

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



GRAND CHAMBER

ANNUAL ACTIVITY REPORT 2004

January 2005

CONTENTS

	Page
I. Introduction	3
II. Composition of the Court.....	4
III. Cases referred to the Grand Chamber by relinquishment of jurisdiction (Article 30 of the Convention and Rule 72 of the Rules of Court)	7
IV. Cases referred to the Grand Chamber by decision of its five-member Panel	9
V. Hearings	14
VI. Decision on admissibility	22
VII. Judgments.....	23
VIII. Advisory Opinion.....	42
IX. Third party interventions.....	43
X. List of Article 43 requests examined by the Grand Chamber's Panel.....	44
XII. List of cases pending before the Grand Chamber on 31 December 2004	44

I. INTRODUCTION

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

14 new cases (concerning 21 applications) were referred to the Grand Chamber, seven by relinquishment of jurisdiction by the respective Chambers pursuant to Article 30 of the Convention (see Chapter III below), and seven by a decision of the Grand Chamber's Panel to accept a request for re-examination under Article 43 of the Convention (see Chapter IV below).

The Grand Chamber held nine oral hearings (see Chapter V below).

The Grand Chamber adopted one decision on admissibility (Senator Lines: see Chapter VI below) and delivered 15 judgments (concerning 16 applications), seven in relinquishment cases and eight in rehearing cases (see Chapter VII below).

The Grand Chamber also adopted a decision on the first ever request by the Committee of Ministers for an advisory opinion (see Chapter VIII below).

II. COMPOSITION OF THE COURT (UP UNTIL 31 OCTOBER 2004)

Luzius **Wildhaber** (Swiss), *President*,
Christos **Rozakis** (Greek), *Vice-President*,
Jean-Paul **Costa** (French), *Vice-President*,
Georg **Ress** (German), *Section President*,
Nicolas **Bratza** (British), *Section President*,
Gaukur **Jörundsson**¹ (Icelandic),
Giovanni **Bonello** (Maltese),
Lucius **Cafilisch**² (Swiss),
Loukis **Loucaides** (Cypriot),
Pranas **Kūris** (Lithuanian),
Ireneu **Cabral Barreto** (Portuguese),
Riza **Türmen** (Turkish),
Françoise **Tulkens** (Belgian),
Viera **Strážnická** (Slovakian),
Corneliu **Bîrsan** (Romanian),
Peer **Lorenzen** (Danish),
Karel **Jungwiert** (Czech),
Volodymyr **Butkevych** (Ukrainian),
Josep **Casadevall** (Andorran),
Boštjan **Zupančič** (Slovenian),
Nina **Vajić** (Croatian),
John **Hedigan** (Irish),
Wilhelmina **Thomassen** (Dutch),
Matti **Pellonpää** (Finnish),
Margarita **Tsatsa-Nikolovska** (citizen of “the Former Yugoslav
Republic of Macedonia”),
Hanne Sophie **Greve** (Norwegian),
András **Baka** (Hungarian),
Rait **Maruste** (Estonian),
Egils **Levits**³ (Latvian),
Kristaq **Traja** (Albanian),
Snejana **Botoucharova** (Bulgarian),
Mindia **Ugrekhelidze** (Georgian),
Anatoly **Kovler** (Russian),
Vladimiro **Zagrebelsky** (Italian),
Antonella **Mularoni** (San Marinese),
Elisabeth **Steiner** (Austrian),
Stanislav **Pavlovschi** (Moldovan),
Lech **Garlicki** (Polish),
Javier **Borrego Borrego** (Spanish),
Elisabet **Fura-Sandström** (Swedish),
Alvina **Gyulumyan** (Armenian),

¹ Died in office in September 2004.

² Judge elected in respect of Liechtenstein.

³ Resigned in April 2004.

Khanlar **Hajiyev** (Azerbaijani),
Ljiljana **Mijović**⁴ (citizen of Bosnia and Herzegovina),
Dean **Spielmann**⁵ (Luxemburger), **Judges**,

Paul **Mahoney** (British), **Registrar**,
Erik **Fribergh** (Swedish), **Deputy Registrar**,
Wolfgang **Strasser**⁶ (Austrian), **Deputy to the Registrar**

COMPOSITION OF THE COURT (AS FROM 1 NOVEMBER 2004)

Luzius **Wildhaber** (Swiss), **President**,
Christos **Rozakis** (Greek), **Vice-President**,
Jean-Paul **Costa** (French), **Vice-President**,
Nicolas **Bratza** (British), **Section President**,
Boštjan **Zupančič** (Slovenian), **Section President**,
Giovanni **Bonello** (Maltese),
Lucius **Cafilisch**⁷ (Swiss),
Loukis **Loucaides** (Cypriot),
Ireneu **Cabral Barreto** (Portuguese),
Riza **Türmen** (Turkish),
Françoise **Tulkens** (Belgian),
Corneliu **Bîrsan** (Romanian),
Peer **Lorenzen** (Danish),
Karel **Jungwiert** (Czech),
Volodymyr **Butkevych** (Ukrainian),
Josep **Casadevall** (Andorran),
Nina **Vajić** (Croatian),
John **Hedigan** (Irish),
Matti **Pellonpää** (Finnish),
Margarita **Tsatsa-Nikolovska** (citizen of “the Former Yugoslav
Republic of Macedonia”),
András **Baka** (Hungarian),
Rait **Maruste** (Estonian),
Kristaq **Traja** (Albanian),
Snejana **Botoucharova** (Bulgarian),
Mindia **Ugrekhelidze** (Georgian),
Anatoly **Kovler** (Russian),
Vladimiro **Zagrebelky** (Italian),
Antonella **Mularoni** (San Marinese),
Elisabeth **Steiner** (Austrian),

⁴ Took up office in May 2004.

⁵ Took up office in October 2004, replacing Marc Fischbach, who resigned in January 2004.

⁶ Died in July 2004.

⁷ Judge elected in respect of Liechtenstein.

Annual Report 2004: Grand Chamber

Stanislav **Pavlovschi** (Moldovan),
Lech **Garlicki** (Polish),
Javier **Borrego Borrego** (Spanish),
Elisabet **Fura-Sandström** (Swedish),
Alvina **Gyulumyan** (Armenian),
Khanlar **Hajiyev** (Azerbaijani),
Ljiljana **Mijović** (citizen of Bosnia and Herzegovina),
Dean **Spielmann** (Luxemburger),
Renate **Jaeger** (German),
Egbert **Myjer** (Netherlands),
Sverre Erik **Jebens** (Norwegian),
David Thór **Björgvinsson** (Icelandic),
Danutė **Jočienė** (Lithuanian),
Ján **Šikuta** (Slovakian), ***Judges***,

Paul **Mahoney** (British), ***Registrar***,
Erik **Fribergh** (Swedish), ***Deputy Registrar***,
Lawrence **Early** (British), ***Deputy Grand Chamber Registrar***

III. CASES REFERRED TO THE GRAND CHAMBER BY RELINQUISHMENT OF JURISDICTION (ARTICLE 30 OF THE CONVENTION AND RULE 72 OF THE RULES OF COURT)

The following seven cases (concerning 12 applications) were referred to the Grand Chamber by decisions of the respective Chambers to relinquish jurisdiction:

- (1) **Von Maltzan and Others v. Germany, no. 71916/01**
Von Zitzewitz and Others v. Germany, no. 71917/01/01
Man Ferrostal and Alfred Töpfer Stiftung v. Germany, no. 10260/02

Referred on 29 January 2004 by the Third Section (hearing on 22 September 2004, see Chapter V below).

- (2) **Bosphorus Airways v. Ireland, no. 45036/98**

Referred on 30 January 2004 by the Fourth Section (hearing on 29 September 2004, see Chapter V below).

- (3) **Makaratzis v. Greece, no. 50385/99**

Referred on 5 February 2004, by the First Section (judgment of 20 December 2004, see Chapter VII below).

- (4) **Roche v. United Kingdom, no. 32555/96**

Referred on 25 March 2004 by the Third Section (hearing on 20 October 2004, see Chapter V below).

- (5) **Hepple and Others v. the United Kingdom, no. 65731/01**
Kimber v. the United Kingdom, no. 65900/01

Referred on 24 August 2004 by the Fourth Section.

The cases concern the applicability of Article 1 of Protocol No. 1 to various categories of social benefits and alleged gender-based discrimination in the determination of entitlement to them.

**(6) Draon and Others v. France, no. 1513/03
Maurice and Others v. France, no. 11810/03**

Referred on 19 October 2004 by the Second Section.

The cases concern the impact of a retroactive change in the law governing the amount of compensation which can be recovered by the applicants. The applicants are parents of children born with a handicap which went undetected during pregnancy as a result of an error in diagnosis and had cases pending before the domestic courts when the law was changed. The cases raise issues under Articles 6, 8, 14 and Article 1 of Protocol No. 1.

**(7) Rasmussen v. Denmark, no. 52620/99
Sørensen v. Denmark, no. 52562/99**

Referred on 25 November 2004 by the First Section.

Mr Rasmussen used to be a member of a trade union. He did not agree with its political stance and resigned his membership. He became a member of another trade union. He was offered a job with his present employer, but on the condition that he became a member of his previous union with which the employer had entered into a closed shop agreement. The applicant agreed and obtained the job. Mr Sørensen was dismissed from his job because he was not a member of a particular trade union, although he knew at the time of his recruitment that membership was a condition of his employment. The applicants essentially complain that the relevant domestic employment law infringed their negative right to freedom of association guaranteed by Article 11 of the Convention.

IV. CASES REFERRED TO THE GRAND CHAMBER BY DECISION OF ITS FIVE-MEMBER PANEL

In 2004 the five-member Panel of the Grand Chamber (Article 43 § 2 of the Convention and Rule 24 § 5 of the Rules of Court) held five meetings (on 24 March, 14 June, 7 July, 10 November and 15 December 2004) to examine requests by the parties for cases to be referred to the Grand Chamber for re-examination under Article 43 of the Convention. It considered requests concerning a total of 139 cases, 58 of which were submitted by the respective Governments (in five cases both the Government and the applicant submitted requests) (see list in Appendix).

The Panel accepted rehearing requests in the following seven cases:

(1) Jahn and Others v. Germany, nos. 46720 /99, 72203/01 and 75552/01

The applicants are the heirs of the new owners of land expropriated after the Second World War under the land reform in the Soviet Occupied Zone of Germany. Full ownership of the land was conferred on them by a German Democratic Republic (GDR) law, which came into force in March 1990. After German reunification had taken effect, a 1992 law provided that the heirs of new owners who had not been carrying on an activity in the agricultural, forestry or food-industry sector on 15 March 1990, or had not done so during the previous ten years, had to return the land to the State. The applicants, who did not satisfy those criteria, were required by the courts to reassign their land without compensation.

A Chamber of the Third Section found on the facts that there had been a breach of Article 1 of Protocol No. 1 and reserved the issue of Article 41 of the Convention.

(2) Kyprianou v. Cyprus, no. 73797/01

The applicant is an advocate who, in the course of a trial in which he was acting as defence counsel, was interrupted by the Assize Court judges whilst cross-examining a witness. He felt aggrieved and sought leave to withdraw from the case, but as leave was not granted, the applicant responded to the court in an intemperate outburst. The applicant was given the opportunity to explain himself to the court or to retract his remarks. Following successive breaks to consider the matter, the same court found the applicant guilty of contempt of court and sentenced him to five days' imprisonment. The Supreme Court dismissed the applicant's appeal, finding that the Assize Court was competent to deal with contempt of court.

A Chamber of the Second Section found that the facts gave rise to breaches of Article 6 §§ 1, 2 and 3(a).

(3) Nachova and Others v. Bulgaria, nos. 43577/98 and 43579/98

Two men of Roma origin, relatives of the applicants, were conscripts serving compulsory military service in an army division dealing with the construction of apartments. They were in detention for repeated absences without leave when they escaped from the construction site where they were confined and took refuge in the house of the grandmother of one of them, situated in a Roma district of a village. Some days later, a military police unit was informed where they were hiding and dispatched four military police officers, under the command of G., to the village. They had instructions to arrest the fugitives using all the means and methods dictated by the circumstances. G. was armed with a handgun and a Kalashnikov automatic rifle. Having noticed the military vehicle in front of their house, the fugitives tried to escape. While running away they were shot by G. after he had given them a warning to stop. Both men died on their way to hospital. One neighbour claimed that several of the policemen had been shooting and that at one stage G. had pointed his gun at him in a brutal manner and had insulted him saying “You damn Gypsies”. The military investigation report concluded that G. had acted in accordance with the regulations and had tried to save the fugitives’ lives by warning them to stop and not shooting at their vital organs. A sketch-map, which lacked relevant details and descriptions of the terrain/area, was appended to the report. The military prosecutor accepted the conclusions and closed the investigation. The applicants’ subsequent appeals to the Armed Forces Prosecutor’s Offices were dismissed.

A Chamber of the First Section found a violation on the facts of Articles 2 (under both its substantive and procedural heads) and 14 of the Convention.

(4) Hirst v. the United Kingdom (no. 2), no. 74025/01

The applicant, who was sentenced to a term of discretionary life imprisonment for manslaughter, is barred by the Representation of the People Act of 1983 from voting in parliamentary or local elections. With a view to obtaining a declaration that this provision was incompatible with the Convention, the applicant issued proceedings in the High Court, together with an application for judicial review by two other prisoners who had applied for registration as electors. His application was heard by the Divisional Court, which acknowledged that whilst it was not easy to

articulate the legitimate aim of disqualifying a convicted prisoner from his right to vote while serving a sentence, the view had been taken that for the period in custody prisoners have forfeited their right and lost the moral authority to vote. The applicant's claims were accordingly rejected, as were those of the other prisoners. His applications for leave to appeal were refused.

A Chamber of the Fourth Section found that there had been a breach of Article 3 of Protocol No. 1.

(5) Ždanoka v. Latvia, no. 58278/00

During the Soviet period, the applicant was a member of the Communist Party of Latvia (CPL), a regional branch of the Communist Party of the Soviet Union. The restoration of the Republic of Latvia's independence was proclaimed in May 1990. A period of transition was introduced with a view to gradual restoration of genuine State sovereignty. This period ended on 21 August 1991 with the proclamation of the country's absolute and immediate independence. On account of its participation in two attempted coups d'état during the transition period, on 13 January and in August 1991, the CPL was declared unconstitutional and dissolved in September 1991. In 1994 and 1995 the Latvian Parliament adopted two laws on municipal and parliamentary elections respectively, which stated that persons who had actively participated in the CPL's activities after 13 January 1991, the date of the first coup d'état supported by that party, could not stand for election. Such participation was to be established by the courts on an application by the Prosecutor-General. In 1997 the applicant was able to stand in local elections and was elected to the Riga City Council. The applicant was obliged to withdraw her candidacy for the 1998 parliamentary elections. In 1999, on an application by the Prosecutor-General's office, the national courts held that the applicant had personally been involved in the CPL's activities after the critical date of 13 January 1991. The applicant was automatically disqualified from standing for election and lost her seat on the Riga City Council. An appeal on points of law by the applicant was declared inadmissible in February 2000. The applicant's name was removed from the list of candidates submitted for the 2002 parliamentary elections.

A Chamber of the First Section found that there had been breaches of Article 3 of Protocol No. 1 and Article 11 of the Convention and that it was not necessary to examine separately the applicant's complaint under Article 10 of the Convention.

(6) Leyla Şahin v. Turkey, no. 44774/98

On 23 February 1998 the Vice-Chancellor of the University of Istanbul issued a circular directing that students wearing the Islamic headscarf would be refused admission to lectures, courses and tutorials. The applicant, who wore an Islamic headscarf, was a student at the faculty of medicine of the university at the material time. On 12 March 1998 she was denied access to a written examination for wearing the Islamic headscarf. On 20 March 1998 the university authorities refused to enrol her on a course, on 16 April 1998 she was denied access to a lecture and on 10 June 1998 to another written examination, all for the same reason. The applicant applied for an order setting the circular aside, but her application was dismissed by the administrative courts. They ruled that, under the relevant legislation and in accordance with decisions of the Constitutional Court and the Supreme Administrative Court, the University Vice-Chancellor had power to regulate students' dress in order to maintain order. Under the settled case-law of those courts, neither the regulation, nor the individual measures, was illegal.

A Chamber of the Fourth Section found that there had been no breach of Article 9 of the Convention and that no separate issue arose under Articles 8 and 10, Article 14 taken together with Article 9, or under Article 2 of Protocol No. 1.

(7) Blečić v. Croatia, no. 59532/00

The applicant was the holder of a specially protected tenancy of a flat in Zadar, Croatia. In July 1991, she left the flat to visit her daughter abroad. Before leaving, she made appropriate arrangements for its maintenance in her absence. The time during which the applicant was away coincided with intensified armed conflict in the region and constant shelling of Zadar. Upon her return, in May 1992, the applicant attempted to recover the flat, but in the meantime the municipal authorities had brought an action for the termination of her tenancy on grounds of an unjustified absence of more than six months. Moreover, a family of displaced persons had moved into the apartment. The applicant alleged that she had been unable to return earlier given the war conditions in the area, her poor health to travel and also because the authorities had stopped paying her pension in October 1991. The first-instance court found that the applicant's absence had not been justified by the war or by any of the other reasons advanced by her. It thus granted the municipal authority's claim and terminated the applicant's special protected tenancy. The judgment was quashed in appeal

proceedings, but subsequently upheld by both the Supreme Court and the Constitutional Court.

A Chamber of the First Section found that there had been no breach of Article 8 of the Convention, and assuming applicability, no breach of Article 1 of Protocol No. 1.

V. HEARINGS

In 2004 hearings were held in the following nine cases (a summary is given only for those cases in which a judgment has not been issued by the end of the year):

(1) Mamatkulov and Askarov v. Turkey, nos. 46827/99 and 46951/99

Rehearing case. Hearing on the merits on 17 March 2004.

Mr Mamatkulov arrived in Istanbul from Kazakhstan on 3 March 1999 on a tourist visa. The Turkish police arrested him at Atatürk Airport (Istanbul) and took him into police custody. Mr Askarov arrived in Turkey on 13 December 1998 on a false passport. The security forces arrested him and took him into police custody on 5 March 1999.

Both men were suspected of homicide, causing injuries by the explosion of a bomb in Uzbekistan, and an attempted terrorist attack on the President of the Republic. They were brought before a judge who ordered them to be remanded in custody. Uzbekistan requested their extradition under a bilateral treaty with Turkey.

Mr Mamatkulov was questioned by the judge at Bakırköy Criminal Court and Mr Askarov was brought before Fatih Criminal Court (Istanbul). The judge and court noted that the offences with which the applicants were charged were neither political nor military in nature, but ordinary criminal offences. They ordered them to be detained pending their extradition.

On 18 March 1999 a Chamber of the Court indicated to the Turkish Government, under Rule 39 (interim measures) of the Rules of Court, that “it was desirable in the interests of the parties and the proper conduct of the proceedings before the Court not to extradite the applicants to Uzbekistan until the Court had had an opportunity to examine the application further at its forthcoming session on 23 March”. On that date the Chamber extended the interim measure until further notice. In the meantime, on 19 March 1999, the Turkish Cabinet issued a decree for the applicants’ extradition. They were handed over to the Uzbek authorities on 27 March 1999.

In a judgment of 28 June 1999 the High Court of the Republic of Uzbekistan found the applicants guilty of the offences as charged and sentenced them to 20 and 11 years’ imprisonment respectively.

Relying on Article 2 and Article 3 of Convention, the applicants submitted that following their extradition their lives were at risk and they

were in danger of being subjected to torture. They also complained, under Article 6, of the unfairness of the extradition procedure in Turkey and of the criminal proceedings against them in Uzbekistan. Pointing out that the applicants had in fact been extradited, their representatives alleged that Turkey had failed to discharge its obligations under the Convention by not acting in accordance with the indications given by the Court under Rule 39 of its Rules of Court.

In a Chamber judgment of 6 February 2003 the Court held unanimously that there had been no violation of Article 3 of the Convention; that Article 6 was inapplicable to the extradition procedure in Turkey; and that no issue arose regarding the second complaint lodged under Article 6. It held, by six votes to one, that there had been a breach of Article 34 of the Convention because Turkey had not complied with the interim measures indicated by the Court.

On 28 April 2003 the Government requested that the case be referred to the Grand Chamber. The Panel of the Grand Chamber granted the request on 21 May 2003.

(2) Kopečský v. Slovakia, no. 44912/98

Rehearing case. Hearing on the merits on 7 April 2004.

Judgment was delivered on 28 September 2004 (see Chapter VII below).

(3) Öçalan v. Turkey, no. 46221/99

Rehearing case. Hearing on the merits on 9 June 2004.

The case concerns an application by the former leader of the Kurdistan Workers' Party (PKK), proscribed as a terrorist organisation under Turkish law, who is currently incarcerated in İmralı Prison (Bursa, Turkey). At the time of the events in question, the Turkish courts had issued seven warrants for Mr Öçalan's arrest and a wanted notice (red notice) had been circulated by Interpol. He was accused of founding an armed gang in order to destroy the integrity of the Turkish State and of instigating terrorist acts resulting in loss of life.

On 9 October 1998 he was expelled from Syria, where he had been living for many years. From there he went to Greece, Russia, Italy and then again Russia and Greece before going to Kenya, where, on the evening of 15 February 1999, in disputed circumstances, he was taken on board an

aircraft at Nairobi airport and arrested by Turkish officials. He was then flown to Turkey, being kept blindfolded for most of the flight.

On arrival in Turkey, a hood was placed over his head while he was taken to İmralı Prison, where he was held in police custody from 16 to 23 February 1999 and questioned by the security forces. He received no legal assistance during that period and made several self-incriminating statements which contributed to his conviction. His lawyer in Turkey was prevented from travelling to visit him by members of the security forces. 16 other lawyers were also refused permission to visit on 23 February 1999.

On 23 February 1999 the applicant appeared before an Ankara State Security Court judge, who ordered him to be placed in pre-trial detention.

The first visit from his lawyers was restricted to 20 minutes and took place with members of the security forces and a judge present in the same room. Subsequent meetings between the applicant and his lawyers took place within the hearing of members of the security forces. After the first two visits from his lawyers, the applicant's contact with them was restricted to two one-hour visits a week. The prison authorities did not authorise the applicant's lawyers to provide him with a copy of the documents in the case file, other than the indictment. It was not until the hearing on 2 June 1999 that the State Security Court gave the applicant permission to consult the case file under the supervision of two registrars and his lawyers permission to provide him with a copy of certain documents.

On 29 June 1999 Ankara State Security Court found the applicant guilty of carrying out actions calculated to bring about the separation of a part of Turkish territory and of forming and leading an armed gang to achieve that end. It sentenced him to death, under Article 125 of the Criminal Code. That decision was upheld by the Court of Cassation.

Under Law no. 4771, published on 9 August 2002, the Turkish Assembly resolved to abolish the death penalty in peacetime. On 3 October 2002 Ankara State Security Court commuted the applicant's death sentence to life imprisonment.

An application to set aside the provision abolishing the death penalty in peacetime for persons convicted of terrorist offences was dismissed by the Constitutional Court on 27 December 2002.

The applicant complains that the imposition and/or implementation of the death penalty was or would be in violation of Articles 2 (right to life), 3 (prohibition of ill-treatment) and 14 (prohibition of discrimination) of the

Convention; and that the conditions in which he was transferred from Kenya to Turkey and detained on the island of İmralı amounted to inhuman treatment in breach of Article 3. He also complains that he was not brought promptly before a judge and did not have access to proceedings to challenge the lawfulness of his detention, in breach of Article 5 §§ 1, 3 and 4. Under Article 6 § 1 he complains that he was denied a fair trial, in that he was not tried by an independent and impartial tribunal, as one of the judges of the State Security Court was a military judge, the judges were influenced by hostile media reports and his lawyers were not given sufficient access to the court file to enable them to prepare his defence properly. He also complains under Article 34 that his legal representatives in Amsterdam were prevented from contacting him after his arrest and/or that the Turkish Government failed to reply to a request by the Court for information.

The applicant further relies on Articles 7, 8, 9, 10, 13, 14 and 18 of the Convention.

In a judgment of 12 March 2003, a Chamber of the Court held that there had been a violation of Article 5 §§ 3 and 4, Article 6 §§ 1 and 3 (b) and (c), and also of Article 3 on account of the fact that the death penalty had been imposed after an unfair trial.

On 9 July 2003, the Panel accepted requests submitted by the applicant and the Government, on 5 and 11 June 2003 respectively, for the case to be referred to the Grand Chamber.

(4) Makaratzis v. Greece, no. 50385/99

Relinquishment case. Hearing on the merits on 30 June 2004.

Judgment was delivered on 20 December 2004 (see Chapter VII below).

(5) Cumpănă and Mazăre v. Romania, no. 33348/96

Rehearing case. Hearing on the merits on 1 September 2004.

Judgment was delivered on 17 December 2004 (see Chapter VII below).

(6) Pedersen and Baadsgaard v. Denmark, no. 49017/99

Rehearing case. Hearing on the merits on 8 September 2004.

Judgment was delivered on 17 December 2004 (see Chapter VII below).

**(7) Von Maltzan and Others v. Germany, no. 71916/01
Von Zitzewitz and Others v. Germany, no. 71917/01
Man Ferrostaal and Alfred Töpfer Stiftung v. Germany,
no. 10260/02**

Relinquishment case. Hearing on the merits on 22 September 2004.

The applications were submitted by 68 German nationals and two German legal persons. The first was submitted by Wolf-Ulrich Freiherr von Maltzan and 45 others, the second by Margarete von Zitzewitz and 21 others and the third by the Alfred Töpfer Foundation and the Man Ferrostaal corporation.

The applications concern one of the major issues to arise after the reunification of Germany: the compensation terms for those whose property was expropriated either after 1949 in the GDR or, as in the vast majority of cases, between 1945 and 1949 in the former Soviet Occupied Zone of Germany. The terms of compensation and just satisfaction are set out in the Compensation and Just Satisfaction Act (Entschädigungs und Ausgleichsleistungsgesetz - EALG) of 27 September 1994.

On 29 June 1995 some of the applicants brought their case before the Federal Constitutional Court, arguing, among other things, that certain provisions of that Act were contrary to basic law, in that the prescribed compensation was generally less than the real market value of the property that had been expropriated. On 22 November 2000 the First Division (erster Senat) of the Federal Constitutional Court delivered a leading judgment dismissing the applicants' claims. Those among the applicants who were not party to those proceedings nonetheless refer to this leading judgment.

The individuals among the applicants argue that the Compensation and Just Satisfaction Act of 1994 and the leading judgment of the Federal Constitutional Court of 2000 infringed their property right, protected by Article 1 of Protocol No. 1 to the Convention, because the amount of compensation they received was far less than the real value of the property that had been illegally expropriated.

The applicants also submit that they were discriminated against contrary to Article 14 of the Convention, taken together with Article 1 of Protocol No. 1, because, unlike other groups of people, they were unable to claim a right to the return of property which was illegally expropriated and for which they received only a negligible sum in compensation.

Lastly, those of the applicants who had brought their case before the Federal Constitutional Court submit that the length of the proceedings in that court (four years and 11 months in one case, and five years and four months in the other) exceeded a reasonable time, in breach of Article 6 § 1 of the Convention.

The Alfred Töpfer Foundation and Man Ferrostaal raise the same complaints, pointing out that, under the Compensation and Just Satisfaction Act of 1994, they neither have a right to the return of their property nor a right to compensation.

(8) Bosphorus Airways v. Ireland, no. 45036/98

Relinquishment case. Hearing on the merits on 29 September 2004.

The case concerns an application brought by an airline charter company registered in Turkey, Bosphorus Hava Yollari Turizm ve Ticaret Anonim Şirketi (“Bosphorus Airways”).

In May 1993 an aircraft leased by the applicant company from Yugoslav Airlines (“JAT”) was seized by the Irish authorities. It had been in Ireland for maintenance by TEAM Aer Lingus, an aircraft maintenance company wholly owned by the Irish State, and it was seized under an EC Council Regulation which, in turn, had implemented the UN sanctions regime against the Federal Republic of Yugoslavia (Serbia and Montenegro).

The applicant’s challenge to the retention of the aircraft was initially successful in the High Court, which held in June 1994 that the relevant Council Regulation was not applicable to the aircraft. However, on appeal, the Supreme Court referred a question under Article 177 of the EEC Treaty to the European Court of Justice (“ECJ”) on whether the applicant’s aircraft was covered by the relevant Council Regulation. The answer was in the affirmative and by judgment dated November 1996 the Supreme Court applied the decision of the ECJ and allowed the State’s appeal.

By that time the applicant’s lease on the aircraft had already expired. Since the sanctions regime against the Federal Republic of Yugoslavia (Serbia and Montenegro) had also been relaxed by that date, the Irish authorities returned the aircraft directly to JAT. The applicant’s aircraft was the only one ever seized under the relevant EC and UN regulations.

The applicant complains under Article 1 of Protocol No. 1 to the Convention that it has had to bear an excessive burden resulting from the

manner in which the Irish State applied the sanctions regime and that it has suffered significant financial loss.

On 13 September 2001, a Chamber of the Court held a hearing on the admissibility and merits of the application and declared the case admissible on the same date. On 30 January 2004, the Chamber relinquished jurisdiction in favour of the Grand Chamber.

(9) Roche v. the United Kingdom, no. 32555/96

In 1953 the applicant joined the British Army and was discharged in 1968 for reasons unrelated to his case before the European Court of Human Rights.

In 1987 he developed high blood pressure and now suffers from hypertension, chronic obstructive airways disease (bronchitis) and bronchial asthma. He has not worked since 1988 and is registered as an invalid. He maintains that his health problems are the result of his participation in mustard and nerve gas tests conducted by the British Armed Forces at the Chemical and Biological Defence Establishment (CBDE) at Porton Down Barracks (England) in 1962 and 1963. There is no record of his having participated in such tests in 1962 but it is not disputed that he did so in 1963.

From 1987 the applicant actively sought access to his service records via medical and political channels, with limited success. On 10 June 1991 he submitted a claim for a service pension. On 28 January 1992 the Secretary of State rejected his pension claim as he had not demonstrated a causal link between the tests and his medical condition.

In 1994 he threatened to bring judicial review proceedings alleging, among other things, negligence on the part of the Ministry of Defence. On 3 August 1995 the Secretary of State issued a certificate under section 10 of the Crown Proceedings Act 1947, which effectively blocks any such proceedings concerning events prior to 1987 while allowing the person concerned to apply for a service pension.

In November 1998 – following the Court’s judgment of 9 June 1998 in the case of *McGinley and Egan v. the United Kingdom* – the applicant appealed to the Pensions Appeal Tribunal (PAT). He applied for the disclosure of official information under Rule 6 (1) of the PAT Rules to enable the PAT to decide whether his illness was caused or aggravated by the Porton Down gas tests. In February 2001 the PAT ordered the Ministry of Defence to disclose certain categories of records and certain documents

were disclosed in 2001 and 2002. The PAT found against the applicant on the substance of his appeal. He appealed successfully to the High Court, which remitted his case to the PAT

The applicant complains that he was denied adequate access to information concerning the tests he underwent at Porton Down in violation of Articles 8 and 10 of the Convention. He also complains that the certificate issued by the Secretary of State under section 10 of the 1947 Act constitutes a violation of his right of access to court, guaranteed by Article 6 § 1 and of Article 1 of Protocol No. 1 taken alone and in conjunction with Article 14. He further relies on Article 13.

VI. DECISION ON ADMISSIBILITY

The Grand Chamber declared the following application inadmissible. The application had been relinquished by a Chamber of the Court under Article 30 of the Convention on 12 December 2002.

**Senator Lines GmbH v. 15 Member States of the European Union,
no. 56672/00**

In 1998 the European Commission imposed a fine of 13,750,000 euros on the applicant company for infringements of European Community competition rules. The applicant was informed that the fine would not be enforced immediately if an appeal was made, provided a bank guarantee was provided. The applicant challenged the decision before the Court of First Instance of the European Communities (“the CFI”) and also requested dispensation from the requirement to provide a bank guarantee. This request was refused, the European Commission considering that the applicant’s holding company could provide the bank guarantee. The applicant’s subsequent request to the CFI for suspension of the operation of the decision imposing the fine was rejected by the President, who accepted that the applicant was unable to provide the guarantee but considered that account should be taken of the group of undertakings to which the applicant belonged. The applicant’s appeal against this decision was dismissed by the President of the Court of Justice of the European Communities, who confirmed that it was permissible to have regard to the assets of the group of undertakings to which the applicant belonged. In 2003 the CFI quashed the fines which had been imposed in 1998. The applicant complained in particular that enforcement of the fine before a judicial determination of the proceedings would have constituted a denial of the right of access to a court.

In a decision adopted on 10 March 2004 the Grand Chamber unanimously declared the application inadmissible on the ground that, following the quashing of the fine by the CFI, the applicant could no longer claim to be a victim.

VII. JUDGMENTS

(1) **Perez v. France, no. 47287/99**

In July 1995 the applicant went to her local gendarmerie to file a complaint that she had been assaulted by her son and daughter. She said her two children had come to see her about a lawsuit between them concerning the payment of maintenance. While all three were together in a motorcar driven by her daughter, her son had allegedly used a syringe to give her two injections of an unknown substance. Soon afterwards injection marks were found on the applicant's body, and the gendarmes later discovered a syringe containing traces of Valium. A judicial investigation was opened on the grounds of assault with an offensive weapon. During the investigation, the applicant joined the proceedings as a civil party.

On 14 March 1997 the investigating judge decided that there was no case to answer, on the basis that there was insufficient evidence that anyone had committed an offence. The applicant's appeal against that decision was dismissed on the ground that she had missed the legal deadline. Her appeal on points of law was also dismissed by the Criminal Division of the Court of Cassation on 21 April 1998.

The application was declared admissible by a Chamber of the Court on 30 January 2003. On 5 June 2003 that Chamber relinquished jurisdiction in favour of the Grand Chamber.

The French Government submitted that Article 6 § 1 was not applicable, because the applicant had failed to make a claim during the proceedings for compensation for the damage directly caused by the offence. For the applicant, it was imperative for Article 6 to apply as soon as the civil party joined the proceedings, whether the case was pending or concluded.

In a judgment delivered on 12 February 2004, the Grand Chamber found, unanimously, that Article 6 § 1 of the Convention was applicable to the impugned domestic proceedings but that there had been no breach of that provision on the merits.

(2) **Gorzelik and Others v. Poland, no. 44158/98**

The case concerns an application brought by three Polish nationals who are all from Upper Silesia. The applicants and 190 others attempted to form an association called the "Union of People of Silesian Nationality" (*Związek Ludności Narodowości Śląskiej*).

The Polish authorities refused to register the association on the ground that both the intended name and certain provisions of the union's memorandum of association, which characterised Silesians as a "national minority", suggested that their real intention was to circumvent the provisions of the electoral law. Also, had the members of the Union been recognised as a "national minority", they would automatically have gained unqualified and legally enforceable privileges. The appeals against that decision failed.

The applicants complained that the Polish authorities had arbitrarily refused to register their association. They further added that the absence of any legal definition of a national minority in Poland, or any procedure whereby such a minority could obtain recognition under domestic law, made it impossible for them to foresee what criteria they were required to fulfil to have their association registered. They relied on Article 11 of the Convention.

In its Chamber judgment of 20 December 2001, the Court found that there had been no breach of Article 11.

The applicants requested that the case be referred to the Grand Chamber and the Panel of the Grand Chamber accepted the request on 10 July 2002. A hearing was held on 2 July 2003.

In a judgment delivered on 17 February 2004, the Grand Chamber held unanimously that there had been no breach of Article 11 of the Convention.

(3) *Maestri v. Italy*, no. 39748/98

The applicant is a judge and was acting president of the La Spezia District Court when he lodged his application.

In November 1993 disciplinary proceedings were brought against him, under Article 18 of the Royal Legislative Decree of 31 May 1946, for having been a member of a Masonic lodge affiliated to the *Grande Oriente d'Italia di Palazzo Giustiniani* from 1981 until March 1993.

In a decision of 10 October 1995 the disciplinary section of the National Council of the Judiciary found that the applicant had committed the offence of which he was accused and gave him a reprimand (*censura*). The disciplinary section stated that it was contrary to disciplinary rules for a judge to be a Freemason, on account of the incompatibility between the Masonic and judicial oaths, the hierarchical relationship between Freemasons, the rejection of State justice in favour of Masonic justice and

the indissoluble nature of the bond between Freemasons. It also referred to the directives issued by the National Council of the Judiciary in March 1990 and July 1993 which highlighted the conflict between membership of the Freemasons and membership of the judiciary.

The applicant appealed on points of law to the Court of Cassation, which dismissed the appeal on 20 December 1996.

The applicant alleged that the imposition of a sanction on him for being a Freemason amounted to a violation of Articles 9, 10 and 11 of the Convention.

The application was declared admissible by a Chamber on 4 July 2002. On 10 October 2002 the Chamber relinquished jurisdiction in favour of the Grand Chamber. A hearing was held on 25 June 2003.

In a judgment delivered on 17 February 2004, the Grand Chamber held, by eleven votes to six, that there had been a breach of Article 11 of the Convention.

(4) Tahsin Acar v. Turkey, no. 26307/95

The case concerns the disappearance of the applicant's brother, Mehmet Salim Acar, who was a farmer in Ambar, a village in the Bismil district in south-east Turkey. According to the applicant, his brother was abducted on 20 August 1994 by two unidentified persons, allegedly plain-clothes police officers. Mehmet Salim Acar's family lodged a series of petitions and complaints about his disappearance with the authorities in order to find out where and why he was being detained. According to the Government, effective investigations were carried out by the relevant authorities following the abduction and disappearance of the applicant's brother. His name is still on the list of persons being searched for by the gendarme forces in Turkey.

On 27 August 2001 the Turkish Government sent the Court the text of a unilateral declaration expressing regret for the actions that had led to the application and offering to make an *ex gratia* payment of 70,000 pounds sterling to the applicant for any pecuniary and non-pecuniary damage and for costs. The Government requested the Court to strike the case out of the list under Article 37 of the Convention. The applicant asked the Court to reject the Government's initiative, arguing that the terms of the declaration were unsatisfactory. In particular, he submitted that the declaration made no admission that there had been any Convention violation in respect of his application or that Mehmet Salim Acar had been abducted by State agents

and was to be presumed dead, that it did not contain any undertaking to investigate the circumstances of the case and that the compensation was to be paid *ex gratia*.

In a judgment of 9 April 2002 a Chamber of the Court decided by six votes to one to strike the case out. On 8 July 2002 the applicant requested that the case be referred to the Grand Chamber. On 4 September 2002 the Panel of the Grand Chamber accepted that request. A hearing was held on 29 January 2003.

In a judgment of 6 May 2003 (*preliminary issue*) the Grand Chamber decided, by sixteen votes to one, to reject the Government's request to strike the application out of the list and to pursue the examination of the merits of the case. In its judgment (*merits*) delivered on 8 April 2004, the Grand Chamber held unanimously that there had been no violation of Article 2 under its substantive head but that there had been a violation by the respondent State of its procedural obligations under that provision. It also held, unanimously, that there had been no violation of Articles 5, 6, 8 and 18 of the Convention and that the respondent State had failed to comply with its obligations under Article 38 of the Convention.

(5) Assanidze v. Georgia, no. 71503/01

The applicant, Tengiz Assanidze, is a Georgian national who was born in 1944. At the time of lodging his application he was in custody in Batumi, the capital of the Ajarian Autonomous Republic in Georgia. He was formerly the mayor of Batumi and a member of the Ajarian Supreme Council.

He was accused of illegal financial dealings in the Batumi Tobacco Manufacturing Company, and of unlawfully possessing and handling firearms. On 28 November 1994 he was sentenced to eight years' imprisonment and orders were made for his assets to be confiscated and requiring him to make good the pecuniary losses sustained by the company. On 27 April 1995 the Supreme Court of Georgia, on an appeal on points of law, upheld the applicant's conviction for illegal financial dealings. The applicant was granted a pardon by the President of the Republic on 1 October 1999, but was not released by the local Ajarian authorities.

While the applicant was still in custody (despite having been pardoned), further charges were brought against him on 11 December 1999 in connection with a separate case of kidnapping. On 2 October 2000 the Ajarian High Court convicted the applicant and sentenced him to twelve years' imprisonment. Although he was subsequently acquitted by the

Supreme Court of Georgia on 29 January 2001, he was not released by the Ajarian authorities. Consequently, more than three years later, he remained in custody in a cell at the Short-Term Remand Prison of the Ajarian Security Ministry.

The applicant complained that he was still being held by the authorities of the Ajarian Autonomous Republic despite having received a presidential pardon in 1999 for the first offence and having been acquitted of the second by the Supreme Court of Georgia in 2001. He relied on Article 5 §§ 1, 3 and 4, Article 6 § 1, and Articles 10 and 13 of the Convention, and Article 2 of Protocol No. 4.

The application was declared partly admissible on 12 November 2002. On 18 March 2003 the Chamber relinquished jurisdiction in favour of the Grand Chamber. A hearing was held on 19 November 2003.

In a judgment delivered on 8 April 2004, the Grand Chamber found, unanimously, that the matters complained of were within the “jurisdiction” of Georgia within the meaning of Article 1 of the Convention and that only the responsibility of the Georgian State was engaged under the Convention; unanimously, that the complaint under Article 5 § 1 regarding the applicant’s detention from 1 October to 11 December 1999 was out of time; unanimously, that the complaint under Article 5 § 1 of the Convention regarding the applicant’s detention from 11 December 1999 to 29 January 2001 fell outside the scope of the matters referred to it for examination; unanimously, that since 29 January 2001 the applicant had been held arbitrarily in breach of the provisions of Article 5 § 1 of the Convention; unanimously, that no separate examination of the issue of the applicant’s place of detention was necessary under Article 5 § 1 of the Convention; unanimously, that the complaint under Article 3 of the Convention fell outside the scope of its examination; by fourteen votes to three that there has been a violation of Article 6 § 1 of the Convention on account of the failure to comply with the judgment of 29 January 2001; by fourteen votes to three that no separate examination of the complaint concerning the failure to comply with the judgment of 29 January 2001 was necessary under Article 5 § 4 of the Convention; unanimously, that no separate examination of the complaint concerning the failure to comply with the judgment of 29 January 2001 was necessary under Article 13 of the Convention; unanimously, that the complaint under Article 5 § 3 was out of time; unanimously, that there had been no violation of Article 10 of the Convention; unanimously, that it was unnecessary to consider the complaint under Article 2 of Protocol No. 4 to the Convention.

Under Article 41 of the Convention, the Grand Chamber held, unanimously, that the respondent State must secure the applicant's release at the earliest possible date and made an award of just satisfaction.

(6) *Azinas v. Cyprus*, no. 56679/00

The applicant worked for the Nicosia Public Service, as Governor of the Department of Co-operative Development, from the time the Republic of Cyprus was established in 1960 until his dismissal. On 28 July 1982 the Public Service Commission brought disciplinary proceedings against him and decided to dismiss him retrospectively on the ground that on 8 April 1981 he was found guilty by Nicosia District Court of theft, breach of trust and abuse of authority. He was sentenced to 18 months' imprisonment. The applicant's appeal against both conviction and sentence was dismissed by the Supreme Court on 16 October 1981. The Public Service Commission held that the applicant had managed the Department as if its resources were his private property. The disciplinary sentence of dismissal also resulted in the forfeiture of the applicant's retirement benefits, including his pension. He appealed unsuccessfully.

The applicant alleged, in particular, a violation of Article 1 of Protocol No. 1, with respect to his dismissal from the Public Service and the consequent forfeiture of his pension rights. On 19 June 2001 the application was declared partly admissible. In its Chamber judgment of 20 June 2002, the Court held, by six votes to one, that there had been a violation of Article 1 of Protocol No. 1 to the Convention and that the question of the application of Article 41 was not ready for decision.

On 13 September 2002 the Cypriot Government requested that the case be referred to the Grand Chamber, and, on 6 November 2002, the Panel of the Grand Chamber accepted that request. A hearing was held on 4 June 2003.

In a judgment delivered on 28 April 2004, the Grand Chamber decided by twelve votes to five that the application was inadmissible under Article 35 §§ 1 and 4 of the Convention on account of the applicant's failure to exhaust domestic remedies in respect of his complaints.

(7) *Broniowski v. Poland*, no. 31443/96

The case concerned the alleged failure to satisfy the applicant's entitlement to compensation for property (a house and land) in Lwów (now Lviv, in the Ukraine) which belonged to his grandmother when the area was still part of Poland, before the Second World War. That entitlement was first

bequeathed to the applicant's mother and, after her death in 1989, to the applicant.

The applicant's grandmother along with many others who had been living in the Eastern provinces of pre-war Poland (which included large areas of present-day Belarus, Ukraine and territories around Vilnius in what is now Lithuania) was repatriated after Poland's eastern border had been redrawn along the Bug River (whose central course formed part of the Curzon line), in the aftermath of the Second World War. The area was known as the "Borderlands" ("*Kresy*") and also, "territories beyond the Bug River" ("*ziemie zabużańskie*").

Following the so-called "republican agreements" between the Polish Committee of National Liberation and the governments of the former Soviet Republics of Lithuania, Belarus and Ukraine, Poland undertook to compensate those who had been "repatriated" from the "territories beyond the Bug River" and had had to abandon their properties. From 1944 to 1953 around 1,240,000 people were "repatriated" under the provisions of the republican agreements.

Since 1946, Polish law has entitled those repatriated in such circumstances to compensation in kind; they have been entitled to buy land from the State and have the value of the abandoned property offset against the fee for the so-called "perpetual use" of this land or against the price of the compensatory property or land.

However, following the entry into force of the Local Government Act of 10 May 1990 and the enactment of further laws reducing the pool of State property available to the Bug River claimants – in particular, by excluding the possibility of enforcing their claims against State agricultural and military property – the State Treasury has been unable to fulfil its obligation to meet the compensation claims because it has had insufficient land to meet the demand. In addition, Bug River claimants have frequently been either excluded from auctions of State property or have had their participation subjected to various conditions.

According to the Government, the anticipated total number of entitled persons is nearly 80,000.

The applicant's entitlement to compensation for the property abandoned by his grandmother was originally (in the 1980s) valued at 1,949,560 old Polish zlotys. According to an expert report produced by the Polish Government, the value of the applicant's entitlement at present amounts to some 390,000 new Polish zlotys. He has received only approximately 2% of

its value (i.e. of the compensation due to him) in the form of the right of perpetual use of a small building plot which his mother bought from the State in 1981.

On 19 December 2002 the Polish Constitutional Court declared the provisions that excluded the possibility of enforcing the Bug River claims against State agricultural and military property unconstitutional. However, following this judgment, the State agencies administering State agricultural and military property suspended all auctions, considering that further legislation was required to deal with the implementation of the judgment.

On 30 January 2004, when the Law of 12 December 2003 entered into force, the Polish State's obligations towards the applicant, and all other Bug River claimants who had ever obtained any compensatory property under the previous legislation, was deemed to have been discharged. Claimants who had never received any such compensation were awarded 15% of their original entitlement, subject to a ceiling of 50,000 Polish zlotys.

The applicant complained that he had not received the compensatory property to which he was entitled. He further submitted that the Polish State failed to react to and resolve through legislative measures, the problem of the insufficient stock of State property designated for the Bug River claimants and also that the State had enacted laws that had all but removed the possibility of obtaining State property. He also maintained that the authorities had made the realisation of his entitlement impossible in practice, given the widespread practice of not putting State land on sale and preventing people entitled to compensatory property from bidding at auctions. He relied on Article 1 of Protocol No. 1 to the Convention.

On 26 March 2002 the Chamber of the Court dealing with the case relinquished jurisdiction in favour of the Grand Chamber.

In a judgment (unanimous) delivered on 22 June 2004, the Grand Chamber held that there had been a violation of Article 1 of Protocol No. 1 to the Convention. It further found that that violation had originated in a systemic problem connected with the malfunctioning of domestic legislation and practice caused by the failure to set up an effective mechanism to implement the "right to credit" of Bug River claimants. On that account, it considered that the respondent State must, through appropriate legal measures and administrative practices, secure the implementation of the property right in question in respect of the remaining Bug River claimants or provide them with equivalent redress in lieu, in accordance with the principles of protection of property rights under Article 1 of Protocol No. 1. The Grand Chamber reserved the question of Article 41 of the Convention.

(8) Ilaşcu and others v. Moldova and Russia, no. 48787/99

The applicants, Ilie Ilaşcu, Alexandru Leşco, Andrei Ivanţoc and Tudor Petrov-Popa, who were Moldovan nationals at the time when the application was lodged, were born in 1952, 1955, 1961 and 1963 respectively. Mr Ilaşcu acquired Romanian nationality in 2000, as did Mr Leşco and Mr Ivanţoc in 2001. The applicants, with the exception of Mr Ilaşcu and Mr Leşcu, who were released in May 2001 and June 2004 respectively, are currently detained in the “Moldavian Republic of Transdniestria” (“the MRT”), a region of Moldova known as Transdniestria, which declared its independence in 1991.

At the material time Mr Ilaşcu was the local leader of the Popular Front and was working towards the unification of Moldova with Romania. He was twice elected to the Moldovan Parliament and was appointed as a member of the Moldovan delegation to the Parliamentary Assembly of the Council of Europe. In December 2000 he was elected to the Senate of the Romanian Parliament and appointed as a member of the Romanian delegation to the Parliamentary Assembly.

Between 2 and 4 June 1992 the applicants were arrested at their homes in Tiraspol by a number of people, some of whom were wearing uniforms bearing the insignia of the former USSR’s Fourteenth Army. They were accused of anti-Soviet activities and illegally combating the legitimate government of the State of Transdniestria, under the direction of the Moldovan Popular Front and Romania. They were also charged with a number of offences which included two murders. On 9 December 1993 the “Supreme Court of the MRT” sentenced Mr Ilaşcu to death and ordered the confiscation of his property. The other applicants were sentenced by the same court to terms of 12 to 15 years’ imprisonment, and their property was likewise ordered to be confiscated.

The applicants complained of a violation of Article 6 of the Convention on the grounds that the court which had convicted them did not have jurisdiction and that, at all events, the proceedings which had led to their conviction had not been fair. They also complained, under Article 1 of Protocol No. 1 to the Convention, of the confiscation of their possessions, and maintained that their detention had been unlawful, contrary to Article 5. Mr. Ilaşcu further complained of a violation of Article 2 on account of his being sentenced to death. All the applicants complained in addition of the conditions of their detention, relying expressly on Articles 3 and 8 and, in substance, Article 34. They submitted that the Moldovan authorities were responsible for the violations they alleged since they had not taken adequate

measures to put a stop to them. In their submission, the Russian Federation shared that responsibility as the territory of Transdniestria was under Russia's *de facto* control owing to the stationing of its troops and military equipment there and the support it gave to the separatists.

On 20 March 2001 the Chamber of the Court dealing with the case relinquished jurisdiction in favour of the Grand Chamber. The Grand Chamber decided to hold a hearing on the admissibility and merits of the application, and the President invited the Romanian Government to take part. By a decision of 4 July 2001 the application was declared partly admissible, after a hearing had been held on 6 June 2001. A delegation of the Court conducted an on-the-spot investigation in Chişinău and Tiraspol from 10 to 15 March 2003.

In a judgment delivered on 8 July 2004, the Grand Chamber held by eleven votes to six that the applicants came within the jurisdiction of the Republic of Moldova within the meaning of Article 1 of the Convention as regards its positive obligations; by sixteen votes to one that the applicants came within the jurisdiction of the Russian Federation within the meaning of Article 1 of the Convention; unanimously that the Court did not have jurisdiction *ratione temporis* to examine the complaint under Article 6 of the Convention; by sixteen votes to one that the Court had jurisdiction *ratione temporis* to examine the complaints under Articles 2, 3, 5 and 8 of the Convention in so far as they concerned events subsequent to 12 September 1997 in the case of the Republic of Moldova and 5 May 1998 in the case of the Russian Federation; by fifteen votes to two that the Court was not required to determine whether it had jurisdiction *ratione temporis* to examine the complaint under Article 1 of Protocol No. 1 to the Convention; unanimously that the complaint of a violation of Article 2 of the Convention on account of the fact that Mr Ilaşcu was sentenced to death by the "Supreme Court of the MRT" did not call for a separate examination; by eleven votes to six that there had been no violation of Article 3 of the Convention by Moldova on account of the ill-treatment inflicted on Mr Ilaşcu and the conditions in which he was detained while under the threat of execution; by sixteen votes to one that there had been a violation of Article 3 of the Convention by the Russian Federation on account of the ill-treatment inflicted on Mr Ilaşcu and the conditions in which he was detained while under the threat of execution, and that these must be termed torture within the meaning of that provision; by eleven votes to six that there had been a violation of Article 3 of the Convention by Moldova since May 2001 on account of the ill-treatment inflicted on Mr Ivanţoc and the conditions in which he had been detained, and that these must be termed torture within the meaning of that provision; by sixteen votes to one that there had been a violation of Article 3 of the Convention by the Russian Federation on

account of the ill-treatment inflicted on Mr Ivanțoc and the conditions in which he had been detained, and that these must be termed torture within the meaning of that provision; by eleven votes to six that there had been a violation of Article 3 of the Convention by Moldova since May 2001 on account of the ill-treatment inflicted on Mr Leșco and Mr Petrov-Popa and the conditions in which they had been detained, and that these must be termed inhuman and degrading treatment within the meaning of that provision; by sixteen votes to one that there had been a violation of Article 3 of the Convention by the Russian Federation on account of the ill-treatment inflicted on Mr Leșco and Mr Petrov-Popa and the conditions in which they had been detained, and that these must be termed inhuman and degrading treatment within the meaning of that provision; by eleven votes to six that there had been no violation of Article 5 of the Convention by Moldova on account of the detention of Mr Ilașcu; by eleven votes to six that there had been and continued to be a violation of Article 5 of the Convention by Moldova on account of the detention of Mr Ivanțoc, Mr Leșco and Mr Petrov-Popa after May 2001; by sixteen votes to one that there was a violation of Article 5 of the Convention by the Russian Federation as regards Mr Ilașcu until May 2001, and that there had been and continued to be a violation of that provision as regards Mr Ivanțoc, Mr Leșco and Mr Petrov-Popa; unanimously that there was no cause to examine separately the applicants' complaint under Article 8 of the Convention; by fifteen votes to two that there had been no violation of Article 1 of Protocol No. 1 to the Convention; by sixteen votes to one that Moldova had failed to discharge its obligations under Article 34 of the Convention; by sixteen votes to one that the Russian Federation had failed to discharge its obligations under Article 34 of the Convention.

The Grand Chamber also held by ten votes to seven that Moldova was to pay the applicants compensation for pecuniary and non-pecuniary damage and by sixteen votes to one that the Russian Federation was to pay compensation to the applicants. It further held unanimously that the respondent States were to take all necessary measures to put an end to the arbitrary detention of the applicants still imprisoned and secure their immediate release.

(9) Vo v. France, no. 53924/00

On 27 November 1991 the applicant attended the Lyons General Hospital for a medical examination scheduled during the sixth month of pregnancy. On the same day another woman, Mrs Thi Thanh Van Vo, was due to have a coil removed at the same hospital.

Owing to a mix-up caused by the fact that both women shared the same surname, the doctor who examined the applicant pierced her amniotic sac, making a therapeutic abortion necessary.

Following a criminal complaint lodged by the applicant and her husband in 1991, the doctor was charged with causing unintentional injury, the charge subsequently being increased to one of unintentional homicide. On 3 June 1996 Lyons Criminal Court acquitted the doctor. The applicant appealed and on 13 March 1997 Lyons Court of Appeal overturned the Criminal Court's judgment, convicted the doctor of unintentional homicide and imposed a six-month suspended sentence and a fine of 10,000 French francs. On 30 June 1999 the Court of Cassation reversed the Court of Appeal's judgment, holding that the facts of the case did not constitute the offence of involuntary homicide; it thus refused to consider the foetus as a human being entitled to the protection of the criminal law.

Relying on Article 2 of the Convention, the applicant complained of the authorities' refusal to classify the unintentional killing of her unborn child as involuntary homicide. She maintained that France had an obligation to pass legislation making such acts a criminal offence.

On 22 May 2003 the Chamber relinquished jurisdiction in favour of the Grand Chamber. A hearing was held on 10 December 2003.

In a judgment delivered on 8 July 2004, the Grand Chamber unanimously declared the application admissible and held by fourteen votes to three that, assuming its applicability, there had been no violation of Article 2 of the Convention.

(10) Kopečský v. Slovakia, no. 44912/98

On 12 February 1959, the applicant's father was fined and sentenced to one year's imprisonment for keeping 131 gold coins and 2,151 silver coins of numismatic value. The coins were also confiscated.

On 1 April 1992, the judgment was quashed and, on 30 September 1992, the applicant claimed the restitution of his father's coins under the Extra-Judicial Rehabilitations Act of 1991 (the 1991 Act).

On 19 September 1995, Senica District Court found that it was practically impossible for the applicant to fulfil the condition under the 1991 Act to show where the movable property in question had been on 1 April 1991, when the 1991 Act became operative. The court ordered the Ministry of the Interior to restore the coins to the applicant.

The Ministry of the Interior appealed, however, arguing that all relevant documents had been destroyed and that the onus of proof concerning the location of the coins was on the applicant.

On 29 January 1997, Bratislava Regional Court dismissed the applicant's action, finding that the applicant had failed to fulfil the obligation under the 1991 Act to indicate the precise location of the property. The Supreme Court upheld this decision. Both courts held that the evidence submitted did not constitute sufficient proof that in 1991 the Ministry of the Interior still possessed the confiscated coins.

The applicant alleged, in particular, that the dismissal of his claim for restitution of the coins violated Article 1 of Protocol No. 1 to the Convention.

In a judgment of 7 January 2003, a Chamber of the Court held, by four votes to three, that there had been a violation of Article 1 of Protocol No. 1.

On 4 April 2003, the Slovakian Government requested that the case be referred to the Grand Chamber and, on 21 May 2003, the Panel of the Grand Chamber accepted that request. A hearing was held on 7 April 2004.

In a judgment delivered on 28 September 2004, the Grand Chamber found by thirteen votes to four that there had been no violation of Article 1 of Protocol No. 1.

**(11) Edwards and Lewis v. the United Kingdom,
nos. 39647/98 and 40461/98**

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

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

The applicants alleged in the Convention proceedings that they had been denied fair trials, contrary to Article 6 of the Convention, as a result of the incitement of offences by *agents provocateurs* and the procedure concerning the non-disclosure of evidence followed by the domestic courts.

A Chamber of the Court held, unanimously, that there had been violations of Article 6 § 1.

On 21 October 2003 the Government requested that the case be referred to the Grand Chamber. The Panel of the Grand Chamber accepted the request on 3 December 2003.

In a judgment delivered on 27 October 2004, the Grand Chamber noted that the Government, which had requested referral of the case to the Grand Chamber, had indicated that they no longer wished to pursue the referral and were content for the Grand Chamber to endorse the Chamber's judgment. The Grand Chamber saw no reason to depart from the Chamber's findings and found, unanimously, that there had been a violation of Article 6 of the Convention.

(12) Öneriyıldız v. Turkey, no. 48939/99

The applicant, Maşallah Öneriyıldız, is a Turkish national who was born in 1955. At the material time he was living with 12 close relatives in the slum quarter of Kazım Karabekir in Ümraniye (Istanbul).

The Kazım Karabekir area was part of an expanse of rudimentary dwellings built without any authorisation on land surrounding a rubbish tip which had been used jointly by four district councils since the 1970s, under the authority and responsibility of Istanbul City Council. An expert report drawn up on 7 May 1991 at the request of Üsküdar District Court, to which the matter had been referred by Ümraniye District Council, drew the authorities' attention to, among other things, the fact that no measures had been taken at the tip in question to prevent an explosion of the methane generated by the decomposing refuse. The report gave rise to a series of disputes between the mayors concerned. However, before the proceedings

instituted by either of them had been concluded, a methane explosion occurred at the tip on 28 April 1993 and the refuse erupting from the pile of waste engulfed more than ten houses situated below it, including the one belonging to the applicant, who lost nine close relatives.

After criminal and administrative investigations had been carried out into the case, the mayors of Ümraniye and Istanbul were brought before the courts, the former for failing to comply with his duty to order the destruction of the illegal huts surrounding the rubbish tip, and the latter for failing to renovate the tip or order its closure, in spite of the conclusions of the expert report of 7 May 1991. On 4 April 1996 the mayors in question were both convicted of “negligence in the performance of their duties” and were both fined 160,000 Turkish liras (TRL) and sentenced to the minimum three-month term of imprisonment provided for in Article 230 of the Criminal Code. Their sentences were subsequently commuted to fines, the enforcement of which was suspended.

The applicant subsequently brought an action for damages in his own name and on behalf of his three surviving children in the Istanbul Administrative Court, holding the authorities liable for the death of his relatives and the destruction of his property. In a judgment of 30 November 1995 the authorities were ordered to pay the applicant and his children TRL 100,000,000 for non-pecuniary damage and TRL 10,000,000 for pecuniary damage in respect of the destruction of household goods (equivalent at the material time to approximately EUR 2,077 and EUR 208 respectively). Those amounts have yet to be paid to the applicant, and he does not appear to have instituted enforcement proceedings.

Relying on Articles 2, 8 and 13 of the Convention and on Article 1 of Protocol No. 1, the applicant submitted that the national authorities were responsible for the deaths of his close relatives and for the destruction of his property as a result of a methane explosion on 28 April 1993 at the municipal rubbish tip in Ümraniye (Istanbul). He further complained that the administrative proceedings conducted in his case had not complied with the requirements of fairness and promptness set forth in Article 6 § 1 of the Convention.

In a Chamber judgment of 18 June 2002 the Court held by five votes to two that there had been a violation of Article 2 of the Convention on account of the death of the applicant’s relatives and the ineffectiveness of the judicial machinery, and by four votes to three that there had been a violation of Article 1 of Protocol No. 1.

On 12 September 2002 the Turkish Government requested that the case be referred to the Grand Chamber. The Panel of the Grand Chamber accepted that request on 6 November 2002. A hearing was held on 7 May 2003.

In a judgment delivered on 30 November 2004, the Grand Chamber held, unanimously, that there had been a violation of Article 2 of the Convention on account of the lack of appropriate steps to prevent the accidental death of nine of the applicant's close relatives; by sixteen votes to one, that there had been a violation of Article 2 on account of the lack of adequate protection by law safeguarding the right to life; by fifteen votes to two, that there had been a violation of Article 1 of Protocol No. 1 to the Convention; by fifteen votes to two, that there had been a violation of Article 13 as regards Article 2; by fifteen votes to two, that there had been a violation of Article 13 as regards the complaint under Article 1 of Protocol No. 1; unanimously, that no separate issue arose under Article 6 § 1 or Article 8.

(13) Cumpănă and Mazăre v. Romania, no. 33348/96

The applicants are both journalists. Mr Mazăre is a Romanian Member of Parliament and the Mayor of Constanța. In April 1994 they published an article in the *Telegraf* newspaper, of which Mr Mazăre is the editor, questioning the legality of an agreement whereby Constanța Town Council had contracted out to a company called V. the task of impounding illegally parked vehicles. The article, which appeared under the headline "Former Deputy Mayor D.M. and serving Judge R.M. commit series of offences in V. scam", was accompanied by, among other things, a cartoon showing the judge (R.M.) on the former deputy mayor's arm, carrying a bag containing banknotes.

R.M., who had signed the contract with V. on behalf of the town council, sued the applicants. She submitted that the cartoon contained an innuendo that she and the deputy mayor, both of whom were married, had had intimate relations. On 17 May 1995 the applicants were convicted of proffering insults and criminal libel and sentenced to seven months' imprisonment. An order was also made prohibiting them from working as journalists for one year after they had completed their prison sentences. Their convictions were upheld on appeal.

The public prosecutor's office applied to have the decision of 17 May 1995 set aside. The Supreme Court of Justice dismissed the application, holding that the article was libellous and that the publication of the cartoon, which was potentially damaging to R.M.'s honour and reputation, constituted the offence of proffering insults.

On 22 November 1996, the Romanian President granted the applicants a pardon releasing them from their custodial sentence. Mr Mazăre continued to work as the editor of the *Telegraf*, while Mr Cumpănă left the newspaper in 1997 when staff levels were reduced.

In the Convention proceedings, the applicants complained that their conviction and sentence for the publication of the article had infringed their freedom of expression, as guaranteed by Article 10 of the Convention.

In a judgment dated 10 June 2003, a Chamber of the Court held by five votes to two that there had been no violation of Article 10 of the Convention.

On 3 December 2003, the Panel of the Grand Chamber accepted the request by the applicants to refer the case to the Grand Chamber. A hearing was held on 1 September 2004.

In a judgment delivered on 17 December 2004, the Grand Chamber found unanimously that there had been a violation of Article 10 of the Convention.

(14) Pedersen and Baadsgaard v. Denmark, no. 49017/99

At the material time the applicants were journalists with Danmarks Radio, one of two national television stations in Denmark. They produced two programmes about a murder trial at which a man had been sentenced to 12 years' imprisonment for murdering his wife. The programmes were broadcast on 17 September 1990 and 22 April 1991. They criticised the Frederikshaven police's handling of the investigation. The second programme showed Mr Baadsgaard interviewing a witness – a taxi driver – during which the commentator asked a number of questions allegedly insinuating that senior police officers had deliberately suppressed the evidence of the taxi driver. The Chief Superintendent and Chief Inspector of the Flying Squad in charge of the investigation were named in this connection and photographs of them shown.

On 23 May 1991 the Chief Superintendent reported the applicants and the television station to the police for defamation. On 29 November 1991 the Special Court of Revision decided to reopen the murder case. In the meantime, following the television programmes, an inquiry had been started into how the police investigation had been conducted; the conclusion, on 20 December 1991, was that they had not complied with the statutory requirement for witnesses to be given an opportunity to read their

statements. The defendant in the murder trial was acquitted on 13 April 1992 after a retrial.

The journalists were formally charged with defamation on 19 January 1993. On 15 September 1995 the City Court convicted them, but did not pass sentence. Both the journalists and the prosecution appealed. On 6 March 1997 the High Court upheld their conviction and sentenced them to 20 day-fines of 400 Danish kroner (DKK) (approximately 53 euros (EUR)) and ordered them to pay DKK 75,000 (approximately EUR 10,000) compensation to the estate of the Chief Superintendent (who had since died). On 28 October 1998 the Supreme Court upheld the conviction and increased the compensation to DKK 100,000 (approximately EUR 13,400).

In the Convention proceedings, the applicants complained, under Article 6 § 1 of the Convention about the length of the criminal proceedings against them. They also alleged under Article 10 that the judgment of the Supreme Court upholding their conviction amounted to a disproportionate interference with their fundamental duty as journalists in a democratic society to act as “public watchdogs”.

In a Chamber judgment of 19 June 2003, the Court held, by six votes to one, that there had been no violation of Article 6 and, by four votes to three, that there had been no violation of Article 10.

On 3 December 2003 the Panel of the Grand Chamber accepted a request by the applicants for the case to be referred to the Grand Chamber. A hearing was held on 8 September 2004.

In a judgment delivered on 17 December 2004, the Grand Chamber unanimously found that there had been no breach of Article 6 of the Convention and by nine votes to eight that there had been no breach of Article 10.

(15) Makaratzis v. Greece, no. 50385/99

On 13 September 1995 the police tried to stop the applicant, an unarmed civilian, after he had driven through a red traffic light in the centre of Athens. The applicant did not stop, but accelerated. He was pursued by several police officers in cars and on motorcycles and his car collided with several other vehicles. Two drivers were injured. After the applicant had broken through five police roadblocks, the police officers started firing at his car. Eventually, after a chase through various main roads in Athens, he stopped his car at a petrol station, but locked the doors and refused to get out. The police officers continued firing. The applicant alleged that they

were firing at his car; the Government alleged that they were firing into the air. One police officer threw a pot at the car windscreen. Finally, the applicant was arrested by a police officer who managed to break into the car. The applicant was immediately driven to the hospital, where he remained for nine days. He sustained injury to his right arm, his right foot, his left buttock and the right side of his chest. He claims that he was shot in the sole of his foot while being dragged out of his car. The Government contested this allegation. The applicant's mental health has deteriorated considerably since the accident.

Some of the police officers left the scene without revealing their identity and disclosing all necessary information concerning the weapons used. The public prosecutor instituted criminal proceedings against seven officers, which ended in their acquittal. Given that not all the officers involved in the incident had been identified, the criminal court was unable to establish beyond reasonable doubt that the seven accused were the ones who had fired at the applicant.

In the Convention proceedings, the applicant complained under Articles 2, 3 and 13 of the Convention that the police officers used excessive fire-power against him, putting his life at risk. He also complained of the lack of an adequate investigation into the incident.

On 5 February 2004, the Chamber dealing with the case relinquished jurisdiction in favour of the Grand Chamber. A hearing was held on 30 June 2004.

In a judgment delivered on 20 December 2004, the Grand Chamber held by twelve votes to five that there had been a breach of Article 2 on account of the respondent State's failure to protect the applicant's right to life by law and, unanimously, that Article 2 had also been breached because of the authorities' failure to carry out an effective investigation into the circumstances surrounding the wounding of the applicant. The Grand Chamber further held by that no separate issue arose under Article 3 (fifteen votes to two) or Article 13 (sixteen votes to one).

VIII ADVISORY OPINION

The Commonwealth of Independent States (“CIS”) was established in 1991 by a number of former Soviet Republics. On 26 May 1995, the Convention on Human Rights and Fundamental Freedoms of the Commonwealth of Independent States (“the CIS Convention”) was opened for signature. It provides for the establishment of a Human Rights Commission of the Commonwealth of Independent States (“the CIS Commission”) to monitor the fulfilment of the human rights obligations entered into by States. The CIS Convention entered into force on 11 August 1998.

In May 2001 the Parliamentary Assembly of the Council of Europe adopted Recommendation 1519(2001), in which it recommended that the Committee of Ministers request the Court to give an advisory opinion on the question whether the CIS Commission should be regarded as “another procedure of international investigation or settlement” within the meaning of Article 35 § 2(b) of the European Convention on Human Rights. The Parliamentary Assembly referred to “the weakness of the CIS Commission as an institution for the protection of human rights” and expressed the view that it should not be regarded as a procedure falling within the scope of Article 35 § 2(b).

The Committee of Ministers decided to accept the advice of the Parliamentary Assembly and requested the Court to give an advisory opinion on “the co-existence of the Convention on Human Rights and Fundamental Freedoms of the Commonwealth of Independent States and the European Convention on Human Rights”.

In its decision delivered on 2 June 2004, the Grand Chamber concluded that the request for an advisory opinion did not come within its advisory competence.

IX THIRD PARTY INTERVENTIONS

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

- (1) **Mamatkulov and Askarov v. Turkey, nos. 46827/99 and 46951/99**

(see Chapter V above)

- (2) **Bosphorus Airways v. Ireland, no. 45036/98**

(see Chapter V above)

- (3) **Kyprianou v. Cyprus, no. 73797/01**

(see Chapter IV above)

- (4) **Nachova and Others, nos. 43577/98 and 43579/98**

(see Chapter IV above)

- (5) **Vo v. France, no. 53924/00**

(see Chapter VII above)

- (6) **Senator Lines GmbH v. 15 Contracting States, no. 56672/00**

(see Chapter VI above)

XI. LIST OF ARTICLE 43 REQUESTS EXAMINED BY THE GRAND CHAMBER'S PANEL

See Appendix.

XII. LIST OF CASES PENDING BEFORE THE GRAND CHAMBER ON 31 DECEMBER 2004

- | | | |
|------|-----------|-------------------------------------|
| (1) | 46827/99 | Mamatkulov and Askarov v. Turkey |
| (2) | 46221/99 | Öçalan v. Turkey |
| (3) | 30324/96 | Smoleanu v. Romania |
| | 35671/97) | Lindner and Hammermayer v. Romania |
| | 31549/96) | Popovic and Dumitrescu v. Romania |
| (4) | 45036/98 | Bosphorus v. Ireland |
| (5) | 71916/01) | Von Maltzan and Others v. Germany |
| | 71917/01) | Von Zitzewitz and Others v. Germany |
| | 10260/02) | Alfred Töpfer Stiftung v. Germany |
| (6) | 32555/96) | Roche v. United Kingdom |
| (7) | 46720/99) | Jahn and Others v. Germany |
| | 72203/01) | |
| | 72552/01) | |
| (8) | 73797/01 | Kyprianou v. Cyprus |
| (9) | 43577/98) | Nachova and Others v. Bulgaria |
| | 43579/98) | |
| (10) | 65731/01) | Hepple and Others v. United Kingdom |
| | 65900/01) | Kimber v. United Kingdom |
| (11) | 1513/03) | Draon and Others v. France |
| | 11810/03 | Maurice and Others v. France |
| (12) | 74025/01 | Hirst v. United Kingdom (no. 2) |
| (13) | 58278/00 | Ždanoka v. Latvia |
| (14) | 44774/98 | Leyla Şahin v. Turkey |
| (15) | 52620/99) | Rasmussen v. Denmark |
| | 52562/99) | Sørensen v. Denmark |
| (16) | 59532/00 | Blečić v. Croatia |

LIST OF REHEARING REQUESTS							
(by Governments and applicants in 2004)							
Appl. No.	Applicant	State	Section	Judgment	Request	Panel date	Panel Result
14949/02	Plaksin	Russia	I	29.04.04	Gvt	10.11.04	rejected
16412/02	Liadis	Greece	I	27.05.04	App	10.11.04	rejected
1814/02	Stepinska	France	II	15.06.04	App	10.11.04	rejected
19449/02	Patrianakos	Greece	I	15.07.04	App	15.12.04	rejected
21413/02	Kansal	UK	IV	27.04.04	App	10.11.04	rejected
21689/93	Özkan and Others	Turkey	II	6.04.04	Gvt	10.11.04	rejected
23145/93 & 25091/94	Elci and others	Turkey	IV	2.12.03	Gvt	24.03.04	rejected
26624/95	Worwa	Poland	III	27.11.03	Gvt	14.6.04	rejected
25754/94	Haran	Turkey	IV	26.03.04	App	15.12.04	rejected
27699/95	Tekdağ	Turkey	I	4.12.03	App	14.6.04	rejected
26144/95	İkincisoy	Turkey	IV	27.07.04	Gvt	15.12.04	rejected
26338/95	I.R.S.and Others	Turkey	II	20.07.04	Gvt	15.12.04	rejected
28298/95	Buldan	Turkey	II	20.04.04	App	10.11.04	rejected
30452/96	Takak	Turkey	III	1.4.04	App	7.7.04	rejected
32984/96	Alfatli and others	Turkey	III	30.10.03	Gvt	24.03.04	rejected
34220/96	A.W. (Andrzej Watral)	Poland	III	24.06.04	App	10.11.04	rejected
35071/97	Gunduz	Turkey	I	4.12.03	Gvt + App	14.6.04	rejected
35577/97	Kaszubski	Poland	IV	24.2.04	App	7.7.04	rejected
36983/97	Haas	The Netherlands	II	13.1.04	App	14.6.04	rejected
37761/97	Lisławska	Poland	IV	13.07.04	App	15.12.04	rejected
38267/97	H.A.L.	Finland	IV	27.1.04	App	7.7.04	rejected
38410/97 &	Fontaine and Bertin	France	II	08.07.03	App	10.11.04	rejected

Annual Report 2004: Grand Chamber

40373/98							
38746/97	Buffalo v. Srl	Italy	I	22.07.04	App	15.12.04	rejected
38805/97	W.K.	Italy	II	20.07.04	Gvt	15.12.04	rejected
38811/97	Gora	Poland	IV	27.04.04	App	10.11.04	rejected
39359/98	Pavletic	Slovakia	IV	22.06.04	Gvt	10.11.04	rejected
40261/98	Asuman Aydin	Turkey	III	15.07.04	Gvt	10.11.04	rejected
40290/98	Kacmar	Slovakia	IV	9.3.04	App	7.7.04	rejected
40528/98	Güven and others	Turkey	III	22.1.04	Gvt App	18.2.04 21.4.04	rejected
40653/98	Iorgov	Bulgaria	I	11.3.04	App	7.7.04	rejected
40997/98	Duran	Turkey	III	29.1.04	Gvt	18.2.04	rejected
41578/98	Baransel and Others	Turkey	III	27.05.04	Gvt	10.11.04	rejected
41580/98							
42439/98	Cavus and Bulut	Turkey	III	23.10.03	Gvt	24.03.04	rejected
42023/98	Gennadiy Naumenko	Ukraine	II	10.02.04	App	15.12.04	rejected
42042/98	Peryt	Poland	IV	2.12.03	App	24.03.04	rejected
42096/98	Skawinska	Poland	IV	16.09.03	App	24.03.04	rejected
42268/98	J.M.F (Figuët)	France	II	01.06.04	App	10.11.04	rejected
42462/98	Koçak and Others	Turkey	III	19.05.04	App	10.11.04	rejected
42472/98	Tkacik	Slovakia	IV	14.10.03	App	24.03.04	rejected
42559/98	Öner and Cavusoglu	Turkey	III	24.06.04	Gvt	10.11.04	rejected
42738/98	Tuncel and others	Turkey	III	27.11.03	App	24.03.04	rejected
42741/98	Cakar	Turkey	III	23.10.03	Gvt	24.03.04	rejected
42775/98	Ükünç and Güneş	Turkey	III	18.12.03	Gvt	18.3.04	rejected
43577/98	Nachova and Others	Bulgaria	I	26.2.04	Gvt	7.7.04	ACCEPTED
43579/98							
44054/98	Kaya	Turkey	III	22.1.04	Gvt	18.2.04	rejected

Annual Report 2004: Grand Chamber

44181/98	Hajnrich	Poland	IV	25.05.04	App	10.11.04	rejected
44568/98	R.L. and M.-J.D.	France	III	19.05.04	Gvt	10.11.04	rejected
44774/98	Sahin	Turkey	IV	29.06.04	App	10.11.04	ACCEPTED
45107/98	Koktavá	Czech Republic	II	2.12.03	App	14.6.04	rejected
45130/98	Slimane Kaid	France	II	06.04.04	App	10.11.04	rejected
46002/99	Wrobel	Poland	IV	20.07.04	App	15.12.04	rejected
46106/99	Eren	Turkey	III	23.10.03	Gvt	24.03.04	rejected
46272/99	Haydar Günes	Turkey	III	22.04.04	App	10.11.04	rejected
46355/99	Tsirikakis	Greece	I	17.1.02	Gvt	10.7.02	rejected
46388/99	Bozkurt and others	Turkey	III	4.12.03	App	24.03.04	rejected
46720/99							
72203/01							
72552/01	Jahn and Others	Germany	III	22.1.04	Gvt	14.6.04	ACCEPTED
46952/99	Hidir Özdemir	Turkey	III	15.01.04	App Gvt	24.03.04 15.1.04	rejected
47340/99	Jalaliaghdam	Turkey	III	22.1.04	Gvt	18.2.04	rejected
47355/99	Kerekgyarto	Hungary	II	16.12.04	App	24.03.04	rejected
48054/99	Sarioglu	Turkey	III	4.12.03	App	24.03.04	rejected
48062/99	Kircan	Turkey	III	22.1.04	Gvt	18.2.04	rejected
48065/99	Polat and others	Turkey	III	15.1.04	Gvt	18.2.04	rejected
48155/99	Çınar	Turkey	III	15.1.04	Gvt	18.2.04	rejected
48339/99	Kangasluoma	Finland	IV	20.1.04	App	14.6.04	rejected
48438/99	Özertikoğlu	Turkey	III	22.1.04	Gvt	18.2.04	rejected
48553/99	Sovtransavto Holding	Ukraine	Former IV	2.10.03	App	24.03.04	rejected
48617/99	Özyol	Turkey	III	23.10.03	Gvt	24.03.04	rejected
48865/99	Morsink	Netherlands	II	11.05.04	Gvt	10.11.04	rejected
48995/99	Surugiu	Romania	II	20.04.04	App	10.11.04	rejected
49503/99	Doğan	Turkey	III	29.1.04	Gvt	18.2.04	rejected

Annual Report 2004: Grand Chamber

49706/99	Rajak	Croatia	IV	28.6.01	App	12.12.01	rejected
49806/99	Prodan	Moldova	IV	18.05.04	Gvt	10.11.04	rejected
49902/99	Brand	Netherlands	II	11.05.04	Gvt	10.11.04	rejected
49975/99	Adamscy	Poland	IV	27.07.04	App	10.11.04	rejected
50118/99	Simsek	Turkey	III	23.10.03	Gvt	24.03.04	rejected
50119/99	Suvariogullari and others	Turkey	III	23.10.03	Gvt	24.03.04	rejected
50178/99	Nikitin	Russia	II	20.07.04	App	15.12.04	rejected
50213/99	Tam	Slovakia	IV	22.06.04	Gvt	10.11.04	rejected
50743/99	Hayrettin Barbaros Yilmaz	Turkey	III	23.10.03	Gvt	24.03.04	rejected
50903/99	Korkmaz	Turkey	III	22.1.04	Gvt App	18.2.04 21.4.04	rejected
51053/99	Tutmaz and others	Turkey	III	23.10.03	Gvt+App	24.03.04	rejected
51416/99	Dilek Dalgic	Turkey	III	23.10.03	Gvt	24.03.04	rejected
51442/99	Coudrier	France	II	10.2.04	App	14.6.04	rejected
51515/99	Krzak	Poland	IV	6.4.04	App	7.7.04	rejected
51559/99	Jamriska	Slovakia	IV	14.10.03	App	24.03.04	rejected
52478/99	Surman-Januszewska	Poland	IV	27.04.04	App	10.11.04	rejected
52665/99	Akkas	Turkey	III	23.10.03	Gvt	24.03.04	rejected
52744/99	Ergül and Engin	Turkey	III	23.10.03	Gvt	24.03.04	rejected
52859/99	Dostal	Czech Republic	II	25.05.04	App	10.11.04	rejected
53014/99	Peker	Turkey	III	23.10.03	Gvt	24.03.04	rejected
53084/99	Kormacheva	Russia	I	29.1.04	App	14.6.04	rejected
53425/99	Dumas	France	II	23.09.03	App	24.03.04	rejected
53431/99	Gencel	Turkey	III	23.10.03	Gvt+App	24.03.04	rejected
53544/99	Racinet	France	II	23.09.03	App	24.03.04	rejected
53760/00	B.B.	UK	IV	10.2.04	App	7.7.04	rejected

Annual Report 2004: Grand Chamber

53895/00	Erdogan	Turkey	III	23.10.03	Gvt	24.03.04	rejected
53988/00	Moufflet	France	II	3.2.04	Gvt	26.4.04	rejected
54457/00	Kovacs	Hungary	II	16.12.03	App	7.7.04	rejected
54919/00	İçöz	Turkey	III	15.1.04	Gvt	18.2.04	rejected
55084/00	Dagot	France	II	27.04.04	App	10.11.04	rejected
55634/00	Cianetti	Italy	I	22.04.04	Gvt	10.11.04	rejected
56021/00	Erolan and others	Turkey	III	15.1.04	Gvt	18.2.04	rejected
56193/00, 57581/00	E.O. and V.P.	Slovakia	IV	27.04.04	Third Party	10.11.04	rejected
57562/00	Becerikli and Altekin	Turkey	III	8.1.04	App	11.3.04	rejected
57939/00	Kalyoncugil and others	Turkey	III	29.1.04	Gvt	18.2.04	rejected
57944/00	Çetinkaya and others	Turkey	III	18.12.03	Gvt App	8.3.04 11.3.04	rejected
57966/00	Vass	Hungary	II	25.11.03	App	24.03.04	rejected
58116/00	Pfleger	Czech Republic	II	27.07.04	App	15.12.04	rejected
58177/00, 58178/00	Houfova (No 1 and 2)	Czech Republic	II	15.06.04	App	10.11.04	rejected
58278/00	Zdanoka	Latvia	I	17.06.04	Gvt	10.11.04	ACCEPTED
58749/00	Matencio	France	I	15.1.04	App	31.3.04	rejected
58887/00	Karoly	Hungary	II	2.12.03	App	24.03.04	rejected
58973/00	Rakevich	Russia	II	28.10.03	App	24.03.04	rejected
59234/00	Al and others	Turkey	III	13.11.03	App	24.03.04	rejected
59532/00	Krstina Blecic	Croatia	I	29.07.04	App	15.12.04	ACCEPTED
60297/00	Toth	Hungary	II	30.3.04	App	7.7.04	rejected
60958/00	S.C. (Scott Cody)	UK	IV	15.06.04	Gvt	10.11.04	rejected
62503/00	Karahalios (no° 2)	Greece	I	6.3.04	App	14.6.04	rejected

Annual Report 2004: Grand Chamber

62543/00	Gorraiz Lizarraga and Others	Spain	IV	27.04.04	App	10.11.04	rejected
63627/00	Volesky	Czech Republic	II	29.06.04	App	10.11.04	rejected
64796/01	Couillard Maugery	France	I	01.07.04	App	10.11.04	rejected
66096/01	Zynger	Poland	IV	13.07.04	Gvt	15.12.04	rejected
66296/01	Belaousof and Others	Greece	I	27.05.04	App	10.11.04	rejected
6711/02	Nastos	Greece	I	15.07.04	App	10.11.04	rejected
67534/01	Romashov	Ukraine	II	27.07.04	Gvt	15.12.04	rejected
67972/01	Somogyi	Italy	II	18.05.04	Gvt	10.11.04	rejected
68255/01-61	Crochard and 6 others	France	II	3.2.04	App	8.4.04	rejected
69498/01	Pla et Puncernau	Andorra	IV	13.07.04	Gvt	15.12.04	rejected
70276/01	Gusinskiy	Russia	I	19.05.04	Gvt	10.11.04	rejected
73562/01, 73565/01 73712/01 73744/01 73792/01 73793/01	Sirbu and Others	Moldova	IV	15.06.04	Gvt	10.11.04	rejected
73577/01	Vodarenska Akciova Spolecnost A.S.	Czech Republic	II	24.2.04	App	7.7.04	rejected
73797/01	Kyprianou	Cyprus	II	27.1.04	Gvt	19.4.04	ACCEPTED
73936/01	De Jorio	Italy	I	03.06.04	Gvt	10.11.04	rejected
74025/01	Hirst (N° 2)	UK	IV	30.03.04	Gvt	10.11.04	ACCEPTED
7503/02	Neroni	Italy	I	22.04.04	App	10.11.04	rejected
75872/01	Gidel	Poland	IV	14.10.03	App	24.03.04	rejected
8694/02	Palaska	Greece	I	19.05.04	App	10.11.04	rejected
8803/02	Dogan	Turkey	III	29.06.04	Gvt	10.11.04	rejected

Annual Report 2004: Grand Chamber

9446/02	Gesiarz	Poland	IV	18.05.04	App	10.11.04	rejected
---------	---------	--------	----	----------	-----	----------	----------