

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



FIRST SECTION

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I. INTRODUCTION

In 2005, the Section held 40 Chamber sessions. Oral hearings were held in six cases. The Section delivered 300 judgments, of which 290 concerned the merits, 7 concerned friendly settlements 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 cases examined by a Chamber

- (a) 307 applications were declared admissible;
- (b) 73 applications were declared inadmissible;
- (c) 64 applications were struck out of the list; and
- (d) 614 applications were communicated to the State concerned for observations of which 554 were communicated by the President by virtue of the new procedure instituted on 1 January 2003.

In addition, the Section held 60 Committee sessions. 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 strike-out decisions taken by the Section during the year.

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

II. COMPOSITION OF THE SECTION

Christos **Rozakis** (Greek), *President*,
Loukis **Loucaides** (Cypriot), *Vice-President*,
Françoise **Tulkens** (Belgian),
Peer **Lorenzen** (Danish),
Nina **Vajić** (Croatian),
Snejana **Botoucharova** (Bulgarian),
Anatoly **Kovler** (Russian),
Elisabeth **Steiner** (Austrian),
Khanlar **Hajiyev** (Azeri),
Dean **Spielmann** (Luxemburger),
Sverre Erik **Jebens** (Norwegian), *Judges*,

Søren **Nielsen**, *Registrar*
Santiago **Quesada**, *Deputy Registrar*

III. HEARINGS

Hearings were held in the following cases:

(1) 54891/00 **Zhigalev v. Russia**

The applicant was allotted property in the privatisation which followed the break-up of the Soviet Union. The local council issued a resolution which allotted 31 ha to the applicant's farm and equal shares in 315 ha to each of six persons, including the applicant. The land certificate which was issued to the applicant by the local land authority provided for the grant of 30.9 ha to the applicant as his property, and for the grant of 315 ha to him as a "lifetime inheritable possession". The applicant was expressed to be the sole owner of both parcels. Two sets of proceedings were brought to challenge the resolution and the certificate. The first proceedings, brought by the council, were unsuccessful. The second proceedings were brought by the prosecutor, who filed an action for nullity against the resolution and the land certificate. The respondent to the proceedings was the council, and the applicant had third party status only. The courts found that it was not open to the applicant, as a "mere" third party, to raise the issue whether the action was time-barred, and that question was not discussed. On the merits, the courts agreed with the prosecutor, approved the resolution on the basis that it provided for an equal division of both the 315 ha and the 30.9 ha between six persons. The courts quashed the land certificate, and the applicant stopped farming the land. The applicant complained under Article 6 of the

Convention about the unfairness of the proceedings. He claimed in particular that through his “third party” status he was unable to state his case. The applicant further complained under Article 1 of Protocol No. 1 that he was deprived of the land, which he lawfully owned and successfully farmed, without any compensation.

Following a hearing on admissibility and the merits, the case was declared admissible on 20 January 2005. Judgment will be delivered at a later date.

(2) no. 62539/00 & 10523/02 Jurisic and Collegium Mehrerau & Coorplan-Jenni GmbH and Hascic v. Austria

The first case concerns proceedings concerning the issuing of an employment permit for the first applicant to the second applicant. The applicants complain under Article 6 about the lack of an oral hearing before the Administrative Court. The first applicant further complains under Article 6 that he was denied access to court as he had not been a party to the proceedings.

The second case concerns proceedings concerning the issuing of an employment permit for the second applicant to the applicant company. The applicants complain under Article 6 about the lack of an oral hearing before the Administrative Court and the length of the proceedings. The second applicant further complains under Article 6 that he was denied access to court as he had not been a party to the proceedings. He further complains under Article 3, 8 and 14 about the Austrian authorities’ refusal to grant the requested employment permit.

Following a hearing on admissibility and the merits, the cases were declared admissible as regards Article 6 (question of applicability of Article 6 joined to the merits) on 24 February 2005. Judgment will be delivered at a later date.

(3) no. 52467/99 Ntumba Kabongo v. Belgium

The case concerns an applicant who was refused asylum and was kept in detention more than ten months due to the fact that the applicant refused to board the airplane with which the Government intended to return her.

– Articles 3 and 5 of the Convention

Following a hearing on admissibility and the merits, the case was declared inadmissible on 2 June 2005.

(4) no. 39922/03 Taïs v. France

The application concerns the death of the applicants’ son while placed in detention.

– Articles 2 and 3 of the Convention

Following a hearing on admissibility and the merits, the case was declared admissible on 6 October 2005. Judgment will be delivered at a later date.

(5) no. 30877/02 Nosov v. Russia

The company in which the applicant was the director successfully sued another company for an outstanding debt. Almost two years after the judgment had become final and the enforcement had begun, a third-instance court decided to re-open the proceedings.

– Article 6 § 1 of the Convention

Following a hearing on admissibility and the merits, the case was declared inadmissible on 20 October 2005, the Court having established that the applicant could not claim to be a “victim” within the meaning of Article 34 of the Convention.

(6) no. 69481/01 Bazorkina v. Russia

The case concerns “disappearance” of the applicant’s son after his detention by the Russian military in Chechnya.

– Articles 2, 3, 5, 6, 8 and 13 of the Convention

The case was declared admissible on 15 September 2005. A hearing on the merits was held on 8 December 2005. Judgment will be delivered at a later date.

IV. CASES RELINQUISHED TO THE GRAND CHAMBER

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

V. INTERESTING JUDGMENTS AND DECISIONS

Of the judgments delivered and decisions adopted by the Section this year, the most interesting included the following:

(1) no. 59450/00 Ramirez Sanchez v. France

The applicant, who claims to be a revolutionary by profession, was taken into custody on 15 August 1994. He was placed under judicial investigation in connection with a series of terrorist attacks in France and on 25 December 1997 was given a life sentence for the murder of three police

officers. The applicant alleged that he had been held in prolonged solitary confinement in breach of Article 3 of the Convention, and that there had been no remedy available to challenge the measure in breach of Article 13 of the Convention.

The Court held that, notwithstanding the possible long-term effects of the applicant's social isolation, the general and very special conditions in which the applicant was being held in solitary confinement and the length of that confinement had not reached the minimum level of severity necessary to constitute inhuman or degrading treatment within the meaning of Article 3 of the Convention, having regard to the applicant's character and the unprecedented danger he posed.

The Court held, however, that there had been a violation of Article 13 of the Convention on account of the lack of a remedy in domestic law that would have allowed the government to challenge the decision to prolong his solitary confinement.

Judgment of 27 January 2005.

(2) nos. 57942/00 and 57945/00 Khashiyev and Akayeva v. Russia

The applicants alleged that their relatives were tortured and killed by members of the Russian federal military in Chechnya in February 2000. They also submitted that the investigation into their deaths was inefficient. The applicants relied on Articles 2, 3 and 13 of the Convention.

Article 2 (*obligation to protect the right to life*): The Court first noted that, in reply to its request, the Government had submitted only about two-thirds of the criminal investigation file. It was inherent in proceedings related to cases of this nature that in certain instances solely the respondent Government had access to information capable of corroborating or refuting the applicant's allegations. A failure on the Government's part to submit such information without a satisfactory explanation could give rise to the drawing of inferences as to the well-founded character of such allegations. On the basis of the material in its possession the Court found it established that the applicants' relatives had been killed by military personnel. No other plausible explanation as to the circumstances of the deaths had been forthcoming, nor had any justification been relied on in respect of the use of lethal force by the State agents.

Conclusion: violation.

Article 2 (*obligation to conduct an effective investigation*): An investigation into the killings of the applicants' relatives had been opened only after a considerable delay and had been flawed. In particular, the investigation did not seem to have pursued the possible involvement of a certain military unit directly mentioned by several witnesses. The Court was not persuaded that an appeal against the outcome of the investigation would have been able to remedy its defects, even if the applicants had been

properly informed of the proceedings and had been involved in it. The applicants were therefore regarded as having complied with the requirement to exhaust the relevant criminal-law remedies. In sum, the authorities had failed to carry out an effective criminal investigation into the circumstances surrounding the deaths of the applicants' relatives.

Conclusion: violation.

Article 3 (*obligation to protect from torture*): The Court was unable to find that beyond all reasonable doubt the applicants' relatives had been subjected to treatment contrary to Article 3.

Conclusion: no violation.

Article 3 (*obligation to conduct an effective investigation*): The Court found that there had been no thorough and effective investigation into credible allegations of torture.

Conclusion: violation.

Article 13 : The applicants' complaints were clearly "arguable" for the purposes of Article 13. They should accordingly have been able to avail themselves of effective and practical remedies capable of leading to the identification and punishment of those responsible and to an award of compensation, for the purposes of Article 13. In the present cases the criminal investigation had been ineffective in that it lacked sufficient objectivity and thoroughness, and the effectiveness of any other remedy, including the civil remedies, had been consequently undermined.

Conclusion: violation.

Judgment of 24 February 2005.

(3) nos. 57947-49/00 Isayeva, Yusupova and Bazayeva v. Russia

The applicants alleged that they were victims of indiscriminate bombing by Russian military planes of a civilian convoy near Grozny as a result of which two children of the first applicant were killed and the first and second applicants were wounded. The third applicant's car and possession were destroyed. The applicants relied on Articles 2, 3 and 13 of the Convention and Article 1 of Protocol No. 1.

Article 2 (*obligation to protect the right to life*): It was undisputed that the applicants had been subjected to an aerial missile attack, during which the first applicant's two children had been killed and the first and the second applicants wounded. While the Court's ability to assess the legitimacy of the attack had been hampered by the Government's failure to submit a copy of the complete investigation file, the materials submitted nevertheless allowed certain conclusions to be drawn as to whether the operation had been planned and conducted in such a way as to avoid or minimise, to the greatest extent possible, damage to civilians.

The Government had claimed that the aim of the operation had been to protect persons from unlawful violence within the meaning of Article 2

§ 2 (a) of the Convention. Given the context of the conflict in Chechnya at the relevant time, the Court assumed that the military had reasonably considered that there had been an attack or a risk of attack, and that the air strike had been a legitimate response to that attack.

The applicants and other witnesses to the attack had testified that they had been aware in advance of the “humanitarian corridor” to Ingushetia for Grozny residents on 29 October 1999, and that there had been numerous civilian cars and thousands of people on the road. They also referred to an order from a senior military officer at the roadblock telling them to return to Grozny and to his giving them assurances as to their safety. The result of that order had been a traffic jam several kilometres long. This should have been known to the authorities who were planning military operations anywhere near the Rostov-Baku highway on that day and should have alerted them to the need for extreme caution as regards the use of lethal force. Yet it did not appear that those responsible for planning and controlling the operation, or the pilots themselves, had been aware of this. This had placed the civilians on the road, including the applicants, at a very high risk of being perceived as suitable targets by the military pilots. Each of the twelve missiles had created several thousand pieces of shrapnel and its impact radius had exceeded 300 metres. Anyone who had been at that time on that stretch of road would have been in mortal danger. The Government had failed to invoke the provisions of domestic legislation at any level governing the use of force by its agents in such situations, and this was also directly relevant to the proportionality of the response to the alleged attack. It followed that, even assuming that the military had been pursuing a legitimate aim, the operation had not been planned and executed with the requisite care for the lives of the civilians.

Conclusion: violation.

Article 2 (*obligation to conduct an effective investigation*): A criminal investigation had been opened only with considerable delay and the Court noted a number of serious and unexplained failures to act once the investigation had commenced. It did not appear, for example, that an operations record book, mission reports and other relevant documents produced immediately before or after the incident had been requested or reviewed. There appeared to have been no efforts to establish the identity and rank of the senior officer at the relevant military roadblock who had ordered the refugees to return to Grozny and allegedly promised them safety on the route, and to question him. No efforts had been made to collect information about the declaration of the “safe passage” for 29 October 1999, or to identify someone among the military or civil authorities who would have been responsible for the safety of the exit. The investigation had not taken sufficient steps to identify other victims and possible witnesses of the attack. There had also been a considerable delay before the applicants were

questioned and granted victim status in the proceedings. The authorities had therefore failed to carry out an effective investigation.

Conclusion: violation.

Article 3 : No separate issue.

Article 1 of Protocol No. 1 : Mrs Bazayeva had been subjected to an aerial attack, which had resulted in destruction of her family's vehicles and household items. This had constituted grave and unjustified interference with her peaceful enjoyment of her possessions.

Conclusion: violation.

Article 13 : The applicants' complaints were clearly "arguable" for the purposes of Article 13. They should accordingly have been able to avail themselves of effective and practical remedies capable of leading to the identification and punishment of those responsible and to an award of compensation. In the present cases the criminal investigation had been ineffective in that it had lacked sufficient objectivity and thoroughness, and the effectiveness of any other remedy, including the civil remedies, had been consequently undermined.

Conclusion: violation.

Judgment of 24 February 2005.

(4) no. 57950/00 Isayeva v. Russia

The applicant alleged that she was a victim of indiscriminate bombing by the Russian military of her native village of Katyr-Yurt as a result of which the applicant's son and three nieces were killed. She relied on Articles 2 and 13 of the Convention.

Article 2 (*obligation to protect the right to life*): The Court accepted that the situation that existed in Chechnya at the relevant time called for exceptional measures by the State. The undisputed presence of a very large group of armed fighters in Katyr-Yurt and their active resistance might have justified use of lethal force by the State agents, thus bringing the situation within paragraph 2 of Article 2. A balance nevertheless had to be struck between the aim pursued and the means employed to achieve it. Although the Court's ability to make an assessment had been hampered by the fact that the Government had not disclosed most of the documents related to the military action, it was able to conclude that the military operation in Katyr-Yurt, aimed at either disarmament or destruction of the fighters, had not been spontaneous. The use of heavy free-falling high-explosion aviation bombs with a damage radius exceeding 1,000 metres in a populated area, outside wartime and without prior evacuation of the civilians, was impossible to reconcile with the degree of caution expected from a law-enforcement body in a democratic society. As no martial law and no state of emergency had been declared in Chechnya, and no derogation had been entered under Article 15 of the Convention the operation therefore had to be

judged against a normal legal background. Even when faced with a situation where, as the Government had submitted, the villagers had been held hostage by a large group of fighters, the primary aim of the operation should have been to protect lives from unlawful violence. The use of indiscriminate weapons stood in flagrant contrast with this aim and could not be considered compatible with the standard of care prerequisite to an operation of this kind involving the use of lethal force by State agents.

While the documents reviewed by the Court confirmed that some information about a safe passage had been conveyed to the population, there was not a single reference anywhere to indicate that such a passage had been observed. The Government's failure to invoke the provisions of any domestic legislation governing the use of force by State agents in such situations was, in the circumstances, also directly relevant to the Court's considerations with regard to the proportionality of the response to the attack. To sum up, accepting that the military operation had pursued a legitimate aim, the Court did not find that it had been planned and executed with the requisite care for the lives of the civilian population.

Conclusion: violation.

Article 2 (*obligation to conduct an effective investigation*): An investigation had been opened only upon communication of the complaint to the respondent Government in September 2000. The Court observed several serious flaws in the part of the investigation file submitted to it, such as the lack of reliable information about the declaration of the "safe passage" for civilians. No persons had been identified among the military or civil authorities as responsible for the declaration of the corridor and for the safety of those using it. No clarification had been provided on the absence of coordination between the announcements of a "safe exit" and the apparent lack of consideration given to this by the military in planning and executing their mission.

Information about the decision by which the proceedings had been closed and the decisions to grant victim status quashed had not been communicated to the applicant and other victims directly, as the domestic relevant legislation prescribed. The Court thus did not accept that the applicant had been properly informed of the proceedings and could have challenged its results. The authorities had therefore failed to carry out an effective investigation into the circumstances of the military operation.

Conclusion: violation.

Article 13 : The applicant's complaint was clearly "arguable" for the purposes of Article 13. She should accordingly have been able to avail herself of effective and practical remedies capable of leading to the identification and punishment of those responsible and to an award of compensation, for the purposes of Article 13. Nevertheless, the criminal investigation had been ineffective in that it had lacked sufficient objectivity

and thoroughness, and the effectiveness of any other remedy, including the civil remedies, had been consequently undermined.

Conclusion: violation.

Judgment of 24 February 2005.

(5) no. 58254/00 Frizen v. Russia

In 1996 a company founded by the applicant's husband granted her an interest-free loan to buy a car. The total amount was transferred directly to the bank account of the car dealer. In 1998, the applicant's husband was convicted of large-scale fraud. The court sentenced him to four years' imprisonment and issued confiscation orders in respect of his property. The applicant's car and certain household items in her flat were seized. Before the European Court the applicant complained that her car had been confiscated for offences for which she had not been convicted and without any legal basis.

The Court held that the existence of public-interest considerations for the forfeiture of the applicant's vehicle, however relevant or appropriate they might have appeared, did not dispense the domestic authorities from the obligation to cite a legal basis for such decision. It observed that the domestic courts did not refer to any legal provision authorising the forfeiture, either in the criminal proceedings against the applicant's husband or in the civil proceedings which she initiated. Furthermore, the Russian Government had not invoked, explicitly or by reference, any domestic legal provision on which the decision to confiscate the applicant's car had been based.

The Court's power to review compliance with domestic law was limited, as it was in the first place for the national authorities to interpret and apply that law. Having regard to the Russian authorities' consistent failure to indicate a legal provision that could be construed as the basis for the forfeiture of the applicant's property, the interference with the applicant's property rights could not be considered "lawful".

Conclusion: violation.

Judgment of 24 March 2005.

(6) no. 9808/02 Stoichkov v. Bulgaria

The applicant left Bulgaria in 1988. In 1989, following proceedings *in absentia*, he was convicted of rape and attempted rape and sentenced to ten years' imprisonment. In 2000 he returned to Bulgaria and was arrested and taken to prison to serve his sentence. His request to be released – based on the argument that the ten-year limitation period for the enforcement of his sentence had expired – was rejected in turn by district and regional prosecutors and the Supreme Cassation Prosecutor, all considering that the

period had been interrupted by several measures taken with a view to having his sentence enforced. In 2001 the Supreme Court held that his request for a reopening of the criminal proceedings was inadmissible as the case-file had been destroyed in 1997, which rendered a rehearing impossible in practice. His request for restoration of the case-file was in vain.

As regards Article 5(1)(a) the Court found no indication that the applicant had waived his right to appear and defend himself in the proceedings against him in 1989. He should, therefore, have had the opportunity to have those proceedings reopened and the merits of the rape charges against him determined in his presence. Since 1 January 2000 Bulgarian law had expressly provided for such a possibility. However, when the applicant had requested that his case be reopened, the Supreme Court of Cassation had refused, essentially on the ground that the case-file of the original proceedings had been destroyed, which, in its view, rendered a rehearing impossible in practice. He had apparently not received a reply to his request for restoration of the case-file. He had thus been deprived of the possibility to obtain from a court, which had heard him, a fresh determination of the merits of the charges on which he had been convicted. It followed that the criminal proceedings against the applicant, coupled with the impossibility to obtain a fresh determination of the charges against him by a court which had heard him, had been manifestly contrary to the principles embodied in Article 6. Therefore, while his initial deprivation of liberty in 2000 might have been deemed justified under Article 5(1)(a), having been effected for the purpose of enforcing a lawful sentence, it ceased to be so in 2001, when the Supreme Court of Cassation had refused to reopen the proceedings.

Conclusion: violation.

As regards Article 5(4) the Court held that the applicant's argument that his sentence could no longer be enforced as the limitation period had expired raised an issue of fact determinative of the legality of his detention which was independent of, and distinct from, his 1989 conviction and sentence. As the legality of his detention was not clear he should have been able to have this issue resolved by a court meeting the requirements of Article 5 (4). Under Bulgarian law, however, all issues affecting the legality of execution of prison sentences were entrusted to the public prosecutor. There was no provision expressly providing for judicial review of such issues and no general *habeas corpus* procedure applying to all kinds of deprivation of liberty.

Conclusion: violation.

As regards Article 5(5) the Court held that Bulgarian law did not provide the applicant with an enforceable right to compensation for the violations found.

Conclusion: violation.

Judgment of 24 March 2005.

(7) no. 77785/01 Znamenskaya v. Russia

In August 1997, in the thirty-fifth week of the applicant's pregnancy, the embryo asphyxiated in her womb. Mr Z., who had been the applicant's husband until their divorce, was entered as the stillbirth's father in the birth certificate and in the birth register. The applicant submitted however that the biological father of the stillbirth had been Mr G., with whom she had been living since 1994. They were unable to file a joint declaration of paternity because G. had been placed in detention in June 1997, following which the applicant had been unable to see him. In October 1997 G. died. In August 2000 the applicant requested the District Court to establish G.'s paternity in respect of the stillbirth and to amend the child's surname and patronymic name accordingly. She relied on Article 49 of the Family Code according to which, if a child is born to parents who are not married to each other and there is no joint declaration or declaration by the child's father, the paternity of the child shall be established in court proceedings on the application of either parent. The court shall then have regard to any evidence capable of establishing the child's paternity with certainty. In November 2000 Z. also died. In March 2001 the District Court ordered the discontinuation of the proceedings, holding that Article 49 of the Family Code only applied to living children. The City Court upheld that decision, finding that the case could not be examined as a civil action because the stillborn child had not acquired any civil rights.

The Court held that the core of the applicant's grievance was the impossibility of having her stillbirth's patronymic name and surname amended so as to reflect its biological descent from her late partner G., notwithstanding the legal presumption that her husband Z. was the father of the child. The case was therefore distinguishable from situations where domestic authorities had opposed the parents' choice of a child's forename or their request to give a child the mother's surname rather than the father's. Nor was the case-law concerning a person's request to change his or her own surname applicable, because a stillborn child could not be considered to have acquired a right to respect for his private or family life separate from that of his mother. Bearing in mind that the applicant must have developed a strong bond with the embryo, whom she had brought almost to full term, and that she had expressed the desire to give him a name and bury him, the establishment of his descent undoubtedly affected her "private life". The existence of a relationship between the applicant and G. was undisputed and no one had contested his paternity. As the child was stillborn, the establishment of paternity did not impose a continuing obligation of support on anyone involved. It appeared therefore that there were no interests conflicting with those of the applicant. In refusing the applicant's claim the domestic courts did not refer to any legitimate or convincing reasons for maintaining *status quo*. Moreover, the Government had accepted that the

domestic courts had erred and that under the applicable family-law provisions the applicant's claim should have been granted. A situation where a legal presumption was 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, was not compatible, even having regard to the margin of appreciation left to the State, with the obligation to secure effective "respect" for private and family life.

Conclusion: violation.

Judgment of 2 June 2005.

(8) no. 58254/00 Fadeyeva v. Russia

The applicant lives in an important steel-producing centre. In 1982, she moved with her family to a flat situated at about 450 metres from a steel-plant. Although the authorities had delimited a buffer zone around the plant's premises – "the sanitary security zone" – with the aim of separating the plant from the town's residential areas, in practice thousands of people (including the applicant's family) lived there. A Decree of 1974 obliged the authorities to resettle certain inhabitants of the sanitary security zone. In the 1990's the Government adopted two programmes to improve the environmental situation in the plant. The latter of these programmes stated that the "environmental situation in the city had resulted in a continuing deterioration in public health". Some of the measures envisaged in the programme included the resettlement of people living in the sanitary security zone. In 1995, the applicant brought a court action seeking resettlement outside the zone, arguing that the concentration of toxic elements and noise levels in the sanitary security zone was dangerous to health and life. In 1996, the Town Court, referring to the Decree of 1974, found that the authorities ought to have resettled all of the zone's residents but that they had failed to do so. However, no specific order to resettle the applicant was given by the court, it merely stated that the local authorities had to place her on a "priority waiting list" to obtain new local authority housing. The court also stated that the applicant's resettlement was conditional to the availability of funds. The first-instance court issued an execution warrant, but the bailiff discontinued the enforcement proceedings on the ground that there was no "priority waiting list" for new housing for residents of the sanitary security zone. In 1999, the applicant brought a fresh action against the municipality, seeking immediate execution of the 1996 judgment. The Town Court dismissed the action, finding that the applicant had been duly placed on the general waiting list. Moreover, it held that the judgment of 1996 had been executed and that there was no need to take any further measures. Both parties submitted to the Court a number of documents containing information on industrial pollution in the town. A report prepared by a Dr Chernaik, commissioned by the applicant,

concluded that he would expect the population residing within the zone to suffer from above-average incidences of several diseases.

As regards Article 8 the Court noted that the degree of disturbance caused by the plant and the effects of pollution on the applicant were disputed by the parties. As the Court had already pointed out, see *López Ostra v. Spain*, the adverse effects of environmental pollution must attain a certain minimum level if they were to fall within the scope of this provision. According to the materials submitted to the Court since 1998 (when the Convention entered into force in Russia, and is therefore the period to be taken into consideration), the pollution levels with respect to a number of rated parameters had exceeded the domestic norms. Given the Government's failure to produce a number of documents requested by the Court, it could be concluded that at certain periods the situation could have been even worse than it appeared from the available data. The fact that the domestic courts in the present case recognised the applicant's right to be resettled showed that the existence of an interference with the applicant's private sphere was taken for granted at the domestic level. It was therefore a presumption that the pollution had become potentially harmful to the health and well-being of those exposed to it. Thus, the very strong combination of indirect evidence and presumptions made it possible to conclude that the applicant's health had deteriorated as a result of her prolonged exposure to the industrial emissions from the plant, and had adversely affected the quality of life at her home, to a degree sufficient to bring the case within the scope of Article 8. As to the attribution of the alleged interference to the State, the plant had been privatised in 1993, and there had thus been no direct interference from the Russian Federation. However, under the Court's case-law, the failure to regulate a private industry in environmental cases may engage a State's responsibility. Following the plant's privatisation in 1993, the State continued to exercise control over the plant (operating conditions, supervision, etc.). The municipal authorities were aware of the continuing environmental problems and applied certain sanctions in order to improve the situation. Thus, the Court concluded that the authorities were certainly in a position to evaluate the pollution hazards and to take adequate measures to prevent or reduce them. The combination of these factors was sufficient to raise an issue of the State's positive obligation under Article 8. As to the legitimate aim of the interference, the Government argued that the applicant's immediate resettlement would inevitably breach the rights of other residents entitled to free housing. It also referred to the fact that the plant contributed to the economic system of the region, which the Court considered served as a legitimate aim. Although Russian legislation did not indicate clearly what should be done with those persons living in the security zone, in a situation where pollution exceeded safe levels, it appeared that the only solution was to place the applicant on a waiting list. The legislation made no difference between those persons who were entitled

to new housing on a welfare basis and those whose everyday life was seriously disrupted by toxic fumes from a neighbouring enterprise. The applicant was placed on the waiting list, but her situation did not change. Therefore, the measure applied by the domestic courts made no difference to the applicant: it did not give her any realistic hope of being removed from the source of pollution. Moreover, the State had authorised the operation of a polluting enterprise in the middle of a densely populated town. Although it had established that a certain territory around the plant should be free of any dwelling, legislative measures in this respect were not implemented in practice, and the State did not offer the applicant any effective solution to help her move from the dangerous area. The polluting enterprise had operated in breach of domestic environmental standards and there was no information that the State had designed or applied effective measures taking into account the interests of the local population affected by the pollution which would have been capable of reducing the industrial pollution to acceptable levels. Despite the wide margin of appreciation of the State in the sphere of environmental practices, a fair balance between the interests of the community and the applicant's effective enjoyment of her right to respect for her home and private life had not been struck.

Conclusion: violation.

Judgment of 9 June 2005.

(9) no. 58254/00 Baklanov v. Russia (former First Section)

The applicant, who lives in Riga, asked an acquaintance to deliver 250,000 US dollars ("USD") to Moscow, where he intended to go and live (for this purpose, he had previously negotiated a real estate deal with a Moscow-based agent). The applicant's acquaintance failed to declare the money at the customs checkpoint and was charged with smuggling. The District Court convicted him on this ground under Article 188-1 of the Criminal Code. As regards the money, it was forfeited to the Treasury as an object of smuggling. The appeal by the applicant's acquaintance was refused, as was an application for supervisory review by the Deputy President of the Supreme Court claiming that smuggled money could only be confiscated if proven to have been acquired criminally. The applicant complained that the District Court forfeited his, an innocent party's, money without any basis in law.

As regards Article 1 of Protocol No. 1 the Court found that the seizure of the applicant's money had constituted an interference with his property rights within the meaning of this provision. This Article authorised a deprivation of possessions or a State's right to control the use of property if these were "prescribed by law". As regards the requirement of lawfulness in the present case, the Court recalled that confiscation of forfeited goods was not provided for by Article 188-1 of the Criminal Code, which served as a

basis for the conviction of the applicant's acquaintance (as was the case prior to the reform of this piece of legislation). The Code of Criminal Procedure permitted the forfeiture of "criminally acquired" assets or money, but there was no evidence to the effect that the applicant's money had been acquired in such a manner, nor did it appear that the national courts had relied upon this provision forfeiting the money. As to the rulings of the Supreme Court and Constitutional Court relied upon by the Government in support of their arguments, these could not serve as an established interpretation of domestic legislation on the basis of which the forfeiture could be effected. Thus, having regard to the national courts' lack of reference to any legal provision as a basis for the forfeiture of an important sum of money, and to the apparent inconsistencies of domestic case-law compared to national legislation, the Court considered that the law in question was not formulated with such precision as to enable the applicant to foresee the consequences of his actions. It followed that the interference with the applicant's property could not be considered lawful.

Conclusion: violation.

Judgment of 9 June 2005.

(10) no. 71615/01 Meznaric v. Croatia

The applicant was the defendant party in civil proceedings brought against him by two plaintiffs which sought damages for breach of contract. The domestic courts, at two instances, gave judgment for the plaintiffs. The applicant appealed to the Supreme Court and subsequently submitted a constitutional complaint. Both complaints were dismissed. One of the judges sitting on the Constitutional Court's panel which delivered the court's decision had shortly acted as legal counsel of the plaintiffs in the early stages of the proceedings. His daughter, who had taken over her father's law practice, later replaced him as the applicants' counsel.

As regards Article 6(1) the Court held as follows : Concerning the subjective impartiality test, there was nothing to indicate personal bias on the part of the judge who had represented the applicants' opponents at an earlier stage. In considering whether there were legitimate reasons to fear lack of impartiality as being objectively justified, it was necessary to recall the fact that a judge which had acted in different capacities in the same case could in certain circumstances compromise a tribunal's impartiality. The impugned judge's previous involvement in the case had been minor and remote, as he had represented the applicant's opponents for only two months and almost nine years before the decision of the Constitutional Court. However, he had carried out a dual role in the case: first, as counsel to the plaintiffs in the principal proceedings, and, subsequently, adjudicating on the constitutionality of the applicant's complaint. This dual role in a single set of proceedings, reinforced by his daughter's involvement also as counsel

to the plaintiff's, created a situation which was capable of raising legitimate doubts as the judge's impartiality.

Conclusion: violation.

Judgment of 15 July 2005.

VI. RULE 39 (INTERIM MEASURES) AND RULE 41 (PRIORITY) REQUESTS

(a) Requests for interim measures pursuant to Rule 39 of the Rules of Court were granted in the following cases:

(1) no. 4023/05 Shabazova v. Russia

The case concerns “disappearance” of the applicant’s husband, a prominent human rights activist from Chechnya. He was allegedly detained on 20 January 2005 by a group of armed men identified by witnesses as belonging to the Chechen security service. As a legal councillor he was involved in preparation and submission of a number of complaints to the Court.

The case is pending.

(2) no. 26853/04 Popov v. Russia

The case concerns conditions of detention and alleged lack of medical assistance in prison for the applicant who suffers from cancer (Articles 2 and 3), non-examination of witnesses (Article 6 § 3 (d)) and certain issues under Article 5. In March 2005 complaints under Articles 8 and 34 concerning alleged censorship of the applicant’s correspondence and threats from State officials were also added.

The case is pending.

(3) no. 40902/05 Bilasi-Ashri v. Austria

The applicant is an Egyptian national, who arrived in Austria in 1994. He claimed political asylum and these proceedings are apparently still pending. In 1995 he was convicted in absentia by an Egyptian Criminal Court for State Security of forgery robbery and theft to a term of imprisonment of 15 years. In 1998 the Egyptian Ministry of Justice requested the applicant’s extradition. The applicant’s extradition was eventually granted by the Austrian Court of Appeal on 12 November 2001. The case raised issues, in particular, under Articles 3, 5 and 6 of the Convention.

The case is pending.

(b) Requests for priority pursuant to Rule 41 of the Rules of Court were granted in 88 cases.

VII. THIRD-PARTY INTERVENTION (ARTICLE 36 AND RULE 44)

Leave to submit third-party comments was given by the President pursuant to Rule 61 § 3 of the Rules of Court in six cases :

(1) Mikadze v. Russia, no. 52697/99

The case concerns the conditions of the applicant's detention, as well as the sanctions and his privation of an effective remedy against the acts of the prison administration. The case raises issues under Articles 3 and 13 of the Convention.

The case is pending.

(2) Vasilevskiy v. Latvia, no. 73485/01

The case concerns the modalities of calculating the pension of the applicant who is a Russian national living in Latvia since 1986. It raises issues under Article 14 of the Convention in conjunction with Article 1 of Protocol No. 1

The case is pending.

(3) Kaya v. Germany, no. 31753/02

The case concerns a second generation immigrant's expulsion to Turkey following his conviction of two attempts of aggravated trafficking in human beings, several counts of battery and aggravated battery, procurement, illegal purchase of drugs, two counts of drunken driving and two counts of insult. Following his expulsion to Turkey, the applicant married a German national of Turkish origins. Subsequently, a child was born to the couple. In 2004 the domestic authorities, upon the applicant's request, limited the applicant's exclusion from the German territory to 5 ½ years. The case raises issues under Articles 3 and 8 of the Convention

The case is pending.

(4) Subašić v. Croatia, no. 18322/03

The applicant claims that the enactment of the 1999 Amendments and the prolonged stay of the proceedings violated his rights of access to a court.

– Article 6 § 1 of the Convention

Judgment of 1 December 2005 – violation.

(5) Choban v. Bulgaria, no. 48737/99

The case concerns the seizing of money belonging to the applicant as evidence in criminal proceedings and its subsequent confiscation by the customs authorities because of its non-declaring at the border. It also concerns the length of these criminal proceedings, in which the applicant participated as a civil claimant.

– Articles 6 § 1, 13 of the Convention and Article 1 of Protocol No. 1

Inadmissible on 23 June 2005 (the interesting issue under Article 1 of Protocol No. 1 being out on either non-exhaustion or six-months).

(6) Sisojeva & others v. Latvia, no. 60654/00

The applicants are a married couple and their daughter. The father and the daughter are Russian nationals and the mother has no nationality. The case concerns the applicants' possibility of obtaining a right to stay in Latvia and raises issues under Article 8 of the Convention. The First Section pronounced judgment in the case on 16 June 2005, finding a violation of Article 8. The case is at present pending before the Grand Chamber.

VIII. Statistical information

1. Results for year
2. Results by month
3. Applications pending
4. Graphic charts
 - (a) Judgments delivered
 - (b) Inadmissibility and strike-out decisions
 - (c) Admissibility decisions
 - (d) Applications communicated
 - (e) Applications pending by year of lodging
 - (f) Applications pending by State

APPENDIX 1

Judgments delivered in 2005	
Merits	290
Striking out	2
Friendly settlement	7
Just satisfaction	1
Revision	
Total	300
Chamber decisions adopted in 2005	
Applications declared admissible	307
Applications declared inadmissible	73
Applications struck out of the list	64
Total	444
Committee decisions adopted in 2005	
Applications declared inadmissible	6811
Applications struck out of the list	67
Total	6878
Applications communicated in 2005	
Total	614
Total cases finalised in 2005 (judgments*, inadmissibility and strike-out decisions)	7314

* Not including judgments on just satisfaction and revision but including judgments which are not yet final. Some judgments dealt with a number of joined applications.

APPENDIX 2

	Chambers					Committees	
	Judgments	Admissible	Inadmissible	Struck out	Communicated	Inadmissible	Struck out
January	15	33	11	1	40	757	6
February	52	22	4	2	42	795	7
March	20	25	8	10	55	415	5
April	28	15	3	1	55	627	3
May	14	47	8	4	48	200	4
June	38	36	11	14	53	491	8
July	24	10	1	0	14	400	5
August	9	6	1	2	12	0	0
September	12	32	4	6	133	808	4
October	33	28	4	11	70	815	4
November	33	33	12	8	54	797	10
December	22	20	6	5	38	706	11
Total	300	307	73	64	614	6811	67

APPENDIX 3

Applications pending on 31 December 2005	
Total applications not yet examined	13539
Adjourned/Communicated for information	7
Communicated/Adjourned	0
Communicated for observations	907
Admissible	192
Judgments not yet final	94
TOTAL APPLICATIONS PENDING	14739
(Chamber: 3 958)	
(Committee: 10 781)	

APPENDIX 4

Chart 1: Judgments delivered in 2005

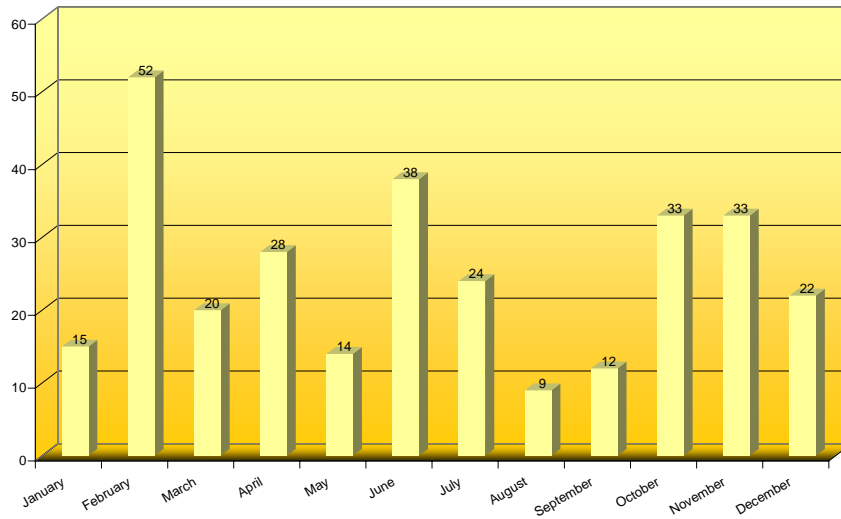
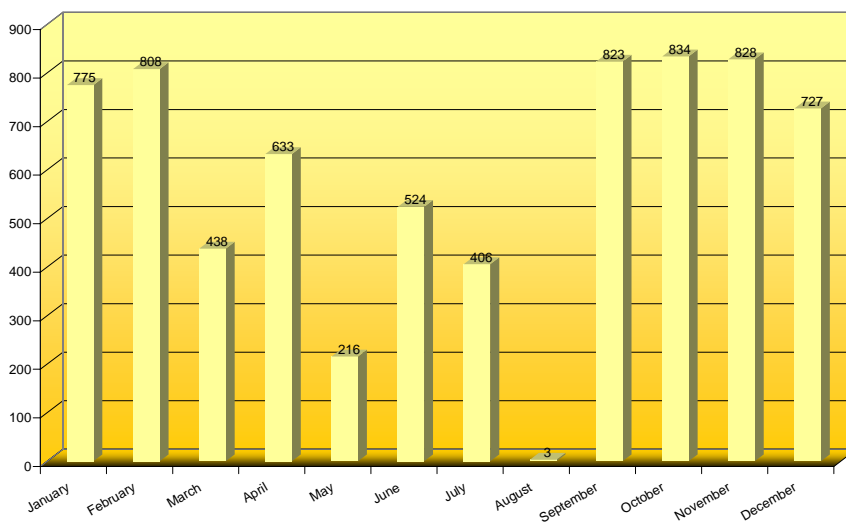


Chart 2: Inadmissibility and strike-out decisions adopted in 2005



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Chart 3: Admissibility decisions adopted in 2005

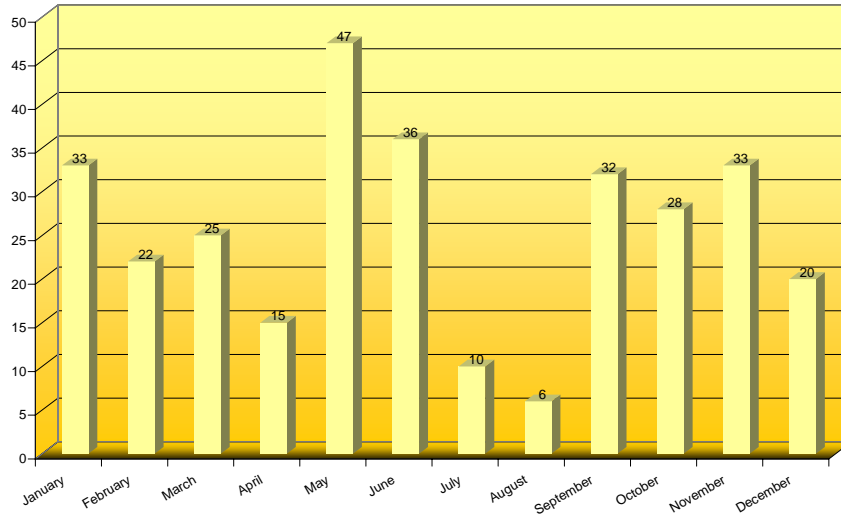


Chart 4: Applications communicated in 2005

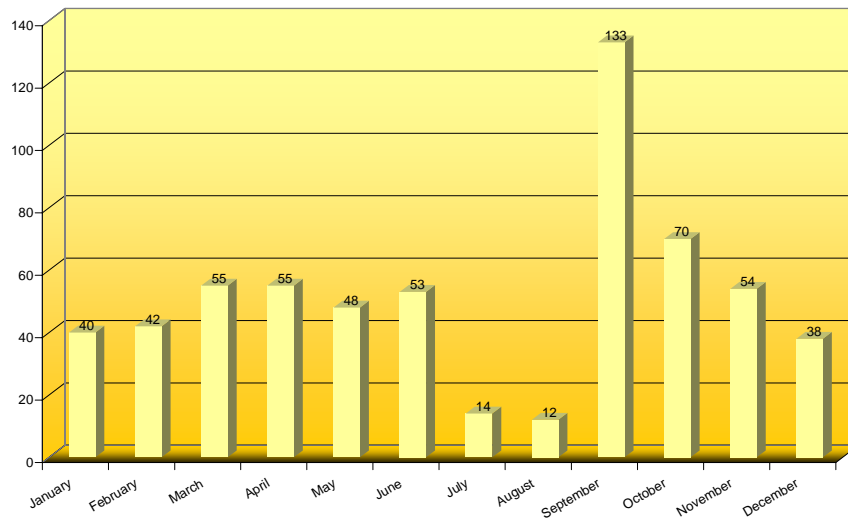


Chart 5: Applications pending on 31 December 2005 by year of lodging

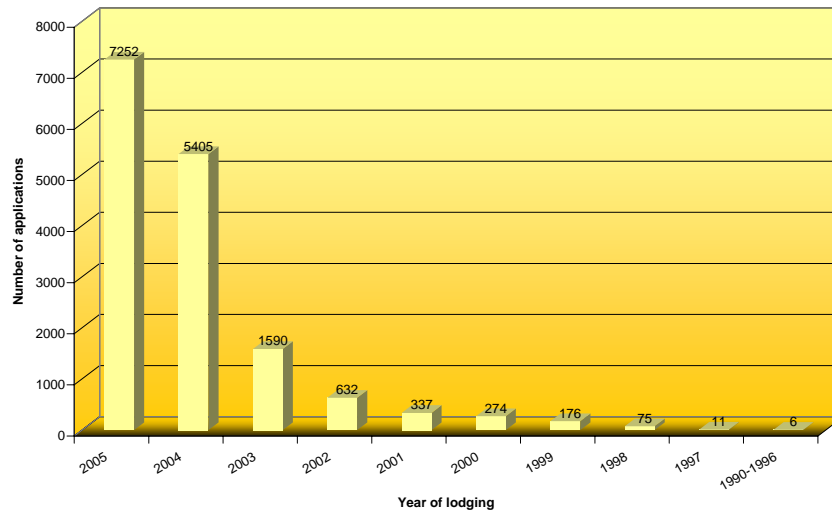


Chart 6: Applications pending on 31 December 2005 by State

