	83
San Marino	-	-	-	1	-	-	1
Serbia and Montenegro	-	-	-	-	-	-	-
Slovakia	28	-	-	-	1 ¹	-	29
Slovenia	1	-	-	-	-	-	1
Spain	-	-	-	-	-	-	-
Sweden	4	-	2	1	-	-	7
Switzerland	5	-	-	-	-	-	5
Turkey	270	10	6	3	1	-	290
Ukraine	119	-	-	1	-	-	120
United Kingdom	15	-	3	-	-	-	18
Total	994³	48	37	18	8	2	1,107³

1. Friendly settlement. 2. Two judgments (one merits and one friendly settlement) concerned the same application. 3. Two judgments concerned two respondent States (Georgia and Russia, and Romania and Hungary).