

European Court  
of Human Rights

*Annual  
Report  
2003*

Registry of the European Court  
of Human Rights  
Strasbourg, 2004

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## FOREWORD

*The Court's Annual Reports always provide an ideal opportunity to look back over the past year and to take stock of the events that marked it. So what is to be gleaned from 2003?*

*The first thing that stands out every year is the way in which, through the Court's case-law, solutions to a wide range of situations and issues are to be found in the handful of substantive Convention provisions. That is undoubtedly the best testimony to the Convention's dynamism and astonishing topicality, qualities that enable it to shed light on virtually all aspects of modern society. In 2003 too the Court had to deal with issues as new and varied as homosexual couples, the right to give birth anonymously and noise pollution. Even in spheres more traditionally within the Convention's domain, 2003 has been marked by what could in many cases be described as cutting-edge developments, such as those concerning the scope of the presumption of innocence or the extent of the States' positive obligations.*

*Out of the 703 judgments delivered in 2003, I have selected two which, through both their differences and their complementarity, reflect the dual role played by the Court. These are the judgments in the cases of Refah Partisi (the Welfare Party) and Others v. Turkey<sup>1</sup> and Jakupovic v. Austria<sup>2</sup>, which were delivered on 13 and 6 February 2003 respectively.*

*The first is a unanimous Grand Chamber decision and is one of a series of judgments over the past few years in which the Court has sought to define the bases of the democratic system on which the Convention is founded. Thus in 1998, in United Communist Party of Turkey and Others v. Turkey<sup>3</sup>, the Court found that democracy appeared to be the sole political model contemplated by the Convention and, consequently, the only one that was compatible with it. But this raises the question of what that concept means.*

*Paradoxically, although most people profess their commitment to democracy, it is in many ways an imprecise notion with an apparent weakness that is capable of causing it to buckle under pressure and even, as history shows, to do away with itself. The reason for this is that, by definition, democracy seeks to satisfy the aspirations of the greatest number. Such aspirations are, however, often changeable and even contradictory, a factor which in turn leads to a growing number of compromises and increasingly complex mediation, whose impact on the system itself will not always be measurable. The former President of the German Constitutional Court recently noted in this connection that democracy is subjected to constant pressure, as its divergent forces interact to create an unstable equilibrium<sup>4</sup>. This, undoubtedly, is especially true at times of crisis, when democracy gives the impression of struggling to meet the rush of challenges posed by globalisation, recession and terrorism.*

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1. [GC], nos. 41340/98, 41342/98, 41343/98 and 41344/98, to be reported in ECHR 2003-II.

2. No. 36757/97.

3. Judgment of 30 January 1998, *Reports of Judgments and Decisions* 1998-I.

4. "Die Demokratie befindet sich in einer unaufhörlichen Bewährungsprobe, weil ihre divergierenden Kräfte in einem labilen Gleichgewicht stehen" (Jutta Limbach, *Die Demokratie und ihre Bürger*, Munich, 2003, p. 146).

*It is in this domain that the Court, aided by the pan-European consensus provided by the Convention, has a role to play in identifying the constituent elements of democracy and in reminding everyone of the minimum essential requirements of a political system if human rights within the meaning of the Convention are to be protected. It has in the past applied itself to establishing the basic principles of the rule of law, the role of political parties, and the limits on freedom of political expression and parliamentary immunity. In Refah Partisi, it carried out a thorough examination of the relationship between the Convention, democracy, political parties and religion, and found that a sharia-based regime was incompatible with the Convention, in particular, as regards the rules of criminal law and procedure, the place given to women in the legal order and its interference in all spheres of private and public life in accordance with religious precepts.*

*That said, a truly democratic society can also be recognised by the attention it gives to the weakest and poorest of its members, as the preamble to the draft Constitution of the European Union helpfully reminds us. It is in this context that the Court's judgments dealing with the plight of ordinary people rather than universal principles come into their own. The second of the cases mentioned above, that of Mr Jakupovic, provides a striking illustration of this type of judgment through its discreet testimony to the despair of the victims of the war in the Balkans, a genuine collective tragedy in present-day Europe.*

*The case concerned a young national of Bosnia and Herzegovina who, when war broke out and at the age of 11, travelled with his brother to join their mother, who was living in Austria. Once there, he became involved in petty crime for which he was given two suspended prison sentences and banned from Austria for ten years. At the age of 16, he was deported alone to the war-torn country of his birth where he no longer had any close relatives, his father having been officially declared missing since the end of the armed conflict. An all-too-common story when all is said and done, but one which the Court found by four votes to three amounted to a violation of Article 8 of the Convention.*

*This review of the past year would not be complete, however, without a reference to the worrying increase in the Court's backlog, which puts the survival of the entire Convention system at risk. The figures, which are reproduced in the pages dealing with the Court's statistics, could hardly be more eloquent. This well-known phenomenon has various causes, arising as they do at all the stages through which each case passes, from recourse to domestic remedies to the execution of the Court's judgments. For this reason, the draft proposals for the reform of the system currently under review by the Committee of Ministers of the Council of Europe contain recommendations for appropriate remedial action at each stage.*

*Leaving aside the specifics of the proposed solutions, the important point, however, is that, as the Council of Ministers stated in May 2003, "the European Convention on Human Rights [remains] the essential reference point for the protection of human rights in Europe"<sup>1</sup>. Only the Convention offers a truly pan-European understanding, free of*

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1. "Guaranteeing the long-term effectiveness of the European Court of Human Rights", Declaration of the Committee of Ministers of the Council of Europe, Strasbourg, 14-15 May 2003.



*regionalism and particularism, of the fundamental rights of every human being. It is a priceless asset<sup>1</sup>.*

*Luzius Wildhaber*  
President  
of the European Court of Human Rights

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

## **I. HISTORICAL BACKGROUND, ORGANISATION AND PROCEDURE**

## **HISTORICAL BACKGROUND, ORGANISATION AND PROCEDURE**

### ***Historical background***

#### **A. The European Convention on Human Rights of 1950**

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

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

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

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

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

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

## **B. Subsequent developments**

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

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

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

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

7. During the three years which followed the entry into force of Protocol No. 11 the Court's caseload grew at an unprecedented rate. The number of applications registered rose from 5,979 in 1998 to 13,858 in 2001, an increase of approximately 130%. Concerns about the Court's capacity to deal with the growing volume of cases led to requests for additional resources and speculation about the need for further reform.

A Ministerial Conference on Human Rights, held in Rome on 3 and 4 November 2000 to mark the 50th anniversary of the opening of the Convention for signature, had initiated a process of reflection on reform of the system. In November 2002, as a follow-up to a Ministerial Declaration on "the Court of Human Rights for Europe", the Ministers' Deputies issued terms of reference to the Steering Committee for Human Rights (CDDH) to draw up a set of concrete and coherent proposals covering measures that could be implemented without delay and possible amendments to the Convention. In May 2003 the Ministers adopted a further declaration welcoming a report by the Steering Committee and expressing the wish that the Committee of Ministers be in a position to consider, with a view to its adoption, a draft amending protocol to the Convention at its 114th Session in May 2004. New terms of reference to this effect were given to the Steering Committee.

## ***The European Court of Human Rights***

### **A. Organisation of the Court**

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

Judges sit on the Court in their individual capacity and do not represent any State. They cannot engage in any activity which is incompatible with their independence or impartiality or with the demands of full-time office. Their terms of office expire when they reach the age of 70.

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

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

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

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

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

### **B. Procedure before the Court**

#### ***1. General***

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

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

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

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

## ***2. Admissibility procedure***

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

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

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

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

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

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

## ***3. Procedure on the merits***

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

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

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

#### ***4. Judgments***

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

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

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

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

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

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

#### ***5. Advisory opinions***

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

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

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



## **II. COMPOSITION OF THE COURT**

## COMPOSITION OF THE COURT

At 31 December 2003 the Court was composed as follows (in order of precedence)<sup>1</sup>:

Mr Luzius Wildhaber, <i>President</i>	(Swiss)
Mr Christos L. Rozakis, <i>Vice-President</i>	(Greek)
Mr Jean-Paul Costa, <i>Vice-President</i>	(French)
Mr Georg Ress, <i>Section President</i>	(German)
Sir Nicolas Bratza, <i>Section President</i>	(British)
Mr Gaukur Jörundsson	(Icelandic)
Mr Giovanni Bonello	(Maltese)
Mr Lucius Caflisch	(Swiss) <sup>2</sup>
Mr Loukis Loucaides	(Cypriot)
Mr Pranas Kūris	(Lithuanian)
Mr Ireneu Cabral Barreto	(Portuguese)
Mr Riza Türmen	(Turkish)
Mrs Françoise Tulkens	(Belgian)
Mrs Viera Strážnická	(Slovakian)
Mr Corneliu Bîrsan	(Romanian)
Mr Peer Lorenzen	(Danish)
Mr Karel Jungwiert	(Czech)
Mr Marc Fischbach	(Luxemburger)
Mr Volodymyr Butkevych	(Ukrainian)
Mr Josep Casadevall	(Andorran)
Mr Boštjan Zupančič	(Slovenian)
Mrs Nina Vajić	(Croatian)
Mr John Hedigan	(Irish)
Mrs Wilhelmina Thomassen	(Netherlands)
Mr Matti Pellonpää	(Finnish)
Mrs Margarita Tsatsa-Nikolovska	(citizen of the “former Yugoslav Republic of Macedonia”)
Mrs Hanne Sophie Greve	(Norwegian)
Mr András B. Baka	(Hungarian)
Mr Rait Maruste	(Estonian)
Mr Egils Levits	(Latvian)
Mr Kristaq Traja	(Albanian)
Mrs Snejana Botoucharova	(Bulgarian)
Mr Mindia Ugrekheldze	(Georgian)
Mr Anatoly Kovler	(Russian)
Mr Vladimiro Zagrebelsky	(Italian)
Mrs Antonella Mularoni	(San Marinense)
Mrs Elisabeth Steiner	(Austrian)
Mr Stanislav Pavlovschi	(Moldovan)
Mr Lech Garlicki	(Polish)
Mr Javier Borrego Borrego	(Spanish)

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1. The seat of judge in respect of Bosnia and Herzegovina was vacant.

2. Elected as judge in respect of Liechtenstein.

Mrs Elisabet Fura-Sandström  
Mrs Alvina Gyulumyan  
Mr Khanlar Hajiyev

(Swedish)  
(Armenian)  
(Azerbaijani)

Mr Paul Mahoney, *Registrar*  
Mr Erik Fribergh, *Deputy Registrar*

(British)  
(Swedish)

### **III. COMPOSITION OF THE SECTIONS**

**COMPOSITION OF THE SECTIONS**  
(in order of precedence)

At 31 December 2003

	<b>Section I</b>	<b>Section II</b>	<b>Section III</b>	<b>Section IV</b>
<i>President</i>	Mr C.L. Rozakis	Mr J.-P. Costa	Mr G. Ress	Sir Nicolas Bratza
<i>Vice-President</i>	Mr P. Lorenzen	Mr A.B. Baka	Mr I. Cabral Barreto	Mr M. Pellonpää
	Mr G. Bonello	Mr L. Wildhaber	Mr L. Caflisch	Mrs V. Strážnická
	Mrs F. Tulkens	Mr Gaukur Jörundsson	Mr P. Kūris	Mr M. Fischbach
	Mrs N. Vajić	Mr L. Loucaides	Mr R. Türmen	Mr J. Casadevall
	Mr E. Levits	Mr C. Bîrsan	Mr B. Zupančič	Mr R. Maruste
	Mrs S. Botoucharova	Mr K. Jungwiert	Mr J. Hedigan	Mr S. Pavlovschi
	Mr A. Kovler	Mr V. Butkevych	Mrs M. Tsatsa-Nikolovska	Mr L. Garlicki
	Mr V. Zagrebelsky	Mrs W. Thomassen	Mrs H.S. Greve	Mr J. Borrego Borrego
	Mrs E. Steiner	Mr M. Ugrekhelidze	Mr K. Traja	Mrs E. Fura-Sandström
	Mr K. Hajiyev	Mrs A. Mularoni	Mrs A. Gyulumyan	
<i>Section Registrar</i>	Mr S. Nielsen ( <i>Acting</i> )	Mrs S. Dollé	Mr V. Berger	Mr M. O'Boyle
<i>Deputy Section Registrar</i>		Mr L. Early	Mr M. Villiger	Mrs F. Elens-Passos

**IV. SPEECH GIVEN BY  
Mr LUZIUS WILDHABER,  
PRESIDENT OF THE EUROPEAN COURT  
OF HUMAN RIGHTS,  
ON THE OCCASION OF THE OPENING  
OF THE JUDICIAL YEAR,  
22 JANUARY 2004**

**SPEECH GIVEN BY Mr LUZIUS WILDHABER,  
PRESIDENT OF THE EUROPEAN COURT  
OF HUMAN RIGHTS,  
ON THE OCCASION OF THE OPENING  
OF THE JUDICIAL YEAR,  
22 JANUARY 2004**

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

I am delighted to have the opportunity of meeting you here every year in Strasbourg to mark the beginning of our judicial year. Among the guests who are honouring us with their presence this evening, and who include more than fifteen Presidents of Supreme and Constitutional Courts, I should like to extend a particular welcome to our guest of honour, Mr Antônio Cançado Trindade, President of the Inter-American Court of Human Rights, and to Mr Vassilios Skouris, on his first visit to Strasbourg in his capacity as the new President of the Court of Justice of the European Communities.

As I do every year, I will tonight outline some of the main messages which emerge from our case-law over the past year. This year I shall talk about four cases.

The first concerned the dissolution, by the Turkish Constitutional Court, of a political party, the Welfare Party, on the grounds that it wanted to introduce sharia law and a theocratic regime. A Grand Chamber of the Court found unanimously that there had been no violation of Article 11 of the Convention, which protects freedom of association. This case gave the Court the opportunity to conduct an in-depth analysis of the relationship between the Convention and democracy, political parties, and religion.

In its judgment<sup>1</sup>, the Court first noted that freedom of thought, of religion, of expression and of association as guaranteed by the Convention could not deprive the authorities of a State in which an association, through its activities, jeopardised that State's institutions, of the right to protect those institutions. It necessarily followed that a political party whose leaders incited to violence or put forward a policy which failed to respect democracy or which was aimed at the destruction of democracy and the flouting of the rights and freedoms recognised in a democracy, could not lay claim to the Convention's protection against penalties imposed on those grounds. Such penalties could even, where there was a sufficiently established and imminent danger for democracy, take the form of preventive intervention.

Noting that the Welfare Party had pledged to set up a regime based on sharia law, the Court found that sharia was incompatible with the fundamental principles of democracy as set forth in the Convention. It considered that "sharia, which faithfully reflects the dogmas and divine rules laid down by religion, is stable and invariable. Principles such as pluralism in the political sphere or the constant evolution of public freedoms have no place in it". According to the Court, it was difficult to declare one's respect for democracy and human

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1. *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], nos. 41340/98, 41342/98, 41343/98 and 41344/98, judgment of 13 February 2003, to be reported in ECHR 2003-II.

rights while at the same time supporting a regime based on sharia, which clearly diverged from Convention values, particularly with regard to its criminal law and criminal procedure, its rules on the legal status of women and the way it intervened in all spheres of private and public life in accordance with religious precepts.

There is no doubt that this judgment is one of the major judgments of the Court in which it endeavours to define the shape and the boundaries of democracy and the rule of law. In the same perspective, I would mention the Court's decision in *Garaudy v. France*<sup>1</sup>. The applicant had challenged, among other things, his conviction for having called into question crimes against humanity, following the publication of a book with strong Holocaust-denial overtones. The Court denied him the protection of Article 10 of the Convention, which protects freedom of expression, on the basis that Article 17 applied. According to the Court, a denial of the reality of clearly established historical facts, such as the Holocaust, was not the same thing as genuine historical research work aimed at establishing the truth. The true purpose of such an approach was to rehabilitate the national socialist regime and by the same token to accuse the victims themselves of having falsified history. Denial of crimes against humanity thus appeared to be one of the most acute forms of racial defamation of Jews and of incitement to racial hatred of Jews. That type of denial or rewriting of history called into question the values underpinning the fight against racism and anti-Semitism and posed a serious threat to public order. Such acts were incompatible with democracy and human rights, and were plainly intended to achieve objectives of the kind prohibited by Article 17 of the Convention. On the ground that the applicant's book as a whole displayed clear Holocaust-denial overtones, the Court found it to be contrary to the fundamental values of the Convention, namely justice and peace.

Also last year, the Court once again had to contend with another of the major issues of our time, namely environmental protection, in a case involving noise pollution. In *Hatton and Others v. the United Kingdom*<sup>2</sup>, residents near Heathrow Airport on the outskirts of London had challenged the way in which the government had decided to regulate night flights at the airport. In its judgment, the Grand Chamber of the Court noted that, while there was no explicit right in the Convention to a clean and quiet environment, where an individual was directly and seriously affected by noise or other pollution, an issue might arise under Article 8, which protects private and family life. It acknowledged however that States enjoyed a certain margin of appreciation in that respect.

The Court noted that in such a case, Article 8 required a fair balance to be struck between the interests of persons affected by noise at night and the competing interests of society as a whole, more particularly the economic interest which night flights represents for a country. In that respect, the Court found that governments should take environmental protection into consideration in acting within their margin of appreciation, but that there was no justification for prescribing a special status or a special approach for the protection of environmental human rights. Nevertheless, the decision-making process must necessarily involve appropriate investigations and studies in order to allow a fair balance to be struck between the various conflicting interests at stake.

In that case, a majority of the Court found that there had been no violation of Article 8, in view of all the measures taken by the government to mitigate the effects of noise, and the

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1. No. 65831/01, decision of 24 June 2003, to be reported in ECHR 2003-IX (extracts).

2. [GC], no. 36022/97, judgment of 8 July 2003, to be reported in ECHR 2003-VIII.



fact that it had not adversely affected house prices in the airport area, which enabled people who were particularly affected – roughly 2 to 3% of the population concerned – to move elsewhere without financial loss.

To conclude this brief overview, I should like to touch on *Koua Poirrez v. France*<sup>1</sup>, a case which looked fairly run-of-the-mill but which provides a very good summary of the state of relations between the Convention and the law of the European Union and their consequences, in terms of the law as it is and the law as it should be. Here was a physically disabled applicant, an Ivory Coast national, who had been adopted as an adult by a French citizen although he did not thereby acquire French nationality. He applied for an adult disability allowance but his application was turned down on the ground of his Ivory Coast nationality. The court hearing his appeal decided to ask the Court of Justice of the European Communities for a preliminary ruling on the compatibility between the relevant French law and Community law, on the basis that the applicant was a direct descendant of a citizen of the European Union. The Court of Justice found that Community law did not apply to the facts of the case: although the applicant's adoptive father was indeed a national of a member State of the European Communities, he did not qualify as a migrant worker since he had always lived and worked in France. On the strength of this Luxembourg judgment, all the French courts which successively dealt with the applicant's appeals rejected his request for a disability allowance. He then applied to this Court which, in a judgment of 30 September 2003, that is, more than thirteen years after he had originally applied, found that the applicant had been the victim of discrimination based on nationality, contrary to Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1, and, ruling on an equitable basis, awarded him 20,000 euros for the damage he had sustained.

So what can we learn from this case? Actually there are many lessons. First, it shows the complementarity – and also the complexity – of the three legal systems involved: French law contained an element of discrimination which Community law was powerless to remedy because it did not apply in the particular case; accordingly it was only in Strasbourg that the situation could finally be remedied.

This case also highlights the problem of the length of proceedings in Europe. As I have just said, the applicant had to wait for more than thirteen years before finally being vindicated in Strasbourg. Would that be a reason to consider doing away in the future with one of the actors involved in this type of proceedings, so as to shorten them for the benefit of applicants? The answer is no, because each of these actors – the national courts, the Court of Justice and the Strasbourg Court – has a key role to play. While it is true that the Court of Justice had no option but to rule that Community law was not applicable to the facts of the case, it would not have taken much for Community law to apply and for the Court of Justice to be required to rule on whether French law contained an element of discrimination that was contrary to Community law. It would have sufficed if, for example, the applicant's adoptive father had been a German or Italian rather than a French national.

So what needs to be done about such delays? Part of the solution must undoubtedly come from the national courts. In this respect, it is astonishing to find a national court enquiring of its own motion about the effects of Community law – which in the event was inapplicable – but failing to consider the impact of the European Convention on Human

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1. No. 40892/98, judgment of 30 September 2003, to be reported in ECHR 2003-X.

Rights, which not only was applicable, but moreover had been violated. If the domestic courts had automatically applied the Convention of their own motion, the applicant might not have had to wait for more than thirteen years before receiving the allowances to which he was entitled.

However, we still need to reform the proceedings in question in order to simplify and shorten them and, although I will be discussing the ongoing reform of the Convention system in a moment, I should simply like to stress, in the context of the forthcoming reforms of our respective legal systems, the need to draw the lessons of *Koua Poirrez* and consider all the issues from a wider perspective, so that in future we analyse the systems to be reformed in terms of their complementarity and interdependence.

As we all know, the Inter-Governmental Conference of the European Union, which was to pave the way for the Union to accede to the Convention, ended in failure. However, since such accession is still the best way of harmonising European case-law on human rights, it continues to be necessary and will send a strong signal in favour of the interdependence and consistency of the machinery for the protection of fundamental rights in Europe. Plainly, this failure does not override all the objective justifications for accession, which is why I express the wish that accession will remain on the agenda of both the European Union and the Council of Europe. We know that the technical and legal problems can be overcome; it is therefore just a question of political resolve. It is true that our Court's caseload is too heavy, but as I said last year on this same occasion, non-accession is not a solution to the problem. The reform of the Convention system and accession by the European Union to the Convention are two separate problems, each requiring its own solutions.

That was the first part of my speech. I wanted to tell you about some of the most important judgments we delivered in 2003. Of course, I could only mention a few cases. The fabulous variety of our caseload is difficult to describe but that is precisely what makes our work so enriching and, I must say, frankly enjoyable. It is a privilege to work in this Court, and we are deeply grateful to be here at this point in history. The Court has made huge progress in refining its procedures, in improving its working methods and increasing its productivity since 1998. Compared with other international courts, its turnover and caseload are unprecedented. If we nevertheless need to discuss issues relating to the reform of the Convention and the independence of the Court, this is only because we believe that the Court and the Convention system must survive and prosper in a meaningful, effective and credible way, that the Convention has a crucial role to play as an instrument of European integration and as the guarantor of the rule of law and democracy throughout the wider Europe.

This year we tried to make the opening of the judicial year a little more attractive for those coming from outside Strasbourg, and particularly those coming from a considerable distance, by providing a fuller programme, which included a lunch here in the Human Rights Building, followed by an informal workshop on reform of the Convention system. This was arranged at rather short notice and was by way of being an experiment to see whether in future we might not try to organise a more ambitious seminar or conference to coincide with the opening of the judicial year. I hope that we can say that this afternoon's meeting was a success and that we are encouraged to repeat this experience on a larger and more sophisticated scale next year, with perhaps rapporteurs on specific topics from both

outside and within the Court. I would welcome contacts from national courts who would be interested in participating in such an event and proposing topics of interest for discussion.

This afternoon's workshop was devoted to reform of the Convention system and I would like to thank the Chair of the Steering Committee for Human Rights, Martin Eaton, for coming to present their work. The Steering Committee has been charged with presenting a draft amending Protocol to the Ministers this May. We congratulate the experts for the considerable efforts they have made in carrying out their mandate. The Court will respond to their latest proposals before the end of this month. I believe that in order to be successful a reform must try to reach beyond the horizon, to seek to express a vision not only of what the Court needs to cope with its problems of today, but also what it needs to face up to those of tomorrow. So far, I do not think we could say that the reform proposals reach beyond the horizon and that makes me worry that, even if we do achieve this rather modest reform now, we might very soon be back here, not talking about the "reform of the reform", which we began discussing even before the entry into force of Protocol No. 11, but about "the reform of the reform of the reform".

The Court's position was set out in a paper adopted last September and it may be summarised very briefly. There are two major problems facing the system: one is the mass of unmeritorious cases; the other is the large number of repetitive cases, cases deriving from structural problems. The Court's answer to the problems so identified would be, for unmeritorious cases, establishing a separate filtering mechanism – with additional personnel – to separate the filtering function from the substantial adjudication function, and for repetitive cases, a pilot-judgment procedure which would enable it not to deal with huge numbers of complaints deriving from the same structural dysfunction at national level, once that dysfunction had been identified by the Court and brought within an enhanced execution process.

My own concern is to ensure the meaningful survival of the Convention system and that includes of course the right of individual petition. That is also the concern of the opponents to the reform of the admissibility conditions. Where we disagree is what the greatest danger to that right is. For me the inexorable accumulation of cases, both inadmissible and substantial cases, will increasingly asphyxiate the system so as to deprive the great majority of incoming cases of any possibility of being heard within a reasonable time and therefore any practical effect. If the right of individual petition is not to become largely illusory, I continue to believe that, in addition to the other measures, there will have to be a reduction in the number of cases which are regarded as warranting full judicial, adversarial process, concluded by a reasoned determination. The Court has to be able at least to prioritise the cases which raise the most important issues, affecting the largest number of people in one way or another, as well as the most serious allegations. It cannot be acceptable that allegations of wide-scale abuses of the gravest kind should take years – four, five, six, maybe more – to be dealt with. This issue has yet to be resolved.

In conclusion on the question of reform, the Court is united in calling for a separate filtering body as a crucial component of any long-term solution. It is also united in calling for formal recognition of a pilot-judgment procedure. I personally believe we should go even further, but on this there is no unanimity in the Court; yet it would be intellectually dishonest of me not to reiterate that belief.

The reform of the Convention system is designed to secure the greatest possible effectiveness of that system at every level, in the Contracting States as well as in Strasbourg in order to reinforce the rule of law and democracy. The effective operation of a judicial system, founded on those twin pillars, is the key to successful implementation of the Convention guarantees. At the heart of the rule of law and democracy lies an independent judiciary, protected from all sorts of interference. The principles surrounding that independence are well known. They include transparent appointment procedures, security of tenure, separation of powers, freedom from any outside pressure or interference and appropriate social protection. An international Court must be exemplary in this respect. It must both be, and be perceived to be, wholly independent of the Contracting Parties, who are also the respondents before it. It is vitally important that firm principles governing an independent international judiciary be established. That is true of our Court as it is true of the Inter-American Court, of the future African Court, of the International Criminal Court, as well as of the European Court of Justice and the EFTA Court, both of which are represented here this evening by their Presidents, and of all the other international judicial bodies.

It is clearly anomalous that, when preparations were made for the entry into force of Protocol No. 11, no arrangements were made for a pension scheme. If no other international court, or indeed national court for that matter, fails to provide a pension scheme for its judges, it is because it is an established principle of judicial independence that judges must be protected not only during their tenure, but also thereafter so as not to be dependent on others for income once they have left office. The situation at present is that a judge leaving the Court may find himself or herself entirely without income and therefore wholly dependent on the very government in respect of which he or she must be perceived to be independent during his or her term of office. This is unsatisfactory and in stark contrast to the situation obtaining in all the other international courts. We have put this case to the Ministers' Deputies and I am now confident in view of their reaction that we will arrive at a concrete solution within the next few months. Indeed we must do so. Of course I can testify that all my fellow judges are independent and adjudicate in full independence without fear or favour. But, potentially, a judge without a pension is a vulnerable judge.

There is, in the new procedural framework for international adjudication that Protocol No. 11 put into place, another interstice that needs to be filled in order to consolidate both the reality and the appearance of the operational independence of the Court. The Convention system is the child of the Council of Europe, the Court's Registry staff are Council of Europe staff, but they are answerable to the Court. The Court alone, in accordance with the requirements of its operational independence, the principles of good management and the express provisions of the Convention, must be vested with authority to determine issues relating to the organisation of the Registry and the functions of its staff, including their appointment and the institution of disciplinary proceedings. So what is needed, in order to avoid unnecessary conflicts, is the same sort of text as exists in all other international courts defining the Court's position within the parent organisation in a way which guarantees both its operational independence and its staff's continued place within that organisation. The Court's Standing Committee on the Rules of Court is working on amendments to the Rules of Court which will spell this out and, once these are adopted by the plenary Court, we will go to the Committee of Ministers to request that the administrative consequences of these rules be reflected in the relevant Council of Europe regulations. For the Court this is a necessary development, which will confirm and define with greater clarity the judicial status of the Court within the Council of Europe. There are

understandable, although now outdated, historical reasons for the present situation. But the anomaly must go. It is completely wrong to think that this would weaken the Council of Europe. On the contrary, it will strengthen it by placing its judicial branch on the same level as the judicial institutions of other international organisations, thus enhancing its credibility and that of its fully independent judicial branch, the European Court of Human Rights.

As regards both these aspects of its status – the judges and the Registry – the Court counts on the understanding and support of all the various actors within the Council of Europe in order to facilitate the smooth and swift introduction of the necessary changes.

Ladies and gentlemen, friends, I must now conclude my speech. I should like to do so on a more poetic note, to remind us of the meaning of all our efforts, by sharing with you two maxims taken from the *Digest of the Neutral Valleys of Andorra*, which was written in 1748 by a lawyer called Antoni Fiter i Rossell and became one of the foundations of politics in Andorra. The first reads: “Show great love and veneration for justice, and dedicate yourself to securing its glorious reign in the Valleys, because it is the basis of their protection.” The second maxim provides the following answer to those who ask how they might pursue that noble aim: “Come to the aid of justice and support it with your strength and money when needed, and all its benefits will flow back to the earth.”

It gives me great pleasure and it is an honour to welcome here this evening the distinguished President of our sister Court in Costa Rica, with whom we have had a long and fruitful relationship, with regular exchanges of information in a mutually beneficial process whereby we follow and are influenced by the case-law developments in our respective Courts. Dear President, dear Antônio, you do not really need introducing to this audience. Strasbourg has long been a home from home for you and your many friends here this evening will be as delighted as I am that you were able to spare the time to address us this evening, further strengthening the close ties which bind our two Courts.

**V. SPEECH GIVEN BY  
Mr ANTÔNIO AUGUSTO CANÇADO TRINDADE,  
PRESIDENT OF THE INTER-AMERICAN COURT  
OF HUMAN RIGHTS,  
ON THE OCCASION OF THE OPENING  
OF THE JUDICIAL YEAR,  
22 JANUARY 2004**

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*The development of international human rights law  
through the activities and case-law  
of the European and the Inter-American Courts of Human Rights*

1. It is a great privilege and honour for me to address you at this ceremony of the official opening of the judicial year 2004 of the European Court of Human Rights. May I first of all thank our sister institution, the European Court, in the person of its distinguished President, Judge Luzius Wildhaber, for the honour of this invitation. Throughout the last four and a half years of my Presidency of the Inter-American Court of Human Rights, I have had the satisfaction of enjoying an excellent relationship with President Wildhaber and some of his colleagues, judges of the European Court; we have indeed succeeded in establishing a fruitful method of cooperation, by means of holding periodic or annual joint meetings, in rotation in Strasbourg and San José of Costa Rica, of delegations of judges and members of the Registry and Secretariat of our two international tribunals of human rights, in order to inform each other of, and to assess, the current trends in our activities and the respective recent jurisprudential developments.

2. This permanent dialogue that our two international tribunals have wisely maintained in the last four and a half years has indeed helped all of us to understand better the problems we face in our daily work (since the regional systems of protection operate in the framework of the universality of human rights), and has deepened our feeling of solidarity which, after all, lies at the very basis of our work in the field of human rights protection. Such protection is indeed an irreversible and definitive conquest of civilisation, and it is our common duty to ensure that no backward steps are allowed. The spirit of mutual *confiance* between our two Courts has, furthermore, paved the way for a remarkable jurisprudential cross-fertilisation, whereby the two international human rights tribunals have contributed significantly to the enhancement of international human rights law and to the impact of the latter on international law in general.

3. In fact, the evolving case-law of the European and Inter-American Courts of Human Rights is nowadays the juridical patrimony of all States and peoples of our continents. In the framework of the fluid and constructive dialogue maintained in the last four and a half years by our two international tribunals, today, 22 January 2004, is a very special day for me, as I can once again enjoy the company of the distinguished judges of the European Court and members of its Registry, this time at the ceremony marking the official opening of yet another judicial year, that of 2004, of work in support of the prevalence of the fundamental rights of the human person. In my address this evening I shall attempt to concentrate my thoughts on what I regard as the major points that emerge from the fruitful dialogue between our two

international human rights tribunals, in their present-day jurisprudential as well as institutional dimensions. I shall then present my conclusions on the matter.

### **The jurisprudential dimension**

4. Despite the distinct factual realities of the two continents in which they operate, the European and the Inter-American Courts of Human Rights have succeeded in setting forth approximations and convergences in their respective case-laws. A clear example of such convergence of outlook can in fact be perceived in the tackling of fundamental issues of interpretation and application of the two regional Conventions on Human Rights. I regard the rich case-law on methods of interpretation of the European Convention as a major historical contribution of the European Court to international human rights law as a whole. Its younger sister institution, the Inter-American Court, has also, in the settlement of cases which reflect the realities of human rights on the American continent, had occasion to construct its own case-law on methods of interpretation of the American Convention, disclosing, as already indicated, a reassuring convergence with that of the European Court.

5. This converging case-law has generated the common understanding, on both sides of the Atlantic, that human rights treaties are endowed with a special nature (as distinct from multilateral treaties of the traditional type); that human rights treaties have a normative character, of *ordre public*; that their terms are to be autonomously interpreted; that in their application one ought to ensure an effective protection (*effet utile*) of the guaranteed rights; that the obligations enshrined therein do have an objective character, and are to be duly complied with by the States Parties, which have the additional common duty of ensuring the collective guarantee of the protected rights; and that permissible restrictions (limitations and derogations) to the exercise of guaranteed rights are to be narrowly interpreted. The work of the European and Inter-American Courts of Human Rights has indeed contributed to the creation of an international *ordre public* based on respect for human rights in all circumstances.

6. Moreover, the dynamic or evolutive interpretation of the respective Conventions on Human Rights (the inter-temporal dimension) has been followed by both the European Court (in *Tyrer v. the United Kingdom*, 1978, *Airey v. Ireland*, 1979, *Marckx v. Belgium*, 1979, and *Dudgeon v. the United Kingdom*, 1981, among others) and the Inter-American Court (in its sixteenth advisory opinion, on the right to information on consular assistance in the framework of the guarantees of the due process of law, 1999, and its eighteenth advisory opinion, on juridical condition and rights of undocumented migrants, 2003). In its sixteenth and pioneering advisory opinion, of the greatest importance (it has inspired international case-law *in statu nascendi* on the matter), the Inter-American Court clarified that, in its interpretation of the norms of the American Convention, it should extend protection in new situations (such as that concerning the observance of the right to information on consular assistance) on the basis of pre-existing rights. The same vision has been propounded by the Inter-American Court in its most recent and forward-looking eighteenth advisory opinion.

7. At procedural law level, one of the basic issues dwelt upon by both Courts has been precisely that of access to justice at international level, achieved under the two Conventions by means of the operation of the respective provisions on the international jurisdiction of the two Courts of Human Rights and on the right of individual petition. I consider those provisions to be of such a fundamental character – true fundamental clauses (*cláusulas pétreas*) of the



international protection of human rights – that any attempt to undermine them would threaten the functioning of the whole mechanism of protection under the two regional Conventions. They constitute the basic pillars of the mechanism whereby the emancipation of the individual *vis-à-vis* his own State is achieved. This outlook grows in importance for having come at a time when the establishment of a new international human rights tribunal (an African Court on Human and Peoples' Rights) under the 1998 Protocol to the African Charter on Human and Peoples' Rights appears forthcoming.

8. In the Strasbourg system, with the entry into force of Protocol No. 11 to the European Convention on Human Rights on 1 November 1998 (at an official ceremony which I had the pleasure of attending here in the Palais des Droits de l'Homme at the Council of Europe as the representative of the Inter-American Court), individuals have been granted *jus standi* to bring a case directly before the European Court of Human Rights. In the San José of Costa Rica system, individuals have been granted under the American Convention on Human Rights – by the historic adoption of the current Rules of Court (effective since 1 June 2001) – *locus standi in judicio* to participate directly in all stages of the procedure before the Inter-American Court of Human Rights.

9. Despite the challenges our two tribunals are currently facing, particularly with regard to the increasing caseload (the European Court to a far greater extent than the Inter-American Court), individuals have been recognised as subjects of international human rights law, endowed with full procedural capacity, and have recovered their faith in human justice when it appeared to be fading away at the level of domestic law. This significant procedural development, with the automatic character of the international jurisdiction of the European Court and recent developments in that direction at the Inter-American Court, strongly suggests, as far as our two international human rights tribunals are concerned, that the old ideal of the realisation of international justice is finally seeing the light of day.

10. This is a point which deserves to be stressed on the present occasion, as in some international legal circles attention has been diverted in recent years from this fundamental achievement to the false problem of the so-called “proliferation of international tribunals”. This narrow-minded, inelegant and derogatory expression simply misses the key point of the considerable advances of the old ideal of international justice in the contemporary world. The establishment of new international tribunals is but a reflection of the way contemporary international law has evolved, and of the current search for, and construction of, an international community guided by the rule of law and committed to the realisation of justice. It is, furthermore, an acknowledgment of the superiority of the judicial means of settlement of disputes, bearing witness to the prevalence of the rule of law in democratic societies and eschewing all surrender to State voluntarism.

11. Following the visionary ideas and writings of Nicolas Politis and Jean Spiropoulos in Greece, Alejandro Álvarez in Chile, André Mandelstam in Russia, Raul Fernandes in Brazil, René Cassin and Georges Scelle in France, Hersch Lauterpacht in the United Kingdom, John Humphrey in Canada, among others, we have had to wait for decades for the current developments in the realisation of international justice to take place, nowadays enriching rather than threatening international law, strengthening rather than undermining international law. The reassuring growth of international tribunals is the sign of a new era, and we have to live up to it, to ensure that each of them makes its contribution to the continuing development of international law in the pursuit of international justice.

12. In the domain of the protection of the fundamental rights of the human person, the growth and consolidation of international human rights jurisdictions on our two continents – Europe and America – bear witness to the striking advances of the old ideal of international justice in our times. The fruitful dialogue which our two Courts of Human Rights have established in recent years, in a spirit of cooperation, mutual respect and coordination in the pursuit of a common cause and ideal, constitutes nowadays an inspiring example to other international tribunals.

13. Both the European and Inter-American Courts have rightly set limits to State voluntarism, have safeguarded the integrity of the respective Conventions on Human Rights and the primacy of considerations of *ordre public* over the will of individual States, have set higher standards of State behaviour and established some degree of control over the imposition of undue restrictions by States, and have reassuringly enhanced the position of individuals as subjects of international human rights law, with full procedural capacity. As far as the basis of their jurisdiction in contentious matters is concerned, eloquent illustrations of their firm stand in support of the integrity of the mechanisms of protection of the two Conventions are afforded, for example, by the decisions of the European Court in *Belilos v. Switzerland* (1988), in *Loizidou v. Turkey* (preliminary objections, 1995) and in *Ilascu and Others v. Moldova and Russia* (2001), as well as by the decisions of the Inter-American Court in *Constitutional Tribunal and Ivcher Bronstein v. Peru* (jurisdiction, 1999) and in *Hilaire, Constantine and Benjamin and Others v. Trinidad and Tobago* (preliminary objection, 2001).

14. Our two international human rights tribunals, by correctly resolving basic procedural issues raised in the aforementioned cases, have aptly made use of the techniques of public international law in order to strengthen their respective jurisdictions in the protection of the human person. They have decisively safeguarded the integrity of the mechanisms of protection of the American and European Conventions on Human Rights, whereby the juridical emancipation of the human person *vis-à-vis* his or her own State is achieved.

15. As to substantive law, the contribution of our two Courts is illustrated by numerous examples of their respective case-law pertaining to the rights protected under the two regional Conventions. The European Court has a vast and impressive case-law, for example, on the right to liberty and security of person (Article 5 of the European Convention) and the right to a fair trial (Article 6). The Inter-American Court has a significant case-law on the fundamental right to life, including living conditions, since its decision in the paradigmatic case of the so-called “street children” (*Villagrán Morales and Others v. Guatemala* (merits, 1999)).

16. Our two tribunals have built up a remarkable jurisprudence on the right of access to justice (and to obtain reparation) at international level. In its historic judgment in the case of the massacre of Barrios Altos (2001), concerning Peru, the Inter-American Court warned that measures of amnesty, of prescription and of exclusion from responsibility, intended to impede the investigation and punishment of those responsible for grave violations of human rights (such as torture, summary or extra-legal or arbitrary executions, and forced disappearances) are inadmissible, as they violate non-derogable rights recognised by international human rights law. This case-law has been reiterated by the Court (with regard to prescription) in its recent decision in *Bulacio v. Argentina* (2003).

17. The extensive case-law of the European Court covers virtually the totality of the rights protected under the European Convention and some of its Protocols. The growing case-law of the Inter-American Court, for its part, appears innovative and forward-looking with regard to

reparation, in its multiple forms, and provisional measures of protection, the latter sometimes benefiting members of entire human communities (particularly in the present situation of armed conflict in Colombia).

### **The institutional dimension**

18. Moving from the jurisprudential to the institutional level, our two Courts have a permanent and most legitimate concern to preserve and strengthen their autonomy as international human rights tribunals. In the case of the Inter-American Court, this concern encompasses its relations with the parent organisation itself, the Organisation of American States (OAS). In fact, the Inter-American Court has in recent years taken concrete initiatives to secure and strengthen its autonomy as an international tribunal of human rights. One such initiative, and a most significant one, has been the agreement on administrative autonomy which it concluded with the General Secretariat of the OAS and which has been in force since 1 January 1998.

19. This agreement, which, *inter alia*, establishes rules in respect of the resources allocated by the OAS General Assembly to the activities of the Court, has had as its main purpose to secure a true administrative independence for the Inter-American Court as an international tribunal of human rights, allowing it to manage its own budget, to make its own decisions with regard to the hiring of Secretariat personnel, and to be autonomous in its acquisition of property and services. This agreement has in practice indeed proved to be an important instrument for the administrative autonomy of the Court.

20. Regular communication with the parent organisation is of course maintained. This is important, for example, with regard to the supervision of the execution of the judgments of the Inter-American Court. While in the European protection system there is a mechanism of supervision by the Committee of Ministers, there is no equivalent in the inter-American system. In order to fill this gap, I have seen fit to propose to the competent bodies of the OAS the establishment of a permanent working group within the Committee on Legal and Political Affairs, whose task would be to report to the main organs – the Permanent Council and the General Assembly – on the state of compliance by States Parties to the American Convention with the judgments of the Inter-American Court and to present its recommendations on the decisions to be taken in each case by the General Assembly.

21. All this suggests that, in a wider dimension, the future of the inter-American human rights system depends nowadays on a series of measures to be taken by the States of the region. Firstly, the ratification of the American Convention on Human Rights (and of its two Protocols, as well as of the sectorial inter-American conventions) by *all* the States of the region. While in the European system 44 out of 45 member States of the Council of Europe are Parties to the European Convention, in the inter-American system, in contrast, 25 out of 34 member States of the OAS are Parties to the American Convention, and 21 have accepted the Inter-American Court's compulsory jurisdiction in contentious matters.

22. Those States which have excluded themselves from the legal regime of the American Convention – such as those of North America – have a historic debt towards the inter-American human rights system which they would do well to discharge. After all, a country's true commitment to the safeguard of internationally recognised human rights can best be assessed in terms of its initiative and determination to become a party to the human rights treaties and to assume the conventional obligations of protection enshrined therein. The same

criteria, principles and norms should apply to all States, which are juridically equal, and should operate to the benefit of all human beings, irrespective of their nationality or any other circumstances.

23. Secondly, all this must necessarily be accompanied by the adoption of essential national measures of implementation of the American Convention. While in the European system the European Convention is nowadays part of domestic law in all forty-four States Parties to it, the same does not yet hold true in the inter-American system. Until all OAS member States have ratified the American Convention, have fully accepted the Inter-American Court's contentious jurisdiction and have incorporated the substantive provisions of the American Convention into their domestic law, it is unlikely that much progress will be achieved in the inter-American human rights system. The regime of international protection can do little if its conventional norms do not reach the basis of national societies.

24. Thirdly, until now only three States of the region (Colombia, Costa Rica and Peru) rely on procedures of domestic law to secure compliance with the judgments of the Inter-American Court; there is an urgent need for all States Parties to the American Convention to adopt procedures operating on a permanent basis. Fourthly, further consideration should be given to the official proposal of the Inter-American Court for a draft protocol of amendments to the American Convention on Human Rights, intended to strengthen its protection mechanism, with recognition of the *jus standi* (no longer only the *locus standi*) of individuals before the Inter-American Court, as well as of the *automatic character* of the compulsory jurisdiction of the Inter-American Court.

25. Fifthly, the States Parties to the American Convention should be prepared to secure together the *collective guarantee* of the latter, parallel to the establishment in the framework of the OAS of a mechanism of supervision (continuous monitoring) of the execution of the judgments of the Inter-American Court. And, sixthly, the OAS should secure, in compliance with General Assembly Resolutions 1828 of 2001, and 1850 of 2002, the allocation of substantial additional resources to the Inter-American Court so that it may discharge its duties in full in face of the new and growing demands of protection.

## Conclusions

26. May I conclude this address with one last line of reflections. It is not surprising that the interpretation and application of certain provisions of a given human rights treaty are at times used as a guide for the interpretation and application of corresponding provisions of another human rights treaty. Thus, in the pursuit of their common cause and ideal, the European and the Inter-American Courts have had no difficulty in referring to each other's case-law whenever they have deemed it pertinent. The Inter-American Court has referred to the case-law of its European counterpart constantly, throughout the whole of its case-law to date. The European Court, for its part, is increasingly doing the same, particularly in recent years: in July 2003, for example, the published judgments of the European Court contained references to the case-law of the Inter-American Court in no less than twelve cases.

27. Human rights treaties such as the European and American Conventions have, in this way, by means of such interpretative interaction, reinforced each other mutually, to the ultimate benefit of the human beings they protect. Interpretative interaction has in a way contributed to the universality of the conventional law on the protection of human rights. This has paved the way for a *uniform* interpretation of the *corpus juris* of contemporary

international human rights law. Such uniform interpretation in no way threatens the unity of international law. Quite on the contrary, instead of threatening to “fragment” international law, our two tribunals have helped to achieve and develop the aptitude of international law to regulate efficiently relations which have a specificity of their own – at intra-State, rather than inter-State, level, opposing States to individuals under their respective jurisdictions – and which require specialised knowledge on the part of the judges.

28. Our two tribunals have helped to secure, in this domain, compliance with the conventional obligations of protection of the States *vis-à-vis* all human beings under their respective jurisdictions. With the development of international human rights law, it is public international law itself which is thereby justified and legitimised, in affirming juridical principles, concepts and categories proper to the present domain of protection, based on premises fundamentally distinct from those which have guided the application of its postulates at the level of purely inter-State relations.

29. One cannot foster the development of international human rights law at the expense of the law of treaties. Nor should one hinder the development of international human rights law by ignoring the specificity of human rights treaties. By means of the application of human rights treaties, within the framework of the law of treaties, and also by resorting to general international law, one can perfectly well develop the aptitude of international law to regulate legal relations adequately at inter-State as well as intra-State level, under the respective treaties of protection. The unity and effectiveness of public international law itself can be measured precisely by its aptitude to regulate legal relations in distinct contexts with equal adequacy.

30. From all that has been said, one can detect the current historical process of *humanisation* of international law (a new *jus gentium*), disclosing a new vision of the relations between public power and the human being – an outlook which is summed up, ultimately, in the acknowledgment that the State exists for the human being, and not vice versa. In operating and constructing their converging case-law to that effect, our two international human rights tribunals, the European and the Inter-American Courts, have indeed contributed to enrich and humanise contemporary public international law. They have done so from an essentially and necessarily anthropocentric point of view, as aptly foreseen, as early as the sixteenth century, by the so-called founding fathers of the law of nations (*droit des gens*).

## **VI. VISITS**

## VISITS

15 January 2003	Mr Costas Simitis, Prime Minister of Greece
27 January 2003	Mr Abdullah Gül, Prime Minister of Turkey
28 January 2003	Mr Edward Fenech Adami, Prime Minister of Malta
28 January 2003	Mr Jesús Enrique Jackson Ramírez, President of the Mexican Senate
30 January 2003	Mr Thomas Klestil, President of the Republic of Austria
7 March 2003	Council of the Bars and Law Societies of the European Union
11 March 2003	House of Commons Scrutiny Committee
27 March 2003	Mr Vladimir Chizhov, Deputy Minister for Foreign Affairs, Russia
9 April 2003	Mrs Mihaela Rodica Stănoiu, Minister of Justice, Romania
16 May 2003	European Cultural Foundation – Human Rights Prize to Mrs Mary Robinson
22 May 2003	Mr Aleksandr Lavrinovich, Minister of Justice, Ukraine
16 June 2003	East African Court of Justice
17 June 2003	Deutsche Richter Akademie
24 June 2003	Mr Rudolf Schuster, President of the Slovak Republic
2 July 2003	Constitutional Court, Russia
4 July 2003	Mr Valeriy Zorkin, President of the Constitutional Court, Russia
9 September 2003	Research group on Human Rights, Japan
9 September 2003	Delegation from the State Council, Thailand
22 September 2003	Constitutional Court, Turkey
23 September 2003	Mr Mustafa Bumin, President of the Constitutional Court, Turkey
23 September 2003	Constitutional Committee, Finland
24 September 2003	Public Prosecution, Switzerland
30 September 2003	Mr Adrian Năstase, Prime Minister of Romania
1 October 2003	Mr Vladimir Voronin, President of the Republic of Moldova

2 October 2003	Mr Péter Medgyessy, Prime Minister of Hungary
7 October 2003	National Committee on Human Rights, Korea
16 October 2003	Senate Human Rights Committee, Canada
30 October 2003	National Commission on Human Rights, Mexico
6 November 2003	Constitutional Court, Slovakia
27 November 2003	Supreme Court, Japan
1-3 December 2003	Constitutional Court, Benin
3 December 2003	Constitutional Court, Algeria
18 December 2003	Mr Yuriy Chayka, Minister of Justice, Russia



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

## **ACTIVITIES OF THE GRAND CHAMBER AND SECTIONS**

### ***1. Grand Chamber***

In 2003 the number of cases pending before the Grand Chamber remained stable. There were 17 cases (concerning 23 applications) plus a request for an advisory opinion pending at the beginning of the year, and 18 cases (concerning 21 applications) plus the request for an advisory opinion at the end of the year.

14 new cases (concerning 16 applications) were referred to the Grand Chamber – 5 by relinquishment of jurisdiction by a Chamber in favour of the Grand Chamber in accordance with Article 30 of the Convention, and 9 by a decision of the panel of the Grand Chamber to accept a referral request under Article 43.

The Grand Chamber held 28 meetings and 9 oral hearings.

The Grand Chamber declared 6 applications admissible. All of these decisions were taken in conjunction with the judgment on the merits, under Article 29 § 3 of the Convention.

The Grand Chamber adopted 12 judgments (concerning 19 applications), of which 11 concerned the merits (6 in relinquishment cases and 5 in referral cases), and one dealt with a preliminary issue.

### ***2. First Section***

In 2003 the Section held 39 Chamber meetings. Oral hearings were held in 4 cases. The Section delivered 230 judgments, of which 179 concerned the merits, 43 concerned friendly settlements and 3 concerned the striking out of cases. The remainder concerned revision or just satisfaction. The Section applied Article 29 § 3 of the Convention (combined examination of admissibility and merits) in 197 cases.

Of the applications examined by a Chamber

- (a) 152 were declared admissible;
- (b) 77 were declared inadmissible;
- (c) 72 were struck out of the list; and
- (d) 460 were communicated to the State concerned for observations, out of which 358 were communicated by the President.

In addition, the Section held 22 Committee meetings. 5,491 applications were declared inadmissible and 30 applications were struck out of the list. The total number of applications rejected by a Committee represented almost 97.5% of the inadmissibility and striking-out decisions taken by the Section during the year.

At the end of the year 10,363 applications were pending before the Section.

### **3. *Second Section***

In 2003 the Section held 40 Chamber meetings. 8 oral hearings were held in 11 cases. A fact-finding mission to Georgia and Russia, programmed in November, was postponed to 2004. The Section delivered 165 judgments, of which 133 concerned the merits, 23 concerned friendly settlements, 4 concerned the striking out of cases and 5 concerned just satisfaction or revisions. The Section applied Article 29 § 3 of the Convention (combined examination of admissibility and merits) in 246 cases, and 58 judgments were delivered under this procedure. The President of the Section communicated 277 cases directly.

Of the applications examined by a Chamber

- (a) 165 were declared admissible;
- (b) 101 were declared inadmissible;
- (c) 45 were struck out of the list; and
- (d) 408 were communicated to the State concerned for observations (including those communicated by the President).

In addition, the Section held 78 Committee meetings. 4,550 applications were declared inadmissible and 47 applications were struck out of the list. The total number of applications rejected by a Committee represented 96.92% of the inadmissibility and striking-out decisions taken by the Section during the year.

At the end of the year 9,621 applications were pending before the Section.

### **4. *Third Section***

In 2003 the Section held 37 Chamber sessions. 8 oral hearings were held concerning 14 applications. The Section delivered 127 judgments (two of which related to the same application), of which 111 concerned the merits, one concerned just satisfaction and 15 concerned the striking out of cases following friendly settlements. The Section applied Article 29 § 3 of the Convention (combined examination of admissibility and merits) in 511 cases, delivering judgment in 45 of them.

Of the applications examined by a Chamber

- (a) 138 applications were declared admissible;
- (b) 119 applications were declared inadmissible;
- (c) 125 applications were struck out of the list; and
- (d) 471 applications were communicated to the State concerned for observations, including 349 by the President of the Section under Rule 54 of the Rules of Court.

In addition, the Section held 28 Committee meetings. 2,761 applications were declared inadmissible and 28 were struck out of the list. The total number of applications rejected by a Committee represented almost 92% of the inadmissibility and striking-out decisions taken by the Section during the year.

At the end of the year 10,016 applications were pending before the Section.

## **5. Fourth Section**

In 2003 the Section held 38 Chamber meetings. Oral hearings were held in 8 cases and delegates took evidence in one case: *Taniş and Others v. Turkey*, no. 65899/01.

The Section delivered 155 judgments, of which 104 concerned the merits and 47 concerned friendly settlements. 4 cases were struck out of the list by a judgment. The Section applied Article 29 § 3 of the Convention (combined examination of admissibility and merits) in 262 cases, and 60 judgments were delivered under this procedure.

Of the applications examined by a Chamber

- (a) 288 were declared admissible;
- (b) 113 were declared inadmissible;
- (c) 112 were struck out of the list; and
- (d) 351 were communicated to the State concerned for observations.

In addition, the Section held 58 Committee meetings. 3,566 applications were declared inadmissible and 35 applications were struck out of the list. The total number of applications rejected by a Committee represented over 94% of the inadmissibility and striking-out decisions taken by the Section during the year.

At the end of the year 8,461 applications were pending before the Section.

**VIII. PUBLICATION  
OF THE COURT'S CASE-LAW**

## PUBLICATION OF THE COURT'S CASE-LAW

### *A. Reports of Judgments and Decisions*

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

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

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

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

The published texts are accompanied by headnotes and summaries and a separate volume containing indexes is issued for each year. The following judgments and decisions delivered in 2003 have been accepted for publication. Grand Chamber cases are indicated by [GC]. Where a Chamber judgment is not final or a request for referral to the Grand Chamber is pending, the decision to publish the Chamber judgment is provisional.

### **ECHR 2003-I**

#### **Judgments**

*Shishkov v. Bulgaria*, no. 38822/97 (extracts)  
*L. and V. v. Austria*, nos. 39392/98 and 39829/98  
*S.L. v. Austria*, no. 45330/99 (extracts)  
*Veeber v. Estonia (no. 2)*, no. 45771/99  
*Peck v. the United Kingdom*, no. 44647/98  
*Cordova v. Italy (no. 1)*, no. 40877/98  
*Cordova v. Italy (no. 2)*, no. 45649/99 (extracts)

#### **Decisions**

*Younger v. the United Kingdom (dec.)*, no. 57420/00  
*Vito Sante Santoro v. Italy (dec.)*, no. 36681/97 (extracts)  
*Geffre v. France (dec.)*, no. 51307/99 (extracts)  
*Caldas Ramírez de Arrellano v. Spain (dec.)*, no. 68874/01 (extracts)

## ECHR 2003-II

### Judgments

*Van der Ven v. the Netherlands*, no. 50901/99

*O. v. Norway*, no. 29327/95

*Ringvold v. Norway*, no. 34964/97

*Y. v. Norway*, no. 56568/00 (extracts)

*Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], nos. 41340/98, 41342/98, 41343/98 and 41344/98

### Decisions

*Burg and Others v. France* (dec.), no. 34763/02

*Düringer and Others v. France* (dec.), nos. 61164/00 and 18589/02 (extracts)

*Wendenburg and Others v. Germany* (dec.), no. 71630/01 (extracts)

*Grišankova and Grišankovs v. Latvia* (dec.), no. 36117/02 (extracts)

## ECHR 2003-III

### Judgments

*Odièvre v. France* [GC], no. 42326/98

*Bertuzzi v. France*, no. 36378/97

*Çetin and Others v. Turkey*, nos. 40153/98 and 40160/98 (extracts)

*Chevol v. France*, no. 49636/99

*Djavit An v. Turkey*, no. 20652/92

### Decisions

*G.L. and S.L. v. France* (dec.), no. 58811/00 (extracts)

*SARL du Parc d'activités de Blotzheim and SCI Haselaecker v. France* (dec.), no. 48897/99

## ECHR 2003-IV

### Judgments

*Hutchison Reid v. the United Kingdom*, no. 50272/99

*Roemen and Schmit v. Luxembourg*, no. 51772/99

*Niederböster v. Germany*, no. 39547/98 (extracts)

*Posokhov v. Russia*, no. 63486/00

*Lešník v. Slovakia*, no. 35640/97

*Pétur Thór Sigurðsson v. Iceland*, no. 39731/98

*Papastavrou and Others v. Greece*, no. 46372/99

*Mehemi v. France (no. 2)*, no. 53470/99

### Decisions

*Scordino v. Italy* (dec.), no. 36813/97

*Yildirim v. Italy* (dec.), no. 38602/02

*Nunes Dias v. Portugal* (dec.), nos. 69829/01 and 2672/03

## ECHR 2003-V

### Judgments

*Aktaş v. Turkey*, no. 24351/94 (extracts)  
*Yvon v. France*, no. 44962/98  
*Poltoratskiy v. Ukraine*, no. 38812/97  
*McGlinchey and Others v. the United Kingdom*, no. 50390/99  
*Iglesias Gil and A.U.I. v. Spain*, no. 56673/00  
*Perna v. Italy* [GC], no. 48898/99

### Decision

*Menson v. the United Kingdom* (dec.), no. 47916/99

## ECHR 2003-VI

### Judgments

*Tahsin Acar v. Turkey* [GC], no. 26307/95  
*Kleyn and Others v. the Netherlands* [GC], nos. 39343/98, 39651/98, 43147/98 and 46664/99  
*Appleby and Others v. the United Kingdom*, no. 44306/98  
*Georgios Papageorgiou v. Greece*, no. 59506/00 (extracts)  
*Kyrtatos v. Greece*, no. 41666/98 (extracts)  
*Pantea v. Romania*, no. 33343/96 (extracts)

### Decisions

*Sequeira v. Portugal* (dec.), no. 73557/01  
*P4 Radio Hele Norge ASA v. Norway* (dec.), no. 76682/01  
*Fischer v. Austria* (dec.), no. 27569/02

## ECHR 2003-VII

### Judgments

*Van Kück v. Germany*, no. 35968/97  
*Gutfreund v. France*, no. 45681/99  
*Pescador Valero v. Spain*, no. 62435/00  
*Tierce v. San Marino*, no. 69700/01  
*Hulki Güneş v. Turkey*, no. 28490/95 (extracts)  
*Allard v. Sweden*, no. 35179/97  
*Dowsett v. the United Kingdom*, no. 39482/98  
*Maire v. Portugal*, no. 48206/99

### Decisions

*Montcornet de Caumont v. France* (dec.), no. 59290/00  
*Antoine v. the United Kingdom* (dec.), no. 62960/00 (extracts)  
*Frommelt v. Liechtenstein* (dec.), no. 49158/99 (extracts)



## ECHR 2003-VIII

### Judgments

*Finucane v. the United Kingdom*, no. 29178/95  
*Sahin v. Germany* [GC], no. 30943/96  
*Sommerfeld v. Germany* [GC], no. 31871/96 (extracts)  
*Hatton and Others v. the United Kingdom* [GC], no. 36022/97  
*Hartman v. the Czech Republic*, no. 53341/99 (extracts)

### Decisions

*Paulino Tomás v. Portugal* (dec.), no. 58698/00  
*Sofri and Others v. Italy* (dec.), no. 37235/97 (extracts)

## ECHR 2003-IX

### Judgments

*Murphy v. Ireland*, no. 44179/98 (extracts)  
*Efstathiou and Michailidis & Cie Motel Amerika v. Greece*, no. 55794/00  
*Luordo v. Italy*, no. 32190/96  
*Perry v. the United Kingdom*, no. 63737/00 (extracts)  
*Y.F. v. Turkey*, no. 24209/94  
*Karner v. Austria*, no. 40016/98  
*Smirnova v. Russia*, nos. 46133/99 and 48183/99 (extracts)  
*Ryabykh v. Russia*, no. 52854/99

### Decisions

*Morel v. France* (dec.), no. 54559/00  
*Reuther v. Germany* (dec.), no. 74789/01  
*Garaudy v. France* (dec.), no. 65831/01 (extracts)  
*Lyons and Others v. the United Kingdom* (dec.), no. 15227/03

## ECHR 2003-X

### Judgments

*Doran v. Ireland*, no. 50389/99 (extracts)  
*Koua Poirrez v. France*, no. 40892/98  
*Ezeh and Connors v. the United Kingdom* [GC], nos. 39665/98 and 40086/98  
*Slivenko v. Latvia* [GC], no. 48321/99

### Decisions

*Withey v. the United Kingdom* (dec.), no. 59493/00  
*Breisacher v. France* (dec.), no. 76976/01  
*Guichard v. France* (dec.), no. 56838/00  
*Radio France and Others v. France* (dec.), no. 53984/00 (extracts)

## ECHR 2003-XI

### Judgments

*Aćimović v. Croatia*, no. 61237/00  
*Credit and Industrial Bank v. the Czech Republic*, no. 29010/95 (extracts)  
*Steur v. the Netherlands*, no. 39657/98  
*Ganci v. Italy*, no. 41576/98  
*Scharsach and News Verlagsgesellschaft v. Austria*, no. 39394/98  
*Worwa v. Poland*, no. 26624/95 (extracts)  
*Henaf v. France*, no. 65436/01  
*Gündüz v. Turkey*, no. 35071/97

### Decisions

*Mirailles v. France* (dec.), no. 63156/00 (extracts)  
*Qufaj Co. sh.P.K. v. Albania* (dec.), no. 54268/00  
*Richard-Dubarry v. France* (dec.), no. 53929/00 (extracts)  
*Örs and Others v. Turkey* (dec.), no. 46213/99 (extracts)  
*Lundkvist v. Sweden* (dec.), no. 48518/99  
*Gündüz v. Turkey* (dec.), no. 59745/00 (extracts)  
*Morby v. Luxembourg* (dec.), no. 27156/02

## ECHR 2003-XII

### Judgments

*M.C. v. Bulgaria*, no. 39272/98  
*Krone Verlag GmbH & Co KG v. Austria* (no. 3), no. 39069/97  
*Yankov v. Bulgaria*, no. 39084/97 (extracts)  
*Cooper v. the United Kingdom* [GC], no. 48843/99  
*Grievés v. the United Kingdom* [GC], no. 57067/00 (extracts)  
*Palau-Martinez v. France*, no. 64927/01

### Decisions

*Loiseau v. France* (dec.), no. 46809/99 (extracts)  
*Zollmann v. the United Kingdom* (dec.), no. 62902/00  
*Schreiber and Boetsch v. France* (dec.), no. 58751/00  
*Transado-Transportes Fluviais do Sado, SA v. Portugal* (dec.), no. 35943/02

### **B. The Court's Internet site**

The Court's website (<http://www.echr.coe.int>) provides general information about the Court, including its composition, organisation and procedure, details of pending cases and oral hearings, as well as the text of press releases. In addition, the site gives access to the Court's case-law database, containing the full text of all judgments and of admissibility decisions, other than those taken by committees of three judges, since 1986 (plus certain earlier ones), as well as resolutions of the Committee of Ministers in so far as they relate to

the European Convention on Human Rights. The database is accessible via simple or advanced search screens and a powerful search engine enables the user to carry out searches in the text and/or in separate data fields. A user manual and a help function are provided.

In 2003 the Court's site had 35 million hits in the course of 1.5 million user sessions.

**IX. SHORT SURVEY OF CASES  
EXAMINED BY THE COURT  
IN 2003**

## SHORT SURVEY OF CASES EXAMINED BY THE COURT IN 2003

In 2003 the Court delivered 703 judgments<sup>1</sup>, 12 of which were delivered by the Grand Chamber. Judgments were given in respect of all Contracting States except Albania, Andorra, Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, Liechtenstein, the former Yugoslav Republic of Macedonia and Slovenia. Four States – Italy, Turkey, France and Poland – accounted for over 60% of all judgments. The number of applications lodged with the Court remained fairly stable<sup>2</sup> but the number of applications communicated to Governments and the number declared admissible continued to show a gradual increase<sup>3</sup>.

The total number of judgments delivered in 2003 was substantially lower than in 2002, with a decrease of 141 (17%). This was the second year in succession in which a fall has been recorded. However, a more accurate picture is obtained by comparing the number of judgments which raised new issues, at least in part, that is those judgments which involved more than the straightforward application of standard case-law. In that respect, the total of around 185 such judgments was very similar to the number in 2002, whereas in the two previous years the corresponding figure was slightly lower (in the order of 150). The drop in the overall number of judgments was in fact largely due to the artificial inflation of the previous years' statistics by significant groups of cases concerning the length of court proceedings in Italy. In 2003, not a single judgment dealt exclusively with that issue, although in a handful of cases the length of the proceedings was an issue, albeit a secondary one<sup>4</sup>. The virtual disappearance of these cases is a direct result of the Pinto Act<sup>5</sup> which was introduced with the specific aim of providing a remedy in respect of the excessive length of court proceedings. The Court has held the remedy to be an effective one for the purposes of Article 35 § 1 of the Convention and has consequently declared inadmissible a large number of applications of this type<sup>6</sup>. It is important to note, however, that subsequent developments have cast some doubt on the effectiveness of the remedy<sup>7</sup>, so that the risk of the floodgates being reopened cannot be excluded. Moreover, a number of judgments concerning Italy raised new issues relating to excessive delays and in particular the effect of the protracted nature of bankruptcy proceedings on various Convention rights<sup>8</sup>.

One other consequence of the dearth of Italian length-of-proceedings cases was that the proportion of cases against all States dealing exclusively with that issue dropped significantly, to the extent that such cases constituted only a third of the total number of judgments<sup>9</sup>, whereas in previous years they had accounted for over half of all judgments delivered. This illustrates the potential impact of effective domestic remedies on the workload of the Court and underlines their importance as a factor in keeping the volume of applications within manageable limits. In that connection, the effectiveness of remedies in respect of the length of court proceedings in several different countries came under scrutiny in 2003<sup>10</sup>.

A further striking feature which may be highlighted is the paucity of judgments representing one of the other major groups of “repetitive” cases, namely those concerning delays in payment of compensation for expropriation in Turkey<sup>11</sup>. Finally, a similar observation may be made with regard to judgments relating to the unavailability of certain allowances to widowers<sup>12</sup>, although a large number of applications raising this issue remain pending before the Court.

### *“Repetitive” cases*

Two of the other principal series of cases continued to generate substantial numbers of judgments: *Immobiliare Saffi*-type cases<sup>13</sup>, which increased significantly from 72 in 2002 to 123 in 2003, and *Brumărescu*-type cases<sup>14</sup>, of which there were 22 (compared to 27 the previous year)<sup>15</sup>. Furthermore, the number of judgments concerning the independence and impartiality of national security courts in Turkey rose considerably, from 9 to 48. These three groups, together with the cases concerning the length of court proceedings, accounted for over 60% of all judgments. To these may be added a number of other judgments of little jurisprudential value: 8 just satisfaction and 7 revision judgments, friendly settlements dealing with matters other than those already referred to and a number of smaller groups or individual instances of “follow-up” cases. Many of this last category were friendly settlements but of the cases examined on the merits the following examples may be mentioned: cases concerning various aspects of the procedure in the French supreme courts<sup>16</sup>, the absence of an oral hearing in administrative proceedings in Austria<sup>17</sup> and in criminal appeal proceedings in San Marino<sup>18</sup>, legislation staying certain civil proceedings in Croatia<sup>19</sup> and the denial of access to property in northern Cyprus<sup>20</sup>.

In addition, numerous cases at least partly raised issues which had been addressed by the Court in earlier judgments. These included cases involving structural deficiencies previously identified by the Court, such as the role of investigators and/or prosecutors in ordering detention on remand<sup>21</sup>, the prolongation of detention on remand in Poland on the basis of the indictment having been lodged<sup>22</sup>, and the fixing and review of “tariff” periods of detention in the United Kingdom<sup>23</sup>, as well as factual situations to which well-established case-law principles could be directly applied, such as the length of detention on remand, expulsion of immigrants after lengthy residence, censorship of detainees’ correspondence, convictions in Turkey for incitement to hatred or hostility or for disseminating separatist propaganda<sup>24</sup> and the dismissal by the French Court of Cassation of appeals on points of law on the ground that the judgment appealed against had not been implemented<sup>25</sup>. Certain other judgments addressed new aspects of matters which had already arisen before the Court, such as the non-disclosure of material by the prosecution authorities in the United Kingdom<sup>26</sup> and a legal presumption in Greece that owners of land partly expropriated for the purpose of road-building derive a benefit which offsets their right to compensation<sup>27</sup>.

Of the less than 200 cases in which some novel aspect was examined on the merits (approximately 25% of the judgments delivered), a number of recurrent themes may be identified. Two types of case are noteworthy in this respect. The first concerns a problem which has arisen with increasing frequency in recent years, namely the refusal of domestic authorities to comply with or their delay in implementing binding decisions of courts<sup>28</sup>; the second relates to the difficult question of the sufficiency of the measures taken by national courts or other authorities to ensure that a parent’s right of access to his or her child is enforced<sup>29</sup>. These and other trends in the development of the case-law are examined below in relation to specific provisions of the Convention.

### *Core rights (Articles 2 and 3)*

One of the most high-profile and important judgments delivered in 2003 concerned the application brought by the former leader of the PKK, Abdullah Öcalan<sup>30</sup>, who raised a number of complaints relating to his arrest by Turkish agents in Kenya and to his subsequent detention and trial. In particular, the case raised the question whether the imposition and implementation of the death penalty – which at the time remained applicable in Turkey – was incompatible with the Convention, notwithstanding the specific exception to the right to life set out in the second sentence of the first paragraph of Article 2. Since by the time of the Court’s judgment there was no longer any likelihood of the sentence being carried out, the death penalty having been commuted to life imprisonment following amendment of the Constitution, the Court rejected the applicant’s complaint in so far as it was based on the implementation of the death penalty. With regard to its imposition, however, the Court considered that sentencing a person to death after a trial which could not be regarded as fair for the purposes of Article 6 amounted to inhuman treatment under Article 3. The case is now pending before the Grand Chamber.

Capital punishment was also a factor in a group of six applications brought by convicted prisoners in Ukraine<sup>31</sup>. The applicants complained primarily about the conditions in which they were held and the Court, in concluding that those conditions – in particular, the lack of access to natural light and the lack of opportunity for exercise – amounted to degrading treatment, referred to a number of aggravating factors, including the fact that throughout the period in question the applicants had been under a sentence of death. Conditions of detention were also examined in two cases concerning the regime in a top-security prison in the Netherlands<sup>32</sup>. The Court considered that the stringent security measures applying in the prison, combined with routine strip-searching, constituted inhuman or degrading treatment. In both the Ukrainian and the Netherlands cases the Court referred to reports of the European Committee for the Prevention of Torture and Other Inhuman or Degrading Treatment or Punishment.

In several of the Ukrainian cases there were specific allegations of ill-treatment by prison officers. While the Court found no violations in that respect, it did consider that there had been insufficient investigation of the allegations and concluded that there had been a violation of the procedural obligation incumbent on States by virtue of Article 3<sup>33</sup>. The lack of an effective investigation similarly resulted in the finding of a procedural violation of Article 2 in a judgment in respect of the United Kingdom concerning the shooting of a solicitor in Northern Ireland in 1989<sup>34</sup> and in a Turkish case concerning an “unknown perpetrator” killing<sup>35</sup>. The only finding of a substantive violation of Article 2 was in a Turkish case involving a death in custody<sup>36</sup>, but substantive violations of Article 3 were found in a number of other judgments relating to Turkey<sup>37</sup>. The events in all of these cases dated back to the early 1990s.

Several judgments dealt with rather novel questions relating to the treatment of prisoners. The shackling of an elderly prisoner to his bed during his hospitalisation<sup>38</sup>, the shaving of a detainee’s head as part of a disciplinary punishment<sup>39</sup> and the treatment of a heroin addict suffering from withdrawal symptoms who died in prison<sup>40</sup> were all held to be in violation of Article 3. Furthermore, in *Pantea v. Romania*<sup>41</sup>, the Court underlined the responsibility of the State for the welfare of detainees in concluding that the prison authorities had failed in their duty to protect the applicant from being assaulted by other inmates<sup>42</sup>.

The extent of the State's positive obligations under Article 3 was also at issue in what was undoubtedly the most far-reaching judgment to date in this connection, *M.C. v. Bulgaria*<sup>43</sup>. In that case there was no question of direct State responsibility for persons under its control, as the case related not to the sphere of detention but to the adequacy of the criminal law in providing protection against the acts of private individuals. The applicant, a 14-year-old girl, claimed that she had been raped by two men. An investigation had duly been conducted by the police but the prosecutor had ultimately discontinued the proceedings on the ground that there was insufficient evidence of rape, and in particular of coercion. In its judgment, the Court identified certain shortcomings in the investigation but also considered that undue emphasis had been given to the lack of direct evidence of the use of violence and in that respect its approach essentially amounted to a finding that the definition of the offence in domestic law, in so far as in practice it required proof of physical resistance on the part of the victim, was not broad enough to provide sufficient protection against other sexual acts of a non-consensual nature. Referring to comparative studies which showed a trend towards defining rape more widely than in the past, the Court expressed the view that the State's positive obligations "must be seen as requiring the penalisation and effective prosecution of any non-consensual sexual act, including in the absence of physical resistance by the victim". In other words, in the context of the State's positive obligations to adopt "measures designed to secure respect for private life even in the sphere of the relations of individuals between themselves"<sup>44</sup>, it may not be enough for the State to establish that a criminal offence is recognised and effectively prosecuted, as the Court may also examine whether the content of the law and the elements of the offence are in conformity with the wider requirements of the Convention.

As usual the Court received numerous requests for the application of interim measures under Rule 39 of the Rules of Court, in particular with the aim of having the enforcement of expulsion or extradition orders stayed pending the Court's examination of the cases. Two important developments may be highlighted in this connection. In *Mamatkulov and Abdurasulovic v. Turkey*<sup>45</sup>, the applicants were extradited to Uzbekistan despite an indication by the Court that they should not be extradited until it had had an opportunity to examine the matter. Although the Court subsequently found that there had been no violation of Article 3, it took the view that the failure to comply with its indication amounted to a hindrance of the effective exercise of the right of petition and thus constituted a violation of Article 34 of the Convention<sup>46</sup>. The case has been referred to the Grand Chamber. The other important case was *Shamayev and Others v. Georgia and Russia*, which was declared admissible in September 2003 after a hearing<sup>47</sup>. The case concerns the extradition or threatened extradition of a number of persons of Chechen origin from Georgia to Russia. The Court plans to carry out a fact-finding mission in both Georgia and Russia.

#### ***Procedural safeguards (Articles 5, 6 and 7 of the Convention, and Articles 2 and 4 of Protocol No. 7)***

No major themes emerged from the judgments dealing with the various aspects of deprivation of liberty but there was nonetheless a considerable number of such judgments. Issues addressed included the arrest of Abdullah Öcalan by Turkish agents in Kenya, to which reference has already been made<sup>48</sup>, the detention of an elderly woman who refused to disclose her identity following a dispute with a bus conductor<sup>49</sup>, and the confinement of asylum-seekers to the transit zone of an airport following unsuccessful attempts to deport



them<sup>50</sup>. Moreover, in several judgments the rights of psychiatric detainees were considered. Two cases concerned detention for the purpose of psychiatric examination<sup>51</sup>, while in two others the Court found that there had been a failure to comply with the procedures prescribed by the domestic law<sup>52</sup>. A couple of other judgments raised rather new points in this connection. In *Herz v. Germany*<sup>53</sup>, a judge had ordered the applicant's emergency confinement on the basis of a diagnosis given over the telephone by a doctor who had not personally examined the applicant. The Court accepted, however, that taking into account the urgency of the matter the measure was in conformity with the Convention. In *Hutchison Reid v. the United Kingdom*<sup>54</sup>, the applicant was suffering from an untreatable psychiatric disorder, which in his submission rendered his detention in a psychiatric institution unlawful and arbitrary, since at the relevant time under Scots law detention in a mental hospital was conditional on the illness or condition being of a nature or degree amenable to medical treatment<sup>55</sup>. The Court, pointing out that there was no similar requirement in Article 5, concluded that the refusal to release the applicant was neither arbitrary nor contrary to the spirit of Article 5.

In several judgments a violation was found on account of the continued detention of the applicant without a proper legal basis, whether on account of an error or oversight on the part of the authorities<sup>56</sup> or due to a delay in implementing a release order<sup>57</sup>. In *Minjat v. Switzerland*<sup>58</sup>, however, the Court concluded that the refusal of the Federal Court to release a detainee when quashing the detention order because of insufficient reasons did not constitute a breach of Article 5 § 1.

As far as the other provisions of Article 5 are concerned, the issues which were raised were on the whole ones which the Court had already addressed in the past, some of which have been alluded to in the section dealing with "repetitive cases", such as the ordering of detention by prosecutors, failure to bring detainees promptly before a judge and the excessive length of pre-trial detention<sup>59</sup>. Otherwise, the complaints which were made related mainly to the scope, fairness and speediness of proceedings for review of the lawfulness of detention under Article 5 § 4.

Alleged violations of Article 6 of the Convention have always constituted a significant proportion of the complaints submitted to the Court (and the former Commission), but in recent years an increasing number of cases have related to the right to a court in general rather than to the specific guarantees of a fair procedure set out in the different provisions of Article 6. One of the most noticeable and worrying trends in this respect is the frequency with which final decisions of domestic courts are ignored or overturned. Mention has already been made of the failure of national authorities to execute court decisions<sup>60</sup> and of the *Brumărescu*-type cases<sup>61</sup>, in which one of the principal issues was the possibility for the Procurator-General in Romania to apply at any time for annulment of final and binding court decisions. A similar system in Russia, known as "supervisory review", led to the finding of a violation in *Ryabykh v. Russia*<sup>62</sup>, in which the Court concluded that the exercise of this prerogative, which had taken place several times, was incompatible with the principle of legal certainty and consequently contrary to Article 6. In that connection, it may be noted that the problem is not limited to civil matters: an application concerning supervisory review of a final acquittal has been declared admissible<sup>63</sup>. The issue of supervisory review is raised in a large number of cases pending before the Court.

The right of access to a court, which is an aspect of the general right to a court implicit in Article 6 was at issue in number of cases<sup>64</sup>, and in particular several involving

immunities. In 2002, the Court had concluded that parliamentary immunity did not as such constitute an unacceptable bar on the right of access to a court<sup>65</sup>. In two Italian cases decided in 2003, however, it found that there had been a violation, since the conduct in question could not be regarded as falling within the exercise of parliamentary functions<sup>66</sup>. In a Belgian case involving somewhat different circumstances, the Court considered that the refusal to institute civil proceedings against judges on the basis of a civil complaint did not constitute an infringement of the essence of the right of access to a court, since an alternative course of action was open to the applicants, and had indeed been used by them<sup>67</sup>.

The right of access to a court is not limited to the possibility of instituting proceedings but may extend to the manner in which those proceedings are then conducted. A number of judgments dealt with the problem of the effect of new legislation on pending court proceedings, which the Court had in the past found to be in certain circumstances contrary to Article 6. A group of cases pending before the Court concerns legislation in Croatia, in respect of which a violation had already been found in 2002<sup>68</sup>. One judgment related to the same legislation, namely a 1996 amendment to the Civil Obligations Act, which stayed proceedings relating to damage resulting from terrorist acts, pending the adoption of new legislation to deal with the matter<sup>69</sup>, while two further judgments concerned a 1999 amendment to the same Act which had the same effect in respect of proceedings relating to “damage caused by the members of the Croatian army or police when acting in their official capacity during the Homeland War”<sup>70</sup>. Legislation addressing this latter issue was finally introduced in 2003. The Court would not speculate on the effect of this legislation on the outcome of stayed proceedings but noted that new conditions had been created with regard to claims and adverted to “the dangers inherent in the use of retrospective legislation which has the effect of influencing the judicial determination of a dispute to which the State is a party, including where the effect is to make pending litigation unwinnable”. Thus, while a prolonged stay constituted a disproportionate limitation on the right of access to a court, the adoption of the new legislation carried the risk of falling foul of the principles laid down by the Court in relation to “legislative intervention” in pending court proceedings<sup>71</sup>. In that respect, the Court made the following observation: “[T]he conditions for liability are set in broad terms that give the courts scope as to their interpretation. It is yet to be seen how the courts applying the Liability Act will interpret its provisions. Certainly, they will have to assess in each individual case whether damage can be awarded.”

The independence and impartiality of civil courts were at issue in several judgments. In *Kleyn and Others v. the Netherlands*<sup>72</sup>, the Grand Chamber was faced with a situation in which the Netherlands *Raad van State* had played a role in the legislative process and subsequently acted in a judicial capacity. The issues were thus similar to those examined in *Procola v. Luxembourg*<sup>73</sup>, in which the Court had found a violation of Article 6. However, the Court considered that the two cases could be distinguished, since in *Kleyn and Others* the *Raad van State* had not been called on to interpret and apply the law on which it had previously given an opinion<sup>74</sup>. The objective impartiality of individual judges was examined in two judgments: *Pescador Valero v. Spain*<sup>75</sup>, which concerned a judge who worked on a part-time basis as an associate professor for the university which was a party to the proceedings before him, and *Pétur Thór Sigurðsson v. Iceland*<sup>76</sup>, which concerned a judge whose husband was indebted to a bank which was a party to the proceedings. The Court found that there had been a violation in both instances<sup>77</sup>.

The Grand Chamber case of *Ezeh and Connors v. the United Kingdom*<sup>78</sup> raised the question of the applicability of Article 6 to prison disciplinary proceedings. The regime at issue was a peculiarly British one, involving the awarding of additional days of imprisonment as a disciplinary punishment. In reaching the conclusion that the proceedings at issue had determined a “criminal charge”, the Court applied the standard criteria laid down in *Engel and Others v. the Netherlands*<sup>79</sup>. In particular, it took into account that the charges in question constituted criminal as well as disciplinary offences and that the penalties imposed on the applicants could not be regarded as “sufficiently unimportant or inconsequential as to displace the presumed criminal nature of the charges against them”. In that connection, the Court took the view that the awards of additional days of imprisonment constituted “fresh deprivations of liberty imposed for punitive reasons after a finding of culpability”. While the case relates to a rather arcane system, the principle is not unimportant, since whenever prison disciplinary proceedings can be regarded as determinative of a criminal charge within the meaning of Article 6, all the guarantees of that provision come into play<sup>80</sup>. In the cases in question, the applicants’ specific complaint was that they had been denied legal representation for their disciplinary hearings, and the Court found that there had been a violation of Article 6 § 3 (c) in that respect.

Two further Grand Chamber judgments also concerned the United Kingdom and dealt with the independence and impartiality of courts martial following modifications to the organisation of such courts in response to the Court’s finding of violations in an earlier series of cases<sup>81</sup>. In 2002, in *Morris v. the United Kingdom*<sup>82</sup>, a Chamber of the Court had taken the view that while these modifications went some way towards bringing the British court-martial system into line with the requirements of Article 6 there remained certain structural deficiencies which deprived courts martial of sufficient guarantees of independence and impartiality. In its judgment in *Cooper v. the United Kingdom*<sup>83</sup>, the Grand Chamber considered that there were good reasons to depart from that finding, in the light of information and material which had not been available to the Chamber and which established that there were sufficient safeguards of independence and impartiality as far as a Royal Air Force court martial was concerned. However, in another judgment of the same day<sup>84</sup>, which concerned a Royal Navy court martial, the Grand Chamber came to a different conclusion, finding a number of distinctions which were sufficient for it to consider that the Royal Navy court martial did not meet the requirement of an independent and impartial tribunal.

In a group of Norwegian cases, the Court was called upon to examine the scope of the presumption of innocence, in particular in the context of the relationship between civil proceedings and earlier criminal proceedings which resulted in the acquittal of the accused. Two of these cases<sup>85</sup> bore a close resemblance to a series of earlier Austrian cases<sup>86</sup>, in which claims for compensation for detention on remand had been refused on the ground that the suspicion that the person concerned had committed the offence had not been dissipated. As in these cases, a violation was found in the two Norwegian cases, as well as in a similar Netherlands case<sup>87</sup>. However, the situation was found to be different in a third Norwegian case, *Ringvold v. Norway*<sup>88</sup>, in which, following the applicant’s acquittal in criminal proceedings, an award of damages had been made against him in separate civil proceedings relating to the same facts. The Court accepted that a finding of civil liability on the basis of a different standard of proof did not constitute a breach of the presumption of innocence, notwithstanding the earlier acquittal<sup>89</sup>. The Court identified an exception to this principle in its judgment of the same day in a fourth Norwegian case<sup>90</sup>, which related to a similar situation but in which the civil court had employed wording which was sufficient in

the Court's view to constitute a statement of criminal guilt incompatible with the presumption of innocence. In order to reach this conclusion, the Court first had to find that Article 6 § 2 was applicable. While Article 6 in its criminal aspect did not apply to the civil proceedings as such, the Court took the view that the domestic court had overstepped the bounds of the civil forum, thereby casting doubt on the correctness of the applicant's acquittal, and that this was in itself sufficient to create a link with the earlier criminal proceedings which was incompatible with the presumption of innocence. This wide interpretation of the notion of the presumption of innocence represented a considerable development of earlier case-law relating to statements made by public authorities prior to the determination of criminal charges<sup>91</sup>.

There were not many judgments in 2003 dealing with the various aspects of the rights of the defence. The question of access to a lawyer was raised in a couple of judgments, in one of which the Court found that there had been a violation<sup>92</sup>, whereas in the other it considered that the complaint was premature in so far as the criminal proceedings were still pending and a global assessment of their fairness was not therefore possible<sup>93</sup>. Two other judgments dealt with the refusal of domestic courts to admit evidence requested by an accused. In the Grand Chamber case of *Perna v. Italy*<sup>94</sup>, the Chamber's finding of no violation was confirmed, while in the other case the Court concluded that there had been a violation<sup>95</sup>.

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

As a preliminary remark, it may be noted that all five Grand Chamber judgments in cases referred to it by virtue of Article 43 of the Convention (that is, after the delivery of a Chamber judgment) concerned issues falling under this heading and that in each case the Grand Chamber reversed the principal findings of the respective Chambers. Furthermore, the increasing importance of private and family life matters may be seen in the fact that five of the Grand Chamber's twelve judgments dealt with issues under Article 8 of the Convention.

The right to mental and physical integrity, which the Court has recognised as an element of the notion of "private life", was a factor in several cases. Reference has already been made to *M.C. v. Bulgaria*<sup>96</sup>, in which the inadequacy of the criminal law on rape was held to violate Article 8 as well as Article 3, and *Worwa v. Poland*<sup>97</sup>, in which a violation of Article 8 was found on account of repeated psychiatric examinations. Another case of interest in this context concerned the subjection of the applicant's wife to a gynaecological examination while in detention<sup>98</sup>. The Court accepted the Government's submission that the medical examination of detainees may be a safeguard against sexual harassment or ill-treatment but stressed that any interference with physical integrity had to be prescribed by law and have the consent of the person concerned. As the Government had failed to show any medical necessity or the existence of the circumstances prescribed by the applicable law, the interference had not been "in accordance with the law" and there had been a violation of Article 8.

*M.C. v. Bulgaria* was the most striking example of an increasing tendency on the part of the Court to impugn not only the interpretation and application of domestic law by national courts and other authorities but also the sufficiency of the concrete measures taken by them to ensure that they are in a position to arrive at a proper decision. The adequacy of the steps

taken by the authorities has of course often been examined in the context of the State's positive obligation to conduct an effective investigation under Articles 2 and 3 of the Convention and, while the transposition of these principles to other provisions of the Convention is a logical progression, there is evidence in a number of recent judgments of the Court's willingness to indicate how the national authorities should have interpreted domestic law or how they should have conducted proceedings. This approach had already appeared in Chamber judgments such as *Sahin v. Germany* and *Sommerfeld v. Germany*<sup>99</sup>, both of which concerned access to children. In the first, the Chamber had held that the failure of the domestic courts to hear the child, who was 5 years old, revealed "an insufficient involvement of the applicant in the access proceedings", while in the second, in which the child had been heard, it considered that the failure of the domestic courts to obtain a psychologist's opinion evaluating the child's wishes similarly revealed an insufficient involvement of the applicant in the decision-making process. The Grand Chamber, however, was more prepared to accept the approach of the national authorities and reversed the Chamber's conclusion, finding no violation of Article 8.

In *Van Kück v. Germany*<sup>100</sup>, the applicant had unsuccessfully sought reimbursement from a private insurance company of part of the costs of gender reassignment surgery and hormone treatment. She had then brought a civil action in the regional court, which had dismissed the claim, finding on the basis of an expert opinion that the surgery was not medically necessary within the meaning of the applicable legislation. The applicant, having gone ahead with the surgery, appealed to the court of appeal, which dismissed the appeal. In concluding that there had been a violation of both Article 6 and Article 8, the Court took the view that the German courts' interpretation of the term "medical necessity" and their evaluation of evidence in that respect had not been "reasonable". It observed that "determining the medical necessity of gender reassignment measures by their curative effects on a transsexual is not a matter of legal definition" and referred to the fact that "transsexualism has wide international recognition as a medical condition for which treatment is provided in order to afford relief". In addition, the Court considered the burden on a transsexual to show the medical necessity of reassignment surgery to be disproportionate. Thus, while the Court reiterated that it is in the first place for the national authorities, and notably the courts, to interpret domestic law and that it is for the national courts to assess the evidence before them, it essentially found that the German courts should have done more to ascertain all the relevant factors and should have interpreted domestic law in line with wider human rights considerations, even if there was no clearly established right at issue. In that respect, the approach was similar to that adopted in the case of *M.C. v. Bulgaria*.

The same observation may be made in relation to two other judgments, both concerning discrimination. *Karner v. Austria*<sup>101</sup> concerned the refusal of the Austrian courts to recognise the right of the homosexual partner of a deceased tenant to take over the lease. The case incidentally raised a procedural issue, namely whether the Court should continue to examine the matter after the applicant himself had died and in the absence of any expressed desire on the part of an heir to pursue the application. The Court considered that the issues were of such general interest that it should continue its examination and it reached the conclusion that there had been a violation of Article 14 taken in conjunction with Article 8<sup>102</sup>, the Government having failed to offer convincing and weighty reasons to justify the narrow interpretation which the Supreme Court had given to the term "life companion" in the Rent Act. Reiterating that differences based on sexual orientation require particularly serious reasons by way of justification, the Court considered that it was

not sufficient in such cases that the measure be proportionate; it also had to be shown that it was necessary in order to achieve the aim pursued, namely the protection of the family in the traditional sense<sup>103</sup>.

*Koua Poirrez v. France*<sup>104</sup> actually raised an issue under Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1 but it may conveniently be referred to in this context, as it also concerned an interpretation of domestic law which the Court considered to be incompatible with general human rights principles. The applicant, an Ivory Coast national who had been adopted by a French national, was refused a disabled adult's allowance on the ground that he was neither a French national<sup>105</sup> nor a national of a country with which France had a reciprocal agreement. His appeal was dismissed after the European Court of Justice had confirmed that the French legislation was compatible with European Union provisions. Although the French courts had considered that the applicant was not entitled to the allowance, the Strasbourg Court took the view that he had a pecuniary right for the purposes of Article 1 of Protocol No. 1, since he was excluded from entitlement solely on the basis of a condition which constituted a difference in treatment falling within the scope of Article 14 of the Convention. It went on to conclude that, in the circumstances, there was no objective and reasonable justification for that distinction.

One of the Grand Chamber judgments relating to Article 8 was *Odièvre v. France*<sup>106</sup>, which raised the sensitive question of the extent of an individual's right to obtain access to information about his or her origins. The applicant had been abandoned at birth by her mother, who had officially requested that her identity be kept secret. The applicant subsequently succeeded in obtaining certain non-identifying information about her natural family, including several siblings, but the authorities refused to provide her with more specific information. In concluding that there had been no violation of Article 8, the Court emphasised that there were competing interests, including those of third parties such as the applicant's adoptive parents and the members of her natural family, as well as a more general interest, namely the avoidance of illegal abortions and the abandonment of children other than under the proper procedure. Taking into account the entry into force in 2002 of new legislation intended to facilitate searches for information about biological origins by means of the creation of a new independent body, the Court considered that the margin of appreciation had not been overstepped<sup>107</sup>.

The Grand Chamber also gave judgment in *Hatton and Others v. the United Kingdom*<sup>108</sup>, in which it found that there had been no violation of Article 8, reversing the Chamber's conclusion. The case concerned noise nuisance in the vicinity of London's Heathrow Airport and in particular the adequacy of the studies carried out by the authorities prior to implementing a system of noise quotas. The Court considered that a fair balance had been struck between the competing interests involved<sup>109</sup>. Environmental considerations also came up in *Kyrtatos v. Greece*<sup>110</sup>, in which one aspect of the applicants' complaint under Article 8 related to the effect of tourist development on an important wildlife refuge adjacent to property owned by one of the applicants. The Court rejected the complaint, finding that it had not been shown that "the alleged damage to the birds and other protected species living in the swamp was of such a nature as to directly affect [the applicants'] own rights under Article 8". The Court added: "[T]he crucial element which must be present in determining whether, in the circumstances of a case, environmental pollution has adversely affected one of the rights safeguarded by paragraph 1 of Article 8 is the existence of a harmful effect on a person's private or family sphere and not simply the general deterioration of the environment. Neither Article 8 nor any of the other Articles of the

Convention are specifically designed to provide general protection of the environment as such; to that effect, other international instruments and domestic legislation are more pertinent in dealing with this particular aspect.”

Privacy in a more traditional sense was at issue in several cases concerning the United Kingdom, certain of which raised the absence at the relevant time of a legal basis for the use of covert listening devices<sup>111</sup>, which had led to the finding of a violation of Article 8 in *Khan v. the United Kingdom*<sup>112</sup>. Of rather greater interest were two cases which introduced more novel issues arising out of different forms of surveillance. The first concerned the filming at a police station, for the purposes of identification, of a suspect who had refused to participate in an identity parade<sup>113</sup>. The Court considered: “[W]hether or not he was aware of the security cameras running in the custody suite, there is no indication that the applicant had any expectation that footage was being taken of him within the police station for use in a video identification procedure and, potentially, as evidence prejudicial to his defence at trial. This ploy adopted by the police went beyond the normal or expected use of this type of camera ... The permanent recording of the footage and its inclusion in a montage for further use may therefore be regarded as the processing or collecting of personal data about the applicant.” While in that case there was a legal basis for the interference, the domestic courts had identified a number of breaches of the applicable code of practice, which led the Court to conclude that the interference had not been “in accordance with the law”. The second case concerned the use of a closed-circuit television camera (CCTV) in a public place<sup>114</sup>. The CCTV operator had spotted the applicant with a knife and had alerted the police, who arrived at the scene and gave medical assistance to the applicant, who had in fact attempted to commit suicide (although this was not recorded). Footage of the incident was subsequently disclosed to the public and to the media, without the applicant’s face being properly masked, as a result of which he was identified by a number of people who knew him. The Court considered that this disclosure could not be regarded as justified and concluded that there had been a violation of Article 8. In both these cases, the Court emphasised that it was not the monitoring of activity in public places which constituted an interference with the right to respect for private life but rather the subsequent use which was made of recorded data<sup>115</sup>. In that connection, mention should also be made of *Von Hannover v. Germany*<sup>116</sup>, concerning the publication by the press of photographs of Princess Caroline of Monaco, taken in public places without her consent. The German Federal Constitutional Court had taken the view that as a contemporary “public figure”, she had to tolerate being photographed in public places, even when not engaged in official duties<sup>117</sup>. The Court declared the application admissible and subsequently held a hearing on the merits.

The *Sommerfeld* and *Sahin* judgments already mentioned above dealt with the rights of fathers of children born out of wedlock and, as has been noted, the Grand Chamber found that there had been no violation of Article 8. It did, however, find a violation of Article 14 taken in conjunction with Article 8, on the ground that the difference in treatment between natural fathers and divorced fathers was discriminatory. It distinguished the cases from *Elsholz v. Germany*<sup>118</sup>, also a Grand Chamber judgment, in which the application of the same legislation had been found not to have violated Article 14.

An increasing number of applications coming before the Court concern the adequacy of the measures taken by national courts or other authorities to ensure compliance with court decisions awarding custody of or access to children<sup>119</sup>. The finding of a violation in a number of these again highlighted the extent of the positive obligations incumbent on State

authorities. One specific problem which arose in *Schaal v. Luxembourg*<sup>120</sup> was the suspension of a father's right of access to his child during criminal proceedings against him on suspicion of having sexually abused her. While recognising the justifiability of such a measure in principle, the Court found that by failing to conduct the proceedings with appropriate expedition the authorities had not taken all reasonable steps to ensure that family life was re-established as soon as it became clear that the suspension of access was no longer necessary. Delays were also a factor leading to the finding of a violation in the only judgment of note dealing with public care of children, *Covezzi and Morselli v. Italy*<sup>121</sup>. The applicants made a number of complaints arising out of the taking into care of their four children following allegations of sexual abuse in the context of Satanic rites. The applicants complained in particular about the taking of the children into care on an emergency basis without giving them an opportunity to contest the decision<sup>122</sup>, the suspension of their access to the children for a lengthy period and the separation of the children, who were placed in different foster homes. However, the Court found no violation in respect of these complaints; it concluded that there had been a violation of Article 8 only in relation to procedural delays in the care proceedings and the absence of any possibility of lodging an appeal against the interim order.

Only a small number of judgments dealt with the deportation issues which have arisen in many past cases. Violations were found in two judgments on the ground that the measure was disproportionate to the aims pursued<sup>123</sup>, while in another judgment the Court found that the ten-year exclusion order imposed on the applicant, who had lived in France virtually all his life, could be regarded as justified, taking into account the temporary nature of the order and in particular the seriousness of the crimes of which he had been convicted (drugs offences for which he had received prison sentences totalling over six years)<sup>124</sup>. An interesting feature of this case, which was not in the end addressed by the Court, was the fact that it was unclear to what extent, if any, the applicant could claim to have a "family life" within the meaning of Article 8. He was unmarried and had no children, and although all the members of his immediate family also lived in France, they were adults with whom he had no apparent links of special dependency bringing the relationship within the scope of Article 8. The Court had never stated explicitly that deportation of second-generation or long-term immigrants could amount to an interference with the right to respect for private life alone; there had always been a family-life element as well. It did not give any clear response to the question in this case, as parts of its reasoning imply that it considered that there was in any event also an interference with the right to respect for family life, whereas other parts suggest that it had regard only to the non-family ties which the applicant had established in France.

The point was clarified in *Slivenko v. Latvia*<sup>125</sup>, in which the Grand Chamber was faced with issues arising out of the agreed withdrawal of former Soviet troops and their families from Latvia. The case represented one of the more prominent examples of an increasing number of situations in which the Court has had to address human rights issues against a complex and sensitive political background and in respect of which its judgments may have serious implications for the governments concerned<sup>126</sup>. The case was originally brought by a retired Soviet army officer and his wife and daughter, all of Russian origin. He had been required to leave Latvia in accordance with a 1994 treaty on the withdrawal of Russian troops and the deportation of the other applicants had also been ordered, despite the fact that the daughter had been born in Latvia and the wife had lived there from the age of one month. The Court had already declared inadmissible the complaints lodged by Mr Slivenko<sup>127</sup>, but in its judgment it found that there had been a violation of the remaining



applicants' right to respect for their private life. It examined the complaint under private life rather than family life because it recognised that there had been an endeavour to respect family life by deporting all the members of the family. On the merits of the complaint, it made the following observation: "[S]chemes such as the present one for the withdrawal of foreign troops and their families, based on a general finding that their removal is necessary for national security, cannot as such be deemed to be contrary to Article 8 of the Convention. However, application of such a scheme without any possibility of taking into account the individual circumstances of persons not exempted by the domestic law from removal is in the Court's view not compatible with the requirements of that Article." In the circumstances of the particular case, it considered that the applicants' interest outweighed any national-security fears.

The case of *Jakupovic v. Austria*<sup>128</sup> concerned the deportation to Bosnia and Herzegovina of a 16-year-old boy on whom a ten-year residence prohibition had been imposed following a conviction for burglary. He and his younger brother had joined their mother, who was working in Austria, four years earlier, and the applicant's situation was not therefore comparable to that of a second-generation immigrant, since he remained well acquainted with his country of origin and spoke its language. However, he apparently had no close relatives there and the Court considered that in these circumstances there would have to be very weighty reasons to justify the expulsion of a young person, alone, to a country which had recently experienced a period of armed conflict with all its adverse effects on living conditions. The Court concluded that the measure imposed on the applicant was disproportionate.

A final judgment dealing with deportation issues was *Mehemi v. France (no. 2)*<sup>129</sup>. The applicant had previously brought a successful application, the Court having found in 1997 that the imposition of a permanent exclusion order was a disproportionate measure in the circumstances of the case<sup>130</sup>. In his second application, the applicant complained that the order had been kept in force – although modified to a ten-year prohibition – notwithstanding the Court's judgment in his favour. The Court observed firstly that the finding of a violation imposed on the State an obligation to facilitate the reunion of the applicant and his family in France and added that particular speed was required in the circumstances. It accepted, however, that the period of three and a half months taken to grant the applicant a special visa was not excessive and that the efforts made by the authorities were reasonable. As far as the maintenance of an exclusion order was concerned, the Court considered that this had been deprived of any legal effect by a subsequent ministerial order requiring the applicant to reside in a specified part of the *département* of the Rhône. The applicant had been granted a succession of temporary residence permits.

With regard to the final aspect of Article 8, the right to respect for correspondence, the absence or imprecision of a legal basis for interferences with detainees' correspondence as well as the lack of any genuine justification for specific measures have over the years been found to be problematic in a succession of States<sup>131</sup>, and the issue came up again in 2003, in particular in relation to Ukraine and Poland. Certain of the Ukrainian cases brought by prisoners sentenced to death<sup>132</sup> concerned restrictions on the right to correspond, including a prohibition on the receipt of parcels, as well as restrictions on visits by family members<sup>133</sup>. In many of the other cases, notably those concerning Poland, there had been interferences with correspondence addressed to or received from the Court or the former Commission, in respect of which there is clear case-law to the effect that such interferences

can only be justified in very exceptional circumstances<sup>134</sup>. This was the situation in *Cotlet v. Romania*<sup>135</sup>, in which the Court also found that there had been an additional violation on account of the failure of the authorities to provide the applicant with writing materials. Finally, restrictions on the receipt of correspondence by bankrupts were also found to be in violation of Article 8 in two Italian cases<sup>136</sup>. However, it should be stressed that the Court did not consider such restrictions to be objectionable in themselves, the violation lying in the period of time during which the restrictions were applied.

Many of the cases concerning freedom of expression which come before the Court relate to defamation and a feature of recent cases is that the defamatory statements have been aimed at judges or other officials in the legal system. An issue of this kind was addressed by the Grand Chamber in *Perna v. Italy*<sup>137</sup>, in which the Court found by sixteen votes to one that the applicant's conviction for defamation of a senior public prosecutor was not disproportionate, so that there had been no violation of Article 10. In so doing, it reversed the unanimous conclusion of the Chamber. A conclusion of no violation was also reached in the somewhat similar case of *Lešnik v. Slovakia*<sup>138</sup>, as well as in two further cases which were subsequently referred to the Grand Chamber. *Cumpănă and Mazăre v. Romania*<sup>139</sup> concerns an article and accompanying cartoon found to be defamatory of a judge. The applicants were sentenced to seven months' imprisonment and prohibited from working as journalists for one year thereafter. However, the President granted a pardon in respect of the custodial sentence and the applicants were not in fact prevented from continuing to work as journalists. *Pedersen and Baadsgaard v. Denmark*<sup>140</sup> concerns the conviction of two television journalists for defaming a senior police officer in a television programme about a murder investigation. The finding of no violation in each of these recent cases appears to be indicative of a slightly more restrained approach to the balancing exercise under Article 10.

In contrast, a violation was found in *Skalka v. Poland*<sup>141</sup>, in which the applicant, who was serving a prison sentence, was convicted of insulting a State authority and sentenced to eight months' imprisonment. He had written to the president of the regional court complaining in highly derogatory terms about a judge who had replied to an earlier letter. The case is noteworthy on account of the Court's reason for finding a violation: it accepted that "an appropriate sentence for insulting both the court as an institution and an unnamed but identifiable judge would not amount to a violation of Article 10" but considered that the sentence imposed was disproportionate, taking into account the absence of any previous offence of that kind. Thus, whilst a lesser penalty would have been acceptable, the disproportionate nature of the sentence was sufficient in itself to justify the finding of a violation. A not dissimilar matter was examined in *Yankov v. Bulgaria*<sup>142</sup>, but the conclusion that there had been a violation in that case was based on quite different grounds. The applicant, while in detention, had been sentenced to seven days' confinement in an isolation cell after prison staff had seized the rough manuscript of a book which he was writing, dealing with his detention and the proceedings against him. The prison governor considered that the manuscript contained "offensive and defamatory statements against officers, investigators, judges, prosecutors and State institutions". The Court found, however, that while the remarks at issue were "undoubtedly insulting", they were far from being "grossly offensive", and that since they had been written "in the context of substantive criticism of the administration of justice and officials involved in it, made in a literary form, the State authorities should have shown restraint in their reaction". The Court also took into account the fact that the remarks had never been disseminated or made public in reaching the conclusion that the authorities had failed to strike a fair balance.

In *Steur v. the Netherlands*<sup>143</sup>, the applicant was a lawyer against whom disciplinary proceedings had been brought after he had claimed in the course of civil proceedings that a social-security investigator had exerted unacceptable pressure on his client in order to obtain incriminating statements. Although no sanction was imposed, the Court considered that the formal finding that he had been at fault constituted an interference with his right to freedom of expression which did not correspond to any pressing social need.

*Scharsach and News Verlagsgesellschaft v. Austria*<sup>144</sup> raised the somewhat different issue of the conviction of a journalist for describing the wife of a well-known right-wing politician as a “closet Nazi”. The Court considered that the State’s margin of appreciation had been overstepped and that there had been a violation of Article 10. In this connection, it may be noted that in its decision declaring *Garaudy v. France*<sup>145</sup> inadmissible the Court considered that the applicant’s book, *Les mythes fondateurs de la politique israélienne*, did not attract the protection of Article 10 of the Convention in so far as it called into question the reality, degree and gravity of clearly established historical facts and in particular the persecution of Jews by the Nazis. In the Court’s view, Article 17 of the Convention<sup>146</sup> removed such assertions from the protection of Article 10. It found that most of the content of the book, as well as its general tone, was negationist in nature and therefore ran counter to the fundamental values of the Convention such as justice and peace. In this respect, the Chamber’s approach echoed that of the Grand Chamber in *Refah Partisi (the Welfare Party) and Others v. Turkey*, discussed below, and is an indication of the limits on the notion of pluralism and on the promotion of ideas and beliefs which are deemed to be essentially incompatible with democratic society.

The special position of journalists was central to two judgments concerning searches carried out in the homes and workplaces of journalists, in one case with a view to obtaining evidence for the purposes of a criminal investigation relating to third parties<sup>147</sup> and in the other with a view to discovering the journalist’s sources<sup>148</sup>. In both cases, the Court considered that the measures could not be regarded as “necessary in a democratic society”.

In *Appleby and Others v. the United Kingdom*<sup>149</sup>, the crucial point related to the forum for exercising freedom of expression. The applicants had been prevented from soliciting signatures for a petition in a town centre, which was in fact a shopping mall owned by a private company which wished to maintain strict neutrality on political and religious issues. As the mall was privately owned, the question was again one of positive obligations. The Court did not exclude that a positive obligation to regulate property rights could arise where the denial of access to property resulted in preventing any effective exercise of freedom of expression but in the particular case it considered that the applicants had had available a variety of other ways in which to communicate their views to the public, for example by canvassing in the old town centre. Consequently, there had been no failure to protect the applicants’ freedom of expression. Moreover, since the same considerations applied in relation to freedom of peaceful assembly, there had been no violation of Article 11 either.

While no major issues of freedom of religion were addressed in judgments delivered in 2003, religious beliefs formed the background to several important cases. In *Palau-Martinez v. France*<sup>150</sup>, the court of appeal, in deciding that the applicant’s children should live with her former husband, had relied on the fact that the applicant was a Jehovah’s Witness, considering that it was not in the children’s interest to be brought up in

the environment which that implied. However, the Strasbourg Court found that by failing to obtain a social inquiry report and by referring only to general considerations rather than specific adverse effects of the mother's beliefs on the children, the court of appeal had not given sufficient reasons and had therefore violated Article 14 taken in conjunction with Article 8<sup>151</sup>. In *Murphy v. Ireland*<sup>152</sup>, the Court was faced with a statutory prohibition on the broadcasting of political or religious advertising. It took the view that the matter fell more properly to be examined under Article 10. The "advertisement" at issue was a public notice about the screening of a video on the Resurrection, which a pastor wished to have announced on a local radio station. The Court observed that "it is not to be excluded that an expression, which is not on its face offensive, could have an offensive impact in certain circumstances" and accepted the Government's submission that a total prohibition was justified, taking into account the particular religious sensitivities in Ireland. As in *Appleby and Others*, the Court noted that the applicant had other options available, since the prohibition related only to the broadcast media – the immediate, invasive and powerful impact of which was an important consideration – and only to advertisements.

The expression of religious views was also an important feature of *Gündüz v. Turkey*<sup>153</sup>. The applicant, the leader of an Islamic sect, had participated in a television programme, during which he had described democracy and secularism as "impious", promoted Islamic law (sharia) and referred in pejorative terms to children born outside a Muslim religious marriage. As a result, he was convicted of openly inciting to hatred and hostility based on religious affiliation. The Court, which again took into account the immediacy of television broadcast as a relevant factor, did not consider that the applicant's comments, on a matter of general interest, could be interpreted as an incitement to the use of violence – the crucial criterion in its case-law in this area<sup>154</sup> – and that the mere defence of *sharia* could not be regarded as "hate speech"<sup>155</sup>. In that respect, the case differed from the Grand Chamber judgment in *Refah Partisi (The Welfare Party) and Others v. Turkey*<sup>156</sup>, one of a series of cases concerning the dissolution of political parties by the Turkish Constitutional Court<sup>157</sup>. In all of the other cases, the Court had concluded that there had been a violation of Article 11 of the Convention but in *Refah Partisi* the Grand Chamber, agreeing with the Chamber's analysis, concluded unanimously that there had been no violation. It relied essentially on the incompatibility of a fundamentalist Islamic view of society with the underlying principles of democracy and with the values of the Convention itself. The Court found that the acts and statements made by the party's leaders, which could be imputed to the party as a whole, proposed a form of society based on sharia or at least on a plurality of legal systems which could not be regarded as in conformity with the rights and freedoms guaranteed by the Convention. There were moreover indications that the use of force was not excluded and, taking into account that the party's election results had put it in a position where there was a real and imminent threat of it being able to implement its policies, its dissolution could be regarded as necessary in a democratic society<sup>158</sup>.

The only other case of interest under Article 11 is *Djavit An v. Turkey*<sup>159</sup>, which concerned the regular refusal of permission for the applicant, a Cypriot national of Turkish origin living in northern Cyprus, to visit the southern part of the island for the purpose of participating in bi-communal meetings. The Court rejected the Government's argument that the complaint related essentially to freedom of movement, guaranteed by Article 2 of Protocol No. 4, which Turkey has not ratified, finding that the applicant's complaint was "not limited to the question of freedom of movement, that is, to physical access to the southern part of Cyprus" but was that "the authorities, by constantly refusing to grant him permits to cross the 'green line', have effectively prevented him from meeting Greek

Cypriots and from participating in bi-communal meetings, thus affecting his right to freedom of assembly and association”. The Court therefore preferred to examine the matter under Article 11, which it furthermore considered to be the *lex specialis* in relation to Article 10.

With regard to freedom of movement as such, one of the judgments dealing with prolonged restrictions on the rights of bankrupts included a complaint about a prohibition on the applicant leaving his place of residence<sup>160</sup>. As with the other restrictions involved, it was not the prohibition in itself which the Court found to be problematic but the length of time for which it was in force. The right to leave one’s country and the right to enter the country of which one is a national were at issue respectively in *Napijalo v. Croatia*<sup>161</sup>, in which there was a violation on account of the delay in returning a confiscated passport, and *Victor-Emmanuel de Savoie v. Italy*<sup>162</sup>, which concerned the constitutional prohibition on male descendants of the last monarch of Italy entering the country. The application was struck out of the list following an amendment to the Constitution. Finally in this connection, mention may be made of *Smirnova v. Russia*<sup>163</sup>, concerning delays by the authorities in returning the applicant’s “internal passport” to her on her release from detention on remand. The Court, examining the complaint under Article 8, recognised that since Russian citizens are often required to prove their identity the applicant had endured a number of everyday inconveniences which amounted to an interference with her right to respect for her private life, for which there had been no legal basis.

The restrictions in *Victor-Emmanuel de Savoie* had also extended to the exercise of electoral rights but there were otherwise few cases in which electoral matters were raised. No judgments dealt with such issues on the merits but several applications were declared admissible, including one concerning the exclusion of convicted prisoners from voting in parliamentary and local elections in the United Kingdom<sup>164</sup>, one concerning disenfranchisement in the context of preventive measures in Italy<sup>165</sup> and one concerning ineligibility to stand as a candidate in parliamentary elections on account of membership of a party declared unconstitutional<sup>166</sup>.

### ***Property rights (Article 1 of Protocol No. 1)***

Over the last few years, a large number of applications lodged with the Court have involved infringements of property rights arising out of expropriations carried out by the former communist regimes in eastern Europe. Reference has already been made to the series of cases raising issues similar to those in *Brumărescu v. Romania*, and problems of restitution have also arisen in Poland<sup>167</sup>, the Czech Republic<sup>168</sup> and Germany<sup>169</sup>, as well as more recently in Slovakia<sup>170</sup> and Lithuania<sup>171</sup>. As far as the German situation is concerned, the exceptional background of the reunification has been an important element in the Court’s examination of the cases. Thus, in *Forrer-Niedenthal v. Germany*<sup>172</sup>, it found that the authorities, in refusing both restitution of property and compensation following reunification, had not failed to strike a fair balance. However, there are indications in a more recent judgment that major issues may still arise in this area<sup>173</sup>.

It has been observed that one of the disquieting features which can be identified in the judgments delivered in 2003 is the failure of domestic authorities to implement judicial decisions. In a number of judgments, the effect of delays in complying with such decisions was found to constitute a violation of property rights as well as a denial of the right to a court under Article 6<sup>174</sup>. Moreover, the excessive length of bankruptcy proceedings in Italy,

which the Court found to have entailed violations of several Articles of the Convention, was also found to be in violation of Article 1 of Protocol No. 1, while in a further Italian case the problem was the length of time taken to reimburse overpaid taxes, the system requiring advance payment of an estimated amount<sup>175</sup>.

The effect on property rights of delays in paying compensation for expropriation has been examined in numerous cases, including the series of Turkish cases mentioned under the “repetitive cases” heading<sup>176</sup>, but the inadequacy of the compensation awarded has in itself also been found to constitute a violation of Article 1 of Protocol No. 1. The Court has made it clear that “the taking of property without payment of an amount reasonably related to its value will normally constitute a disproportionate interference that cannot be considered justifiable under Article 1 of Protocol No. 1”<sup>177</sup> and in a series of recent judgments it has taken the view that the compensation received by the applicants could not be regarded as fulfilling this requirement<sup>178</sup>. In that respect, the failure to take into account significant delays in calculating the appropriate amount has been found to upset the fair balance. Thus, in one Greek case<sup>179</sup>, the applicants’ land had been occupied since 1967, and when expropriation finally took place in 1999 no account was taken, when fixing the amount of compensation to be paid, of the lengthy period during which the applicants had been deprived of the use of their property. In another Greek case, no compensation had been paid in respect of an expropriation which had taken place in 1973, as the proceedings were still pending<sup>180</sup>. The Court found that there had been a violation in both cases.

In this connection, mention may be made of *Papastavrou and Others v. Greece*<sup>181</sup>, in which the tendency for the Court to indicate what the authorities should have done can be seen in the context of property rights. The local authority had decided in 1994 that certain land should be reforested, on the basis of a ministerial decree dating back to 1934. The Court considered that a fresh reassessment of the situation should have been made by the authorities when ordering such a serious measure affecting property rights and that the rejection of the applicants’ appeal by the Supreme Administrative Court on the sole ground that the decision was not an operative act but simply confirmation of the ministerial decision had failed to strike a fair balance.

The importance of cases involving serious interferences with property rights can be seen in the sums awarded by the Court in respect of just satisfaction. The difficulties involved in calculating appropriate amounts in respect of pecuniary damage are illustrated by the fact that the Court regularly reserves the question of just satisfaction in such cases. Indeed, all eight of the Court’s judgments concerning just satisfaction in 2003 involved violations of Article 1 of Protocol No. 1, and several of them related specifically to issues of expropriation. An award of 150,000 euros (EUR) was made in one case concerning the inadequacy of the compensation paid to a dairy farmer in respect of an expropriation which left him with insufficient land to continue his activities<sup>182</sup>, while in another Greek case concerning the delays by the authorities in complying with a court judgment EUR 200,000 were awarded in respect of pecuniary damage<sup>183</sup>. The highest awards, however, related to the application in Italy of the doctrine of “constructive expropriation”, namely the validation of unlawful occupation of land by the authorities as an indirect expropriation. In two just satisfaction judgments the Court awarded over EUR 760,000 and over EUR 1,385,000 respectively in respect of pecuniary damage alone<sup>184</sup>. Finally in this connection, it may be noted that an award of over EUR 3,000,000 was made in *Motais de Narbonne v. France*<sup>185</sup>, which concerned the failure of the authorities, following an

expropriation decision, to carry out the proposed development within a reasonable period<sup>186</sup>.

The Court had previously dealt with a group of Greek cases concerning the application of an irrebuttable presumption to the effect that owners of property partly expropriated for the purpose of road-building derived a benefit from the new road which imposed on them an obligation to contribute to the cost of constructing it. In four more recent judgments<sup>187</sup>, the Court took note of the fact that the case-law of the Greek courts had changed, so that the presumption was no longer regarded as an irrebuttable one. However, it considered that the system for providing compensation for expropriation had not improved significantly, not only because the presumption remained but also because the courts which determined the amount of compensation did not themselves examine the question whether the owner derived any benefit, since owners were required to institute separate proceedings if they wished to establish that they had in fact been adversely affected. Since the compensation procedure already involved three different stages, this additional phase risked prolonging the whole process. In the Court's view, expropriation ought to be accompanied by a procedure which allowed for a global assessment of the consequences, including the award of appropriate compensation and the identification of those entitled to it.

In addition to the large group of cases concerning the difficulties faced by landlords in evicting tenants in Italy, a further case relating to tenancy merits a mention. The case of *Hutten-Czapska v. Poland*<sup>188</sup> raises the question of the allegedly disproportionate burden imposed on landlords as a consequence of rent restrictions introduced as a response to critical housing shortage<sup>189</sup>. The case has been declared admissible.

Violations of Article 1 of Protocol No. 1 were also found in a variety of judgments dealing with miscellaneous situations. In *Stockholms Försäkrings- och Skadeståndsjuridik AB v. Sweden*<sup>190</sup> the applicant company had been required to pay the fees of the receiver appointed on the basis of a declaration of bankruptcy which was subsequently found to have been erroneous, an obligation which the Court considered in the circumstances to be "wholly unjustifiable", while in *Allard v. Sweden*<sup>191</sup> a demolition order in respect of the applicant's house, which had been built without the consent of all joint owners of the land, was implemented while court proceedings relating to the division of ownership were pending. The Court found it "remarkable" that the demolition went ahead in these circumstances and considered that it would have been reasonable for the Supreme Court to await the outcome of those proceedings, "in particular when regard is had to the irreparable effects of the demolition of a house and the economic consequences of such a measure". While this case highlights the importance of communication between different national courts and authorities, *Stretch v. the United Kingdom*<sup>192</sup> demonstrates the potential conflict between a narrow application of domestic law and the overriding principle of proportionality. The applicant had set up a business and erected a number of buildings on land which he had leased from the local authority with an option to renew the lease at the end of the period. However, when he indicated that he wished to exercise the renewal option, the local authority refused on the ground that it had not had power to agree to such an option. The domestic courts upheld this approach but the Court concluded that this strict application of the law constituted a disproportionate interference with the right to peaceful enjoyment of possessions. Finally, in *Kopecký v. Slovakia*<sup>193</sup>, the applicant was unable to recover gold and silver coins which had been confiscated from his father in 1959, as he was unable to show where the coins had been deposited at the time of entry into force of the Extra-judicial Rehabilitations Act in 1991. The Court observed that the reasons for the

applicant's inability to trace the coins were attributable to the public authorities, taking into account the fact that he had produced a detailed inventory and an official record showing that they had been deposited with the Ministry of the Interior. It concluded that a disproportionate burden had been placed on the applicant. The case is now pending before the Grand Chamber.

### *Procedural issues*

One of the judgments delivered by the Grand Chamber, *Tahsin Acar v. Turkey*<sup>194</sup>, was limited to a preliminary question, namely whether it was appropriate to strike an application out of the list on the basis of a unilateral declaration by the Government. The case concerned the disappearance of the applicant's brother following his abduction in 1994 by two men claiming to be police officers. The Government had submitted a declaration which included a statement of regret and an offer to pay the applicant 70,000 pounds sterling and on that basis the Chamber had struck the application out, notwithstanding the applicant's request that the Court continue its examination of the case. While not excluding the possibility of striking an application out on the basis of a unilateral declaration, the Grand Chamber considered that it was not appropriate in the circumstances of the case, noting in particular that the Government had subsequently made firm submissions to the effect that the declaration could not be interpreted as an admission of responsibility or liability for any violation of the Convention. Consequently, the Court will proceed to an examination of the merits of the complaints.

Other procedural issues of note relate to the nature of interim measures under Rule 39 of the Rules of Court, raised in *Mamatkulov and Abdurasulovic v. Turkey*<sup>195</sup>, the obligation of Governments to furnish all necessary facilities to enable the Court to conduct an effective investigation<sup>196</sup>, the Court's refusal to strike out *Karner v. Austria*<sup>197</sup> following the death of the applicant, notwithstanding the absence of heirs wishing to pursue the application and the limits on the role of the Court in the execution of its judgments<sup>198</sup>.

### Notes

1. Two judgments concerned the same application, the first relating to a partial friendly settlement and the second to the merits of the complaints of the remaining applicant. Moreover, two revision judgments related to cases in which the judgment on the merits was also delivered in 2003.
2. In fact, while the number of applications lodged rose from 34,618 to 38,628 (provisional figure), there was a slight drop in the number of applications "allocated to a decision body", from 28,214 to 27,281.
3. The number of communications rose from 1,675 to 1,720, while the number of applications declared admissible rose from 578 to 753. However, the number of applications declared admissible was exceptionally low in 2002 and apart from that year and 2000, when the number reached 1,086, the level of admissible cases has remained stable (between 700 and 765 each year) since 1997.
4. See, for example, *Guerrera and Fusco v. Italy*, no. 40601/98, judgment of 3 April 2003.
5. Law no. 89 of 24 March 2001.
6. See, in particular, *Brusco v. Italy* (dec.), no. 69789/01, ECHR 2001-IX, and *Giacometti and Others v. Italy* (dec.), no. 34939/97, ECHR 2001-XII.
7. See *Scordino v. Italy* (dec.), no. 36813/97, 27 March 2003, to be reported in ECHR 2003-IV, in which the Court found that the amount of compensation awarded to the applicants was insufficient to deprive them of their status as victims and furthermore that they were not required to appeal to the Court of Cassation to



contest the level of compensation. See also *Pelli v. Italy* (dec.), no. 19537/02, 13 November 2003, and *Finazzi v. Italy* (dec.), no. 62152/00, 22 January 2004. *Mascolo v. Italy* (dec.), no. 68792/01, 16 October 2003, concerned the applicability of the Pinto Act to proceedings relating to the eviction of tenants.

8. See *Luordo v. Italy*, no. 32190/96, to be reported in ECHR 2003-IX, and *Bottaro v. Italy*, no. 56298/00, judgments of 17 July 2003; *Peroni v. Italy*, no. 44521/98, and *S.C., V.P., F.C., M.C. and E.C. v. Italy*, no. 52985/99, judgments of 6 November 2003; and *Bassani v. Italy*, no. 47778/99, judgment of 11 December 2003.

9. The length of court proceedings (including the availability of an effective remedy for the purposes of Article 13) was the sole issue in 234 judgments, and was an additional issue in a further 29 judgments. In that respect, the effect of the length was sometimes an important feature: see, for example, *Schaal v. Luxembourg*, no. 51773/99, judgment of 18 February 2003, which concerned criminal proceedings for sexual abuse, and *Berlin v. Luxembourg*, no. 44978/98, judgment of 15 July 2003, which concerned the effect of protracted divorce proceedings on the right to start a new family. It may also be noted that most of the seven revision judgments related to length-of-proceedings cases.

10. See *Šoć v. Croatia*, no. 47863/99, judgment of 9 May 2003; *Hartman v. the Czech Republic*, no. 53341/99, judgment of 10 July 2003, to be reported in ECHR 2003-VIII (extracts); *Broca and Texier-Micault v. France*, nos. 27928/02 and 31694/02, judgment of 21 October 2003; *Paulino Tomás v. Portugal* (dec.), no. 58698/00, to be reported in ECHR 2003-VIII, and *Gouveia da Silva Torrado v. Portugal*, no. 65305/01, both of 22 May 2003; *Slovák v. Slovakia*, no. 57983/00, judgment of 8 April 2003; *Caldas Ramírez de Arrellano v. Spain* (dec.), no. 68874/01, 28 January 2003, to be reported in ECHR 2003-I (extracts); and *Soto Sanchez v. Spain*, no. 66990/01, judgment of 25 November 2003.

11. See *Akkuş v. Turkey*, judgment of 9 July 1997, *Reports of Judgments and Decisions* 1997-IV, and *Aka v. Turkey*, judgment of 23 September 1998, *Reports* 1998-VI. Only three judgments, including two friendly settlements, dealt with this issue in 2003. It should be noted, however, that a significant number of applications of this kind were struck out of the list on the basis of pre-admissibility friendly settlements.

12. See *Willis v. the United Kingdom*, no. 36042/97, ECHR 2002-IV. Only one judgment, a friendly settlement, dealt with this issue in 2003.

13. See *Immobiliare Saffi v. Italy* [GC], no. 22774/93, ECHR 1999-V.

14. See *Brumărescu v. Romania* [GC], no. 28342/95, ECHR 1999-VII.

15. Certain new issues are now pending before the Grand Chamber, to which the following three cases have been referred: *Smoleanu v. Romania*, no. 30324/96, and *Lindner and Hammermayer v. Romania*, no. 35671/97, judgments of 3 December 2002, and *Popovici and Dumitrescu v. Romania*, no. 31549/96, judgment of 4 March 2003.

16. See, in particular, *Reinhardt and Slimane-Kaïd v. France*, judgment of 31 March 1998, *Reports* 1998-II; *Kress v. France* [GC], no. 39594/98, ECHR 2001-VI; and *Meftah and Others v. France* [GC], nos. 32911/96, 35237/97 and 34595/97, ECHR 2002-VII.

17. See, for example, *Stallinger and Kuso v. Austria*, judgment of 23 April 1997, *Reports* 1997-II, and *Eisenstecken v. Austria*, no. 29477/95, ECHR 2000-X.

18. See *Tierce and Others v. San Marino*, nos. 24954/94, 24971/94 and 24972/94, ECHR 2000-IX.

19. See *Kutić v. Croatia*, no. 48778/99, ECHR 2002-II.

20. See *Loizidou v. Turkey* (merits), judgment of 18 December 1996, *Reports* 1996-VI, and *Loizidou v. Turkey* (Article 50), judgment of 28 July 1998, *Reports* 1998-IV. A large number of follow-up cases were awaiting the execution of this judgment by the respondent State, which eventually took place at the end of 2003: see Committee of Ministers resolutions ResDH(2003)190 and 191.

21. See *Klamecki v. Poland* (no. 2), no. 31583/96, judgment of 3 April 2003, applying *Niedbala v. Poland*, no. 27915/95, judgment of 4 July 2000; *Shishkov v. Bulgaria*, no. 38822/97, judgment of 9 January 2003, to be reported in ECHR 2003-I (extracts), *Nikolov v. Bulgaria*, no. 38884/97, judgment of 30 January 2003, and *Yankov v. Bulgaria*, no. 39084/97, judgment of 11 December 2003, to be reported in ECHR 2003-XII (extracts), applying *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports* 1998-VIII; and *Nikolova v. Bulgaria* [GC], no. 31195/96, ECHR 1999-II. See also *Pantea v. Romania*, no. 33343/96, judgment of 3 June 2003, to be reported in ECHR 2003-VI (extracts).

22. See *Goral v. Poland*, no. 38654/97, judgment of 30 October 2003, applying *Baranowski v. Poland*, no. 28358/95, ECHR 2000-III.

23. See *Von Bülow v. the United Kingdom*, no. 75362/01, judgment of 7 October 2003, and *Wynne v. the United Kingdom* (no. 2), no. 67385/01, judgment of 16 October 2003, as well as the leading judgment, *Stafford v. the United Kingdom* [GC], no. 46295/99, ECHR 2002-IV. See also *Easterbrook v. the United Kingdom*, no. 48015/99, judgment of 12 June 2003.

24. See, for example, *Ceylan v. Turkey* [GC], no. 23556/94, *Karataş v. Turkey* [GC], no. 23168/94, *Erdoğan and İnce v. Turkey* [GC], nos. 2506794 and 25068/94, *Başkaya and Okçuoğlu v. Turkey* [GC], nos. 23536/94 and 24408/94, and *Sürek v. Turkey (no. 1)* [GC], no. 26682/95, all reported in ECHR 1999-IV.
25. See *Annoni di Gussola and Others v. France*, nos. 31819/96 and 33293/96, ECHR 2000-XI.
26. See *Edwards and Lewis v. the United Kingdom*, nos. 39647/98 and 40461/98, judgment of 22 July 2003, which has been referred to the Grand Chamber. See also *Dowsett v. the United Kingdom*, no. 39482/98, judgment of 24 June 2003, to be reported in ECHR 2003-VII. The leading judgments in this respect are *Rowe and Davis v. the United Kingdom* [GC], no. 28901/95, and *Fitt v. the United Kingdom* [GC], no. 29777/96, both reported in ECHR 2000-II, and also *Jasper v. the United Kingdom* [GC], no. 27052/95, judgment of 16 February 2000.
27. See *Katikaridis and Others v. Greece* and *Tsomtsos and Others v. Greece*, judgments of 15 November 1996, Reports 1996-V; *Papachelas and Others v. Greece* [GC], no. 31423/96, ECHR 1999-II; *Savvidou v. Greece*, no. 38704/97, judgment of 1 August 2000; and *Azas v. Greece*, no. 50824/99, judgment of 19 September 2002. See also *Serghides and Christoforou v. Cyprus*, no. 44730/98, judgment of 5 November 2002.
28. See *Jasiūnienė v. Lithuania*, no. 41510/98, judgment of 6 March 2003; *Kyrtatos v. Greece*, no. 41666/98, judgment of 22 May 2003, to be reported in ECHR 2003-VI (extracts); *Ruianu v. Romania*, no. 34647/97, judgment of 17 June 2003; *Timofeyev v. Russia*, no. 58263/00, judgment of 23 October 2003; *Karahalios v. Greece*, no. 62503/00, judgment of 11 December 2003; and also the first admissible Albanian case, *Qufaj Co. sh.P.K. v. Albania* (dec.), no. 54268/00, 2 October 2003, to be reported in ECHR 2003-XI. With regard to Russia, the problem of non-execution was first addressed in *Burdov v. Russia*, no. 59498/00, ECHR 2002-III, and many cases raising the same issue are pending before the Court. A similar group of cases relating to Ukraine is also pending but as yet no pilot judgment has been delivered.
29. See *Sylvester v. Austria*, nos. 36812/97 and 40104/98, judgment of 24 April 2003; *Iglesias Gil and A.U.I. v. Spain*, no. 56673/00, judgment of 29 April 2003, to be reported in ECHR 2003-V; *Maire v. Portugal*, no. 48206/99, judgment of 26 June 2003, to be reported in ECHR 2003-VII; and *Hansen v. Turkey*, no. 36141/97, judgment of 23 September 2003. A violation of Article 8 was found in each of these judgments. See also *Ignaccolo-Zenide v. Romania*, no. 31679/96, ECHR 2000-I. By way of contrast, similar complaints were declared inadmissible in several cases: *Paradis and Others v. Germany* (dec.), no. 4783/03, 15 May 2003; *R.F. v. Italy* (dec.), no. 42933/98, 26 June 2003; *Guichard v. France* (dec.), no. 56838/00, 2 September 2003, to be reported in ECHR 2003-X; and *Kálló v. Hungary* (dec.), no. 70558/01, 14 December 2003.
30. *Öcalan v. Turkey*, no. 46221/99, judgment of 12 March 2003. The PKK (Workers Party of Kurdistan) is a proscribed organisation in Turkey and several other countries.
31. *Poltoratskiy v. Ukraine*, no. 38812/97, to be reported in ECHR 2003-V, *Kuznetsov v. Ukraine*, no. 39042/97, *Nazarenko v. Ukraine*, no. 39483/98, *Dankevich v. Ukraine*, no. 40679/98, *Aliiev v. Ukraine*, no. 41220/98, and *Khokhlich v. Ukraine*, no. 41707/98, judgments of 29 April 2003.
32. *Van der Ven v. the Netherlands*, no. 50901/99, to be reported in ECHR 2003-II, and *Lorsé and Others v. the Netherlands*, no. 52750/99, judgments of 4 February 2003.
33. See also *Kmetty v. Hungary*, no. 57967/00, judgment of 16 December 2003.
34. *Finucane v. the United Kingdom*, no. 29178/95, judgment of 1 July 2003, to be reported in ECHR 2003-VIII.
35. *Tepe v. Turkey*, no. 27244/95, judgment of 9 May 2003.
36. *Aktaş v. Turkey*, no. 24351/94, judgment of 24 April 2003, to be reported in ECHR 2003-V (extracts).
37. See *Hulki Güneş v. Turkey*, no. 28490/95, judgment of 19 June 2003, to be reported in ECHR 2003-VII (extracts); *Esen v. Turkey*, no. 29484/95, and *Yaz v. Turkey*, no. 29485/95, judgments of 22 July 2003; and *Elci and Others v. Turkey*, nos. 23145/93 and 25091/94, judgment of 13 November 2003.
38. See *Henaf v. France*, no. 65436/01, judgment of 27 November 2003, to be reported in ECHR 2003-XI.
39. See *Yankov v. Bulgaria*, cited above, note 21.
40. See *McGlinchey and Others v. the United Kingdom*, no. 50390/99, judgment of 29 April 2003, to be reported in ECHR 2003-V.
41. Cited above, note 21.
42. The applicant's complaint that while hospitalised he had been obliged to share a bed with a person infected with HIV was found to be entirely unsubstantiated. See *Khokhlich v. Ukraine*, cited above, note 31, in which the applicant claimed that he had contracted tuberculosis from his cell-mate.
43. No. 39272/98, judgment of 4 December 2003, to be reported in ECHR 2003-XII.
44. See *X and Y v. the Netherlands*, judgment of 26 March 1985, Series A no. 91, p. 11, § 23.
45. Nos. 46827/99 and 46951/99, judgment of 6 February 2003.
46. See *Cruz Varas and Others v. Sweden*, judgment of 20 March 1991, Series A no. 201.
47. No. 36378/02, decision of 16 September 2003.

48. See note 30 above. The Court found that there had been no violation of Article 5 § 1. See also *Stocké v. Germany*, judgment of 19 March 1991, Series A no. 199.
49. See *Vasileva v. Denmark*, no. 52792/99, judgment of 25 September 2003. The Court found that there had been a violation of Article 5 § 1: although the initial detention of the applicant was justified under Article 5 § 1 (b), the authorities, by keeping her in detention for thirteen and a half hours without making sufficient efforts to establish her identity had failed to strike a fair balance. See the inadmissible case of *Novotka v. Slovakia* (dec.), no. 47244/99, 4 November 2003.
50. See *Shamsa v. Poland*, nos. 45355/99 and 45357/99, judgment of 27 November 2003. The Court found that there had been a violation of Article 5 § 1. See also *Amuur v. France*, judgment of 25 June 1996, *Reports* 1996-III.
51. *Kepenerov v. Bulgaria*, no. 39269/98, judgment of 31 July 2003, and *Worwa v. Poland*, no. 26624/95, judgment of 27 November 2003, to be reported in 2003-XI (extracts). In *Kepenerov*, the Court found that there had been a violation of Article 5 § 1. In *Worwa*, which concerned the ordering of repeated examinations at short intervals in the context of separate legal proceedings, the Court found that there had been no violation of Article 5 § 1 but considered that the way in which these successive examinations had been carried out constituted a violation of the applicant's right to respect for her private life.
52. See *Tkáčik v. Slovakia*, no. 42472/98, judgment of 14 October 2003, and *Rakevich v. Russia*, no. 58973/00, judgment of 28 October 2003.
53. No. 44672/98, judgment of 12 June 2003.
54. No. 50272/99, judgment of 20 February 2003, to be reported in ECHR 2003-IV.
55. This lacuna in the law led to the passing of the Mental Health (Public Safety and Appeals) Scotland Act 1999, which provided for the refusal of an appeal where the patient was suffering from a mental disorder which required him to be detained in hospital, *whether for medical treatment or not*, in order to protect the public from serious harm.
56. See *Grava v. Italy*, no. 43522/98, judgment of 10 July 2003; *Pezone v. Italy*, no. 42098/98, judgment of 18 December 2003; and *Pantea v. Romania*, cited above, note 21.
57. See *Nikolov v. Bulgaria*, no. 38884/97, cited above, note 21.
58. No. 38223/97, judgment of 28 October 2003.
59. In this connection, it is worth noting that the Court found in *Shishkov v. Bulgaria*, cited above, note 21, that pre-trial detention was unjustified even when the length was not in itself excessive: "Article 5 § 3 of the Convention, however, cannot be seen as authorising pre-trial detention unconditionally provided that it lasts no longer than a certain minimum period. Justification for any period of detention, no matter how short, must be convincingly demonstrated by the authorities."
60. See note 28 above.
61. See notes 14 and 15 above.
62. No. 52854/99, judgment of 24 July 2003, to be reported in ECHR 2003-IX.
63. See *Nikitin v. Russia* (dec.), no. 50178/99, 13 November 2003.
64. See, for example, *Credit and Industrial Bank v. the Czech Republic*, no. 29010/95, judgment of 21 October 2003, to be reported in ECHR 2003-XI (extracts), and *Stockholms Försäkrings- och Skadeståndsjuridik AB v. Sweden*, no. 38993/97, judgment of 16 September 2003.
65. See *A. v. the United Kingdom*, no. 35373/97, ECHR 2002-X.
66. See *Cordova v. Italy (no. 1)*, no. 40877/98, and *Cordova v. Italy (no. 2)*, no. 45649/99, judgments of 30 January 2003, to be reported in ECHR 2003-I (the second one as extracts). See also the inadmissible case of *Zollmann v. the United Kingdom* (dec.), no. 62902/00, 27 November 2003, to be reported in ECHR 2003-XII.
67. See *Ernst and Others v. Belgium*, no. 33400/96, judgment of 15 July 2003.
68. See *Kutić v. Croatia*, no. 48778/99, ECHR 2002-II.
69. *Kastelic v. Croatia*, no. 60533/00, judgment of 10 July 2003.
70. *Multiplex v. Croatia*, no. 58112/00, judgment of 10 July 2003, and *Acimović v. Croatia*, no. 61237/00, judgment of 9 October 2003, to be reported in ECHR 2003-XI.
71. See also *Forrer-Niedenthal v. Germany*, no. 47316/99, judgment of 20 February 2003; *Satka and Others v. Greece*, no. 55828/00, judgment of 27 March 2003; and *Crişan v. Romania*, no. 42930/98, judgment of 27 May 2003. see also the admissible cases of *Gorraiz Lizarraga and Others v. Spain* (dec.), no. 62543/00, 14 January 2003, and *Ogis-Institut Stanislas and Others v. France* (dec.), nos. 42219/98 and 54563/00, 3 April 2003.
72. [GC], nos. 39343/98, 39651/98, 43147/98 and 46664/99, judgment of 6 May 2003, to be reported in ECHR 2003-VI.
73. Judgment of 28 September 1995, Series A no. 326.

74. See also *G.L. and S.L. v. France* (dec.), no. 58811/00, 6 March 2003, to be reported in ECHR 2003-III (extracts), concerning the French *Conseil d'Etat*.
75. No. 62435/00, judgment of 17 June 2003, to be reported in ECHR 2003-VII.
76. No. 39731/98, judgment of 10 April 2003, to be reported in ECHR 2003-IV.
77. In this connection, see also the admissible case of *Pabla Ky v. Finland* (dec.), no. 47221/99, 16 September 2003, which concerns the impartiality of a judge who is also a member of Parliament.
78. [GC], nos. 39665/98 and 40086/98, judgment of 9 October 2003, to be reported in ECHR 2003-X.
79. Judgment of 8 June 1976, Series A no. 22.
80. See also *Ganci v. Italy*, no. 41576/98, judgment of 30 October 2003, to be reported in ECHR 2003-XI.
81. See, in particular, *Findlay v. the United Kingdom*, judgment of 25 February 1997, *Reports* 1997-I; *Coyne v. the United Kingdom*, judgment of 24 September 1997, *Reports* 1997-V; and *Hood v. the United Kingdom* [GC], no. 27267/95, ECHR 1999-I.
82. No. 38784/97, ECHR 2002-I.
83. [GC], no. 48843/99, judgment of 16 December 2003, to be reported in ECHR 2003-XII.
84. *Grievés v. the United Kingdom* [GC], no. 57067/00, judgment of 16 December 2003, to be reported in ECHR 2003-XII (extracts).
85. *O. v. Norway*, no. 29327/95, to be reported in ECHR 2003-II, and *Hammern v. Norway*, no. 30287/96, judgments of 11 February 2003.
86. See, in particular, *Sekanina v. Austria*, judgment of 25 August 1993, Series A no. 266-A. See also *Adolf v. Austria*, judgment of 26 March 1982, Series A no. 49; *Minelli v. Switzerland*, judgment of 25 March 1983, Series A no. 62; and *Lutz v. Germany*, *Englert v. Germany* and *Nölkenbockhoff v. Germany*, judgments of 25 August 1987, Series A no. 123.
87. *Baars v. the Netherlands*, no. 44320/98, judgment of 28 October 2003.
88. No. 34964/97, judgment of 11 February 2003, to be reported in ECHR 2003-II.
89. This approach was subsequently applied in *Lundkvist v. Sweden* (dec.), no. 48518/99, 13 November 2003, to be reported in ECHR 2003-XI. See also *Reeves v. Norway*, no. 4248/02, which has been communicated for observations.
90. *Y. v. Norway*, no. 56568/00, judgment of 11 February 2003, to be reported in ECHR 2003-II (extracts).
91. See, in particular, *Allenet de Ribemont v. France*, judgment of 10 February 1995, Series A no. 308.
92. *Öcalan v. Turkey*, cited above, note 30, which involved the denial of access to a lawyer during the initial period of custody, supervision of subsequent consultations and restrictions on visits by lawyers.
93. *Pantea v. Romania*, cited above, note 21.
94. [GC], no. 48898/99, judgment of 6 May 2003, to be reported in ECHR 2003-V.
95. See *Georgios Papageorgiou v. Greece*, no. 59506/00, judgment of 9 May 2003, to be reported in ECHR 2003-VI (extracts).
96. Cited above, note 43.
97. Cited above, note 51.
98. See *Y.F. v. Turkey*, no. 24209/94, judgment of 22 July 2003, to be reported in ECHR 2003-IX.
99. No. 30943/96 and no. 31871/96, judgments of 11 October 2001.
100. No. 35968/97, judgment of 12 June 2003, to be reported in ECHR 2003-VII.
101. No. 40016/98, judgment of 24 July 2003, to be reported in ECHR 2003-IX.
102. The Court considered that Article 14 was applicable because the complaint related to the applicant's "home"; it did not find it necessary to examine the scope of the notions of "private life" and "family life".
103. Questions relating to homosexuals were also examined in two other Austrian cases, *L. and V. v. Austria*, nos. 39392/98 and 39829/98, and *S.L. v. Austria*, no. 45330/99, judgments of 9 January 2003, to be reported in ECHR 2003-I (the second one as extracts), which concerned the prohibition on homosexual acts between adults and adolescents. The Court found that there had been a violation of Article 14 in conjunction with Article 8. See also *B.B. v. the United Kingdom*, no. 53760/00, judgment of 10 February 2004.
104. No. 40892/98, judgment of 30 September 2003, to be reported in ECHR 2003-X.
105. His application for French nationality had been refused because he was already an adult by the date of application.
106. [GC], no. 42326/98, judgment of 13 February 2003, to be reported in ECHR 2003-III.
107. See *Gaskin v. the United Kingdom*, judgment of 7 July 1989, Series A no. 160, and *M.G. v. the United Kingdom*, no. 39393/98, judgment of 24 September 2002.
108. [GC], no. 36022/97, judgment of 8 July 2003, to be reported in ECHR 2003-VIII.
109. See also the more recent inadmissible case of *Ashworth and Others v. the United Kingdom* (dec.), no. 39561/98, 20 January 2004, which concerned a small aerodrome.
110. Cited above, note 28.

111. See *Hewitson v. the United Kingdom*, no. 50015/99, judgment of 27 May 2003; *Chalkley v. the United Kingdom*, no. 63831/00, judgment of 12 June 2003; and *Lewis v. the United Kingdom*, no. 1303/02, judgment of 25 November 2003. See also *Prado Bugallo v. Spain*, no. 58496/00, judgment of 18 February 2003, and *M.M. v. the Netherlands*, no. 39339/98, judgment of 8 April 2003.
112. No. 35394/97, ECHR 2000-V.
113. *Perry v. the United Kingdom*, no. 63737/00, judgment of 17 July 2003, to be reported in ECHR 2003-IX (extracts). See *Allan v. the United Kingdom*, no. 48539/99, ECHR 2002-IX.
114. *Peck v. the United Kingdom*, no. 44647/98, judgment of 28 January 2003, to be reported in ECHR 2003-I.
115. See also *Martin v. the United Kingdom* (friendly settlement), no. 63608/00, judgment of 19 February 2004.
116. No. 59320/00, decision of 8 July 2003.
117. The issue of the publication of photographs in the press was also raised in *Pascalidou and Others v. Sweden* (striking out) (dec.), no. 53970/00, 11 February 2003.
118. [GC], no. 25735/94, ECHR 2000-VIII.
119. See note 29 above, and also the more recent case of *Kosmopolou v. Greece*, no. 60457/00, judgment of 5 February 2004.
120. Cited above, note 9.
121. No. 52763/99, judgment of 9 May 2003.
122. See *K. and T. v. Finland* [GC], no. 25702/94, ECHR 2001-VII; *P., C. and S. v. the United Kingdom*, no. 56547/00, ECHR 2002-VI; and *Venema v. the Netherlands*, no. 35731/97, ECHR 2002-X.
123. *Yilmaz v. Germany*, no. 52853/99, judgment of 17 April 2003, and *Mokrani v. France*, no. 52206/99, judgment of 15 July 2003.
124. *Benhebba v. France*, no. 53441/99, judgment of 10 July 2003.
125. [GC], no. 48321/99, judgment of 9 October 2003, to be reported in ECHR 2003-X.
126. Other examples are *Loizidou v. Turkey*, cited above, note 20, and the series of inter-State applications brought by Cyprus against Turkey, the most recent of which was *Cyprus v. Turkey* [GC], no. 25781/94, ECHR 2001-IV; *Ilaşcu and Others v. Moldova and Russia* (dec.), no. 48787/99, 4 July 2001, concerning the responsibility of the respondent Governments for events in Transnistria; *Assanidze v. Georgia* (dec.), no. 71503/01, 12 November 2002, concerning the refusal of the authorities of the Autonomous Republic of Abkhazia to implement a judgment of the Georgian Supreme Court; *Shamayev and Others v. Georgia and Russia* (dec.), no. 36378/02, 16 September 2003, concerning the extradition of Chechens from Georgia to Russia.
127. See *Slivenko v. Latvia* (dec.) [GC], no. 48321/99, ECHR 2002-II. See also *Kolosovskiy v. Latvia* (dec.), no. 50183/99, 29 January 2004.
128. No. 36757/97, judgment of 6 February 2003.
129. No. 53470/99, judgment of 10 April 2003, to be reported in ECHR 2003-IV.
130. See *Mehemi v. France* (no. 1), judgment of 26 September 1997, *Reports* 1997-VI.
131. See, in particular, *Silver and Others v. the United Kingdom*, judgment of 25 March 1983, Series A no. 61; *Schönenberger and Durmaz v. Switzerland*, judgment of 20 June 1988, Series A no. 137; *Pfeifer and Plankl v. Austria*, judgment of 25 February 1992, Series A no. 227; *Calogero Diana v. Italy* and *Domenichini v. Italy*, judgments of 15 November 1996, *Reports* 1996-V; *Petra v. Romania*, judgment of 23 September 1998, *Reports* 1998-VII; *Demirtepe v. France*, no. 34821/97, ECHR 1999-IX; *Niedbala v. Poland*, no. 27915/95, judgment of 4 July 2000; *Rehbock v. Slovenia*, no. 29462/95, ECHR 2000-XII; *Peers v. Greece*, no. 28524/95, ECHR 2001-III; *Valašinas v. Lithuania*, no. 44558/98, ECHR 2001-VIII; *A.B. v. the Netherlands*, no. 37328/97, judgment of 29 January 2002; and *Lavents v. Latvia*, no. 58442/00, judgment of 28 November 2002.
132. See note 31 above.
133. One case raised the question of denial of conjugal visits, while in two others refusal to allow a priest to visit the applicants was at issue. The Court found no violation with regard to the first matter but concluded that there had been a violation of Article 9 with regard to the second. These were the only judgments in which a substantive examination of complaints under Article 9 took place.
134. See *Campbell v. the United Kingdom*, judgment of 25 March 1992, Series A no. 233.
135. No. 38565/97, judgment of 3 June 2003.
136. *Luordo v. Italy* and *Bottaro v. Italy*, cited above, note 8.
137. Cited above, note 94.
138. No. 35640/97, judgment of 11 March 2003, to be reported in ECHR 2003-IV.
139. No. 33348/96, judgment of 10 June 2003.
140. No. 49017/99, judgment of 19 June 2003.
141. No. 43425/98, judgment of 27 May 2003.

142. Cited above, note 21.
143. No. 39657/98, judgment of 28 October 2003, to be reported in ECHR 2003-XI.
144. No. 39394/98, judgment of 13 November 2003, to be reported in ECHR 2003-XI.
145. No. 65831/01, decision of 24 June 2003, to be reported in ECHR 2003-IX (extracts).
146. Article 17 provides: “Nothing in [the] Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.”
147. See *Ernst and Others v. Belgium*, cited above, note 67. In this case, the searches and seizure of documents were also found to be in violation of Article 8.
148. See *Roemen and Schmit v. Luxembourg*, no. 51772/99, judgment of 25 February 2003, to be reported in ECHR 2003-IV. In this case, the search of the journalist’s home and workplace was examined under Article 10 alone, whereas the search of the office of the other applicant, a lawyer, was examined under Article 8 alone. On disclosure of journalists’ sources, see also *Goodwin v. the United Kingdom*, judgment of 27 March 1996, *Reports* 1996-II.
149. No. 44306/98, judgment of 6 May 2003, to be reported in ECHR 2003-VI.
150. No. 64927/01, judgment of 16 December 2003, to be reported in ECHR 2003-XII. See *Hoffmann v. Austria*, judgment of 23 June 1993, Series A no. 255-C.
151. The Court concluded that no separate issue arose under Article 9, either alone or taken in conjunction with Article 14.
152. No. 44179/98, judgment of 10 July 2003, to be reported in ECHR 2003-IX (extracts).
153. No. 35071/97, judgment of 4 December 2003, to be reported in ECHR 2003-XI.
154. See, as the most recent example, *Gökçeli v. Turkey*, nos. 27215/95 and 36194/97, judgment of 4 March 2003.
155. See the decision concerning another application lodged by the same applicant, *Gündüz v. Turkey* (dec.), no. 59745/00, 13 November 2003, to be reported in ECHR 2003-XI (extracts). The applicant had been convicted of public incitement to commit a crime. The application was declared inadmissible. See also the admissible case of *Arslan v. Turkey* (dec.), no. 42571/98, 13 November 2003.
156. [GC], nos. 41340/98, 41342/98, 41343/98 and 41344/98, judgment of 13 February 2003, to be reported in ECHR 2003-II.
157. See *United Communist Party of Turkey and Others v. Turkey*, judgment of 30 January 1998, *Reports* 1998-I; *Socialist Party and Others v. Turkey*, judgment of 25 May 1998, *Reports* 1998-III; *Freedom and Democracy Party (ÖZDEP) v. Turkey* [GC], no. 23885/94, ECHR 1999-VIII; *Yazar and Others v. Turkey*, nos. 22723/93, 22724/93 and 22725/93, ECHR 2002-II; *Dicle for the Democracy Party (DEP) v. Turkey*, no. 25141/94, judgment of 10 December 2002; and, most recently, *Socialist Party of Turkey (STP) and Others v. Turkey*, no. 26482/95, judgment of 12 November 2003.
158. The conflict between religious beliefs and a secular society also arises in two admissible applications concerning the wearing of headscarves by Muslim women: *Zeynep Tekin v. Turkey* (dec.), no. 41556/98, and *Leyla Şahin v. Turkey* (dec.), no. 44774/98, both of 2 July 2002.
159. No. 20652/92, judgment of 20 February 2003, to be reported in ECHR 2003-III.
160. See *Luordo v. Italy*, cited above, note 8.
161. No. 66485/01, judgment of 13 November 2003.
162. No. 53360/99, judgment of 24 April 2003 (stiking out).
163. Nos. 46133/99 and 48183/99, judgment of 24 July 2003, to be reported in ECHR 2003-IX (extracts).
164. *Hirst v. the United Kingdom (no. 2)* (dec.), no. 74025/01, 8 July 2003. A hearing on the merits was held on 16 December 2003.
165. *Vito Sante Santoro v. Italy* (dec.), no. 36681/97, 16 January 2003, to be reported in ECHR 2003-I (extracts).
166. *Ždanoka v. Latvia* (dec.), no. 58278/00, 6 March 2003.
167. See *Zwierzyński v. Poland*, no. 34049/96, ECHR 2001-VI, and also *Broniowski v. Poland* (dec.) [GC], no. 31443/96, ECHR 2002-X.
168. See *Malhous v. the Czech Republic* (dec.) [GC], no. 33071/96, ECHR 2000-XII; *Pincová and Pinc v. the Czech Republic*, no. 36548/97, ECHR 2002-VIII; and *Zvolský and Zvolská v. the Czech Republic*, no. 46129/99, ECHR 2002-IX. See also the inadmissible case of *Harrach v. the Czech Republic* (dec.), no. 77532/01, 27 May 2003.
169. See *Wittek v. Germany*, no. 37290/97, ECHR 2002-X.
170. See *Jantner v. Slovakia*, no. 39050/97, judgment of 4 March 2003.
171. See *Jasiūnienė v. Lithuania*, cited above, note 28.
172. Cited above, note 71.
173. See *Jahn and Others v. Germany*, nos. 46720/99, 72203/01 and 72552/01, judgment of 22 January 2004.

174. See *Timofeyev v. Russia* and *Karahalios v. Greece*, cited above, note 28, both of which concerned delays in payment of sums awarded by courts, and also *Frascino v. Italy*, no. 35227/97, judgment of 11 December 2003, which concerned the failure of the authorities to comply with a court order to grant a building permit.
175. See *Buffalo Srl in liquidation v. Italy*, no. 38746/97, judgment of 3 July 2003.
176. See also *Almeida Garrett, Mascarenhas Falcão and Others v. Portugal*, nos. 29813/96 and 30229/96, ECHR 2000-I.
177. See *The Holy Monasteries v. Greece*, judgment of 9 December 1994, Series A no. 301-A.
178. See, for example, *Yılmaz Yıldız Turistik Tesisleri A.Ş. v. Turkey*, no. 30502/96, judgment of 24 April 2003. See also the earlier cases of *Platakou v. Greece*, no. 38460/97, ECHR 2001-I; *Lallement v. France*, no. 46044/99, judgment of 11 April 2002; and also *Azas v. Greece*, no. 50824/99, judgment of 19 September 2002. See also *Guerrera and Fusco v. Italy*, cited above, note 4.
179. *Karagiannis and Others v. Greece*, no. 51354/99, judgment of 16 January 2003. See, in this connection, *Papamichalopoulos and Others v. Greece*, judgment of 24 June 1993, Series A no. 260-B, which related to the same facts. See also *Malama v. Greece*, no. 43622/98, ECHR 2001-II.
180. See *Nastou v. Greece*, no. 51356/99, judgment of 16 January 2003. See also *Tsirikakis v. Greece*, no. 46355/99, judgment of 17 January 2002.
181. No. 46372/99, judgment of 10 April 2003, to be reported in ECHR 2003-IV.
182. See *Lallement v. France* (just satisfaction), no. 46044/99, judgment of 12 June 2003. See also note 174 above.
183. See *Katsaros v. Greece* (just satisfaction), no. 51473/99, judgment of 13 November 2003. See also *Katsaros v. Greece*, no. 51473/99, judgment of 6 June 2002.
184. See *Belvedere Alberghiera Srl v. Italy* (just satisfaction), no. 31524/96, judgment of 30 October 2003, and *Carbonara and Ventura v. Italy* (just satisfaction), no. 24638/94, judgment of 11 December 2003. In the latter case, there was also a substantial award of EUR 200,000 in respect of non-pecuniary damage.
185. No. 48161/99, judgment of 27 May 2003 (just satisfaction).
186. The other notable award in respect of pecuniary damage – EUR 500,000 – was made in *Sovtransavto Holding v. Ukraine* (just satisfaction), no. 48553/99, judgment of 2 October 2003.
187. *Efstathiou and Michailidis & Cie Motel Amerika v. Greece*, no. 55794/00, to be reported in ECHR 2003-IX, *Konstantopoulos AE and Others v. Greece*, no. 58634/00, *Interoliva ABEE v. Greece*, no. 58642/00, judgments of 10 July 2003, and *Biozokat AE v. Greece*, no. 61582/00, judgment of 9 October 2003.
188. No. 35014/97, decision of 16 September 2003.
189. See *Mellacher and Others v. Austria*, judgment of 19 December 1999, Series A no. 169.
190. No. 38993/97, judgment of 16 September 2003.
191. No. 35179/97, judgment of 24 June 2003, to be reported in ECHR 2003-VII.
192. No. 44277/98, judgment of 24 June 2003.
193. No. 44912/98, judgment of 7 January 2003.
194. [GC], no. 26307/95, judgment of 6 May 2003, to be reported in ECHR 2003-VI.
195. Cited above, note 45. See also *Olaechea Cahuas v. Spain*, no. 24668/03, which has been communicated to the Government for observations.
196. In *Tepe v. Turkey*, cited above, note 35, there had been delays and omissions by the Government in responding to requests for documents, information and witnesses, while in the case of *Aktaş v. Turkey*, cited above, note 36, a number of witnesses had refused to give evidence without certain security measures being put in place. The Court found in both cases that there had been a failure on the part of the Government to fulfil their obligations under Article 38 of the Convention.
197. Cited above, note 101.
198. See *Fischer v. Austria* (dec.), no. 27569/02, 6 May 2003, to be reported in ECHR 2003-VI, and *Lyons and Others v. the United Kingdom* (dec.), no. 15227/03, 8 July 2003, to be reported in ECHR 2003-IX.

**X. SUBJECT MATTER  
OF JUDGMENTS DELIVERED BY THE COURT  
IN 2003**



**SUBJECT MATTER OF JUDGMENTS  
DELIVERED BY THE COURT IN 2003**

**A. Subject matter of selected judgments, by Convention Article**

**Article 2**

*Cases concerning the right to life*

Risk of implementation of the death penalty (*Öcalan v. Turkey*, no. 46221/99)

Death in custody and lack of effective investigation (*Aktaş v. Turkey*, no. 24351/94)

Killing by unknown perpetrators in 1993 and effectiveness of investigation (*Tepe v. Turkey*, no. 27244/95)

Effectiveness of investigation into a shooting allegedly carried out with the collusion of the security forces (*Finucane v. the United Kingdom*, no. 29178/95)

**Article 3**

*Cases concerning physical integrity*

Torture or ill-treatment in custody (*Aktaş v. Turkey*, no. 24351/94; *Hulki Güneş v. Turkey*, no. 28490/95; *Ayşe Tepe v. Turkey*, no. 29422/95; *Esen v. Turkey*, no. 29484/95; *Yaz v. Turkey*, no. 29485/95; *Elci and Others v. Turkey*, nos. 23145/93 and 25091/94)

Ill-treatment on arrest and in custody and effectiveness of investigation (*Kmetty v. Hungary*, no. 57967/00)

Conditions of arrest, transfer and detention (*Öcalan v. Turkey*, no. 46221/99)

Ill-treatment of prisoners and effectiveness of investigation (*Poltoratskiy v. Ukraine*, no. 38812/97; *Kuznetsov v. Ukraine*, no. 39042/97)

Ill-treatment by prison officers (*Aliev v. Ukraine*, no. 41220/98)

Rape of a detainee and conditions of detention (*Zeynep Avci v. Turkey*, no. 37021/97)

Conditions of detention of prisoners sentenced to death (*Poltoratskiy v. Ukraine*, no. 38812/97; *Kuznetsov v. Ukraine*, no. 39042/97; *Nazarenko v. Ukraine*, no. 39483/98; *Dankevich v. Ukraine*, no. 40679/98; *Aliev v. Ukraine*, no. 41220/98; *Khokhlich v. Ukraine*, no. 41707/98)

Detention regime in maximum-security prison, including regular strip searches (*Van der Ven v. the Netherlands*, no. 50901/99; *Lorsé and Others v. the Netherlands*, no. 52750/99)

Shackling of an elderly detainee to his hospital bed (*Henaf v. France*, no. 65436/01)

Shaving of a detainee's head (*Yankov v. Bulgaria*, no. 39084/97)

Assault on a detainee by cell-mates and lack of effective investigation (*Pantea v. Romania*, no. 33343/96)

Infection of a prisoner with tuberculosis (*Khokhlich v. Ukraine*, no. 41707/98)

Adequacy of medical care provided by prison authorities to a heroin addict suffering withdrawal symptoms (*McGlinchey and Others v. the United Kingdom*, no. 50390/99)

Imposition and risk of implementation of death penalty (*Öcalan v. Turkey*, no. 46221/99)

Adequacy of the criminal law and practice in providing protection against rape (*M.C. v. Bulgaria*, no. 39272/98)

Effect of detention in a maximum-security prison on a detainee's family (*Lorsé and Others v. the Netherlands*, no. 52750/99)

Extradition to Uzbekistan, where there is an alleged risk of ill-treatment (*Mamatkulov and Abdurasulovic v. Turkey*, nos. 46827/99 and 46951/99)

## Article 5

### *Cases concerning the right to liberty and security*

Lawfulness of arrest and detention of applicant by Turkish security forces in Kenya (*Öcalan v. Turkey*, no. 46221/99)

Detention after the date on which a convicted person was entitled to release by virtue of remission of sentence (*Grava v. Italy*, no. 43522/98)

Unlawful detention on account of an error in calculating the sentence (*Pezzone v. Italy*, no. 42098/98)

Detention of an elderly woman on account of her refusal to disclose her identity (*Vasileva v. Denmark*, no. 52792/99)

Unlawful detention and continued detention on remand after expiry of the detention order (*Pantea v. Romania*, no. 33343/96)

Delay in implementation of a release order (*Nikolov v. Bulgaria*, no. 38884/97)

Refusal of the Federal Court to order release of a detainee after quashing the detention order due to the absence of reasons (*Minjat v. Switzerland*, no. 38223/97)

Lawfulness of detention of a number of lawyers, allegedly on account of their having defended suspected terrorists (*Elci and Others v. Turkey*, nos. 23145/93 and 25091/94)

Lawfulness of detention for the purpose of psychiatric examination (*Kepernerov v. Bulgaria*, no. 39269/98; *Worwa v. Poland*, no. 26624/95)

Lawfulness of psychiatric detention (*Tkáčik v. Slovakia*, no. 42472/98; *Rakevich v. Russia*, no. 58973/00)

Lawfulness of psychiatric detention based on a diagnosis obtained by telephone and an eighteen-month-old medical report (*Herz v. Germany*, no. 44672/98)

Psychiatric detention on the basis of a mental disorder not amenable to treatment (*Hutchison Reid v. the United Kingdom*, no. 50272/99)

Lawfulness of continued detention in an airport transit zone following unsuccessful attempts to deport (*Shamsa v. Poland*, nos. 45355/99 and 45357/99)

Lawfulness and length of detention pending extradition (*Raf v. Spain*, no. 53652/00)

Lawfulness of detention with a view to deportation (*Slivenko v. Latvia*, no. 48321/99)

Lawfulness of detention and reasonableness of detention on remand (*Shishkov v. Bulgaria*, no. 38822/97; *Nikolov v. Bulgaria*, no. 38884/97; and also *Yankov v. Bulgaria*, no. 39084/97, with regard to the second aspect)

Role of investigators and prosecutors in ordering detention (*Shishkov v. Bulgaria*, no. 38822/97; *Nikolov v. Bulgaria*, no. 38884/97; *Yankov v. Bulgaria*, no. 39084/97) [see *Nikolova v. Bulgaria* [GC], no. 31195/96, ECHR 1999-II]

Ordering of detention on remand by a prosecutor (*Klamecki v. Poland (no. 2)*, no. 31583/96) [see *Niedbała v. Poland*, no. 27915/95, 4 July 2000]

Ordering of detention on remand by a prosecutor and failure to bring detainee promptly before a judge (*Pantea v. Romania*, no. 33343/96)

Failure to bring a detainee promptly before a judge in a region subject to a state of emergency (*Nuray Şen v. Turkey*, no. 41478/98)

Length of detention on remand – presumption of dangerous character of persons accused of certain serious crimes (*Pantano v. Italy*, no. 60851/00)

Length of detention on remand (*Klamecki v. Poland (no. 2)*, no. 31583/96; *Smirnova v. Russia*, nos. 46133/99 and 48183/99; *Hristov v. Bulgaria*, no. 35436/97; *Mihov v. Bulgaria*, no. 35519/97; *Al Akidi v. Bulgaria*, no. 35825/97; *Goral v. Poland*, no. 38654/97; *Matwiejczuk v. Poland*, no. 37641/97; *Imre v. Hungary*, no. 53129/99; *Yankov v. Bulgaria*, no. 39084/97)

Absence of any possibility for a detainee to attend or be represented at hearings on detention on remand (*Klamecki v. Poland (no. 2)*, no. 31583/96)

Denial of access to the file in connection with appeals against detention on remand (*Shishkov v. Bulgaria*, no. 38822/97; *Nikolov v. Bulgaria*, no. 38884/97)

Absence of review of the lawfulness of detention and failure to summon a lawyer for a hearing (*Shishkov v. Bulgaria*, no. 38822/97)

Absence of right for a psychiatric detainee to institute proceedings for review of the lawfulness of her detention (*Rakevich v. Russia*, no. 58973/00)

Absence of any possibility to obtain a review of the lawfulness of detention (*Öcalan v. Turkey*, no. 46221/99)

Absence of review of the lawfulness of continuing detention on the basis of a mandatory life sentence, after expiry of the tariff period (*Von Bülow v. the United Kingdom*, no. 75362/01; *Wynne v. the United Kingdom (no. 2)*, no. 67385/01) [see *Stafford v. the United Kingdom* [GC], no. 46295/99, ECHR 2002-IV]

Refusal of the courts to examine the lawfulness of detention after expiry of the detention order (*Herz v. Germany*, no. 44672/98)

Remittal by the Federal Court to a cantonal court of the question of the lawfulness of detention after quashing the detention order (*Minjat v. Switzerland*, no. 38223/97)

Scope of court review of the lawfulness of detention and non-disclosure of the prosecutor's submissions (*Hristov v. Bulgaria*, no. 35436/97; *Mihov v. Bulgaria*, no. 35519/97; and also *Yankov v. Bulgaria*, no. 39084/97, with regard to the first aspect)

Burden of proof on a detainee to show the absence of any mental disorder requiring continued detention (*Hutchison Reid v. the United Kingdom*, no. 50272/99)

Length of time taken to decide on requests for release from detention on remand (*Nikolov v. Bulgaria*, no. 38884/97; *Pantea v. Romania*, no. 33343/96)

Absence of any possibility of speedy review of the lawfulness of detention with a view to extradition (*Kadem v. Malta*, no. 55263/00)

Speed of review of the lawfulness of continuing detention on the basis of a mental disorder (*Hutchison Reid v. the United Kingdom*, no. 50272/99)

Length of time taken to decide on the lawfulness of psychiatric detention (*Herz v. Germany*, no. 44672/98)

Absence of a right to compensation (*Pantea v. Romania*, no. 33343/96; *Wynne v. the United Kingdom (no. 2)*, no. 67385/01; *Yankov v. Bulgaria*, no. 39084/97; *Pezzone v. Italy*, no. 42098/98)

## Article 6

### *Cases concerning the right to a fair trial*

Restrictions on a bankrupt's right to institute court proceedings (*Luordo v. Italy*, no. 32190/96)

Access to a court to contest the placing of a bank under compulsory administration (*Credit and Industrial Bank v. the Czech Republic*, no. 29010/95)

Effectiveness of a detainee's access to a court to challenge special security measures (*Ganci v. Italy*, no. 41576/98)

Exclusion of court review of the lawfulness of the decisions of an administrative body (*Glod v. Romania*, no. 41134/98)

Absence of a court determination of liability to pay a receiver's fee (*Stockholms Försäkrings- och Skadeståndsjuridik AB v. Sweden*, no. 38993/97)

Non-enforcement of a court decision relating to compensation in respect of previously nationalised property (*Jasiūnienė v. Lithuania*, no. 41510/98)

Failure of the authorities to comply with a court judgment (*Kyrtatos v. Greece*, no. 41666/98) and prolonged non-enforcement of court decisions (*Ruianu v. Romania*, no. 34647/97; *Timofeyev v. Russia*, no. 58263/00; *Karahalios v. Greece*, no. 62503/00)

Supervisory review of a final and binding judgment (*Ryabykh v. Russia*, no. 52854/99)

Parliamentary immunity attaching to alleged defamation by a member of Parliament (*Cordova v. Italy (no. 1)*, no. 40877/98; *Cordova v. Italy (no. 2)*, no. 45649/99)

Refusal to institute criminal proceedings on the basis of a civil complaint, on the ground of the immunity enjoyed by judges (*Ernst and Others v. Belgium*, no. 33400/96)

Legislation staying all proceedings relating to claims for damages in respect of acts of members of the army or police during the war in Croatia (*Multiplex v. Croatia*, no. 58112/00; *Aćimović v. Croatia*, no. 61237/00) and to claims for damages in respect of terrorist acts (*Kastelic v. Croatia*, no. 60533/00) [see *Kutić v. Croatia*, no. 48778/99, ECHR 2002-II]

Adoption of legislation affecting the outcome of pending court proceedings (*Forrer-Niedenthal v. Germany*, no. 47316/99)

Adoption of successive decrees depriving court decisions of effect (*Satka and Others v. Greece*, no. 55828/00)

Adoption, during court proceedings, of a law excluding court review of the decisions of a particular administrative body (*Crişan v. Romania*, no. 42930/98)

Dismissal as out of time of an appeal lodged with the duty court within the time-limit (*Stone Court Shipping Company S.A. v. Spain*, no. 55524/00)

Effect on civil claims of the time-bar of a prosecution as a result of procedural delays (*Anagnostopoulos v. Greece*, no. 54589/00)

Dismissal of an appeal by the *Conseil d'Etat* on the basis of the binding opinion of the Minister for Foreign Affairs as to non-respect of a condition of reciprocity in relation to an international agreement (*Chevrol v. France*, no. 49636/99)

Arbitrariness of a court decision (*A.B. v. Slovakia*, no. 41784/98)

Failure of a court to give reasons for the refusal to admit evidence proposed by a party (*Suominen v. Finland*, no. 37801/97)

Lack of a fair hearing in proceedings concerning the consolidation of parcels of land owned by the same person (*Kienast v. Austria*, no. 23379/94)

Fairness of proceedings concerning reimbursement of the costs of gender reassignment surgery and hormone treatment (*Van Kück v. Germany*, no. 35968/97)

Non-disclosure of documents (*Ernst and Others v. Belgium*, no. 33400/96)

Non-disclosure to a party of documents submitted to the Supreme Administrative Court in proceedings relating to competition law (*Fortum Corporation v. Finland*, no. 32559/96)

Lack of equality of arms on account of the role of the Government Commissioner in proceedings relating to expropriation (*Yvon v. France*, no. 44962/98)

Non-disclosure to a party in civil proceedings of additional submissions made by the opposing party's lawyer, and omission of the court of appeal to communicate the entire case file to the appellants after their lawyer had stopped representing them (*Walston v. Norway*, no. 37372/97)

Refusal to appoint a lawyer to represent a disabled person and holding of a hearing in her absence (*A.B. v. Slovakia*, no. 41784/98)

Refusal of three successive lawyers to represent a legally aided applicant in an action for damages against another lawyer (*Bertuzzi v. France*, no. 36378/97)

Role of the *Raad van State* in applying legislation on which it had previously given an advisory opinion (*Kleyn and Others v. the Netherlands*, nos. 39343/98, 39651/98, 43147/98 and 46664/99)

Dismissal of an appeal on points of law on account of the appellant's failure to show he was in detention by virtue of the judgment appealed against, and absence of any opportunity to contest that ground (*Skondrianos v. Greece*, nos. 63000/00, 74291/01 and 74292/01)

Lack of impartiality of a judge on account of her husband's indebtedness to one of the parties (*Pétur Thór Sigurðsson v. Iceland*, no. 39731/98)

Lack of impartiality of a judge on account of his part-time employment as an associate professor by a university party to the proceedings (*Pescador Valero v. Spain*, no. 62435/00)

Conviction on appeal by the prosecution without hearing the accused in person (*Sigurþór Arnarsson v. Iceland*, no. 44671/98)

Length of time taken by the Secretary of State to fix the tariff period of a sentence (*Easterbrook v. the United Kingdom*, no. 48015/99)

Refusal of a court to refer a preliminary question to the Court of Arbitration (*Ernst and Others v. Belgium*, no. 33400/96)

Refusal to allow production of evidence requested by an accused (*Georgios Papageorgiou v. Greece*, no. 59506/00)

Refusal to admit evidence requested by the accused in a defamation case (*Perna v. Italy*, no. 48898/99)

Non-disclosure of material by the prosecution (*Dowsett v. the United Kingdom*, no. 39482/98) and non-disclosure by the prosecution, on grounds of public interest immunity, of material potentially relevant to defence of entrapment (*Edwards and Lewis v. the United Kingdom*, nos. 39647/98 and 40461/98)

Fairness of extradition proceedings (*Mamatkulov and Abdurasulovic v. Turkey*, nos. 46827/99 and 46951/99)

Refusal to allow convicted prisoners to be legally represented in prison disciplinary proceedings (*Ezeh and Connors v. the United Kingdom*, nos. 39665/98 and 40086/98)

Absence of public hearings and public delivery of decisions during a preliminary criminal investigation (*Ernst and Others v. Belgium*, no. 33400/96)

Independence and impartiality of courts martial (*Cooper v. the United Kingdom*, no. 48843/99; *Grieves v. the United Kingdom*, no. 57067/00)

Impartiality of judges in interlocutory proceedings (*Korellis v. Cyprus*, no. 54528/00)

Dismissal by a judge of an appeal against the refusal of legal aid by the Legal Aid Board, which he had presided (*Gutfreund v. France*, no. 45681/99)

Non-compliance with the rules on participation of lay judges in criminal trials (*Posokhov v. Russia*, no. 63486/00)

Seizure of a book as an interim measure pending criminal proceedings (*Gökçeli v. Turkey*, nos. 27215/95 and 36194/97)

Refusal of compensation following acquittal, on the ground of failure to show on the balance of probabilities that the accused had not committed the acts in question (*O. v. Norway*, no. 29327/95; *Hammern v. Norway*, no. 30287/96)

Award of compensation in civil proceedings against persons previously acquitted of criminal offences concerning the same facts (*Ringvold v. Norway*, no. 34964/97; *Y. v. Norway*, no. 56568/00)

Refusal of costs and compensation for detention on remand, following discontinuation of criminal proceedings, on the ground that the person would probably have been convicted (*Baars v. the Netherlands*, no. 44320/98)

Refusal to appoint a Finnish-speaker as court-appointed defence counsel (*Lagerblom v. Sweden*, no. 26891/95)

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

Denial of access to a lawyer during pre-trial questioning (*Pantea v. Romania*, no. 33343/96)

Use at trial of statements made by witnesses who did not attend in person (*Hulki Güneş v. Turkey*, no. 28490/95)

Absence of any opportunity for an accused, in proceedings to contest conviction *in absentia*, to question witnesses having given statements during the initial investigation who failed to appear (*Rachdad v. France*, no. 71846/01)

## **Article 7**

### *Cases concerning non-retroactivity of criminal offence and penalties*

Retroactive application of the criminal law (*Veeber v. Estonia (no. 2)*, no. 45771/99)

Lack of clarity of the law (*Gökçeli v. Turkey*, nos. 27215/95 and 36194/97)

Continued detention after the date on which a convicted person was entitled to release by virtue of remission of sentence (*Grava v. Italy*, no. 43522/98)

Failure of the courts to apply the reduction of sentence provided by law after finding diminished responsibility of the accused (*Gabbari Moreno v. Spain*, no. 68066/01)



## Article 8

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

Compulsory gynaecological examination of the applicant's wife while in detention (*Y.F. v. Turkey*, no. 24209/94)

Successive compulsory psychiatric examinations (*Worwa v. Poland*, no. 26624/95)

Adequacy of the criminal law and practice in providing protection against rape (*M.C. v. Bulgaria*, no. 39272/98)

Refusal to return an identity card on release from detention on remand (*Smirnova v. Russia*, nos. 46133/99 and 48183/99)

Inability of a person abandoned at birth to discover her mother's identity, on account of the latter's request for confidentiality (*Odièvre v. France*, no. 42326/98)

Refusal to order reimbursement by a private insurance company of the costs of gender reassignment surgery and hormone treatment (*Van Kück v. Germany*, no. 35968/97)

Deportation, in the context of the withdrawal of Russian troops, of a former military officer's wife and daughter, who had always lived in Latvia (*Slivenko v. Latvia*, no. 48321/99)

Covert filming of a suspect at a police station for identification purposes (*Perry v. the United Kingdom*, no. 63737/00)

Disclosure to the public of closed-circuit television images recorded in a public place (*Peck v. the United Kingdom*, no. 44647/98)

Adequacy of the legal basis for interception of telephone calls (*Prado Bugallo v. Spain*, no. 58496/00)

Recording of a telephone conversation by one party with the assistance of the police (*M.M. v. the Netherlands*, no. 39339/98)

Release into the public domain of transcripts of telephone calls intercepted in the context of criminal proceedings and reading out of the transcripts at trial (*Craxi v. Italy (no. 2)*, no. 25337/94)

Search of a lawyer's office (*Roemen and Schmit v. Luxembourg*, no. 51772/99)

Search of lawyers' homes and offices and seizure of documents (*Elci and Others v. Turkey* (nos. 23145/93 and 25091/94)

Search of journalists' homes and workplaces and seizure of documents (*Ernst and Others v. Belgium*, no. 33400/96)

Adverse effects of development on the environment (*Kyrtatos v. Greece*, no. 41666/98)

Noise nuisance from night flights (*Hatton and Others v. the United Kingdom*, no. 36022/97)

Refusal to allow a homosexual to succeed to his deceased cohabitant's tenancy rights (*Karner v. Austria*, no. 40016/98)

Denial of conjugal visits to a prisoner (*Aliev v. Ukraine*, no. 41220/98)

Effect of the length of divorce proceedings on the possibility of starting a new family (*Berlin v. Luxembourg*, no. 44978/98)

Refusal to grant fathers access to children born out of wedlock (*Sahin v. Germany*, no. 30943/96; *Sommerfeld v. Germany*, no. 31871/96)

Arrest allegedly carried out in the presence of a child then left unattended (*Worwa v. Poland*, no. 26624/95)

Taking of children into care, sufficiency of parent's involvement in the procedure and failure of the authorities to take proper steps to reunite parents and children (*K.A. v. Finland*, no. 27751/95)

Taking of children into care on an emergency basis, in an allegedly traumatic way and without giving the parents an opportunity to contest the decision, prolonged suspension of contact between the parents and the children, placement of the latter in separate foster homes, procedural delays in the care proceedings and absence of any appeal against an interim order (*Covezzi and Morselli v. Italy*, no. 52763/99)

Suspension of decision on a father's access to his child pending criminal proceedings concerning alleged sexual abuse, and adequacy of the measures taken to restore his right of access to the child following his acquittal (*Schaal v. Luxembourg*, no. 51773/99)

Adequacy of measures taken by the authorities to enforce court decisions ordering the return of children to their father (*Sylvester v. Austria*, nos. 36812/97 and 40104/98), to secure the return of children to their mother (*Iglesias Gil and A.U.I. v. Spain*, no. 56673/00; *Maire v. Portugal*, no. 48206/99) and to enforce a mother's right of access to her children (*Hansen v. Turkey*, no. 36141/97)

Prolonged prohibition on a detainee's contact with his wife, by visits or telephone (*Klamecki v. Poland (no. 2)*, no. 31583/96) and restrictions on a detainees' contacts with others, including restrictions on family visits (*Van der Ven v. the Netherlands*, no. 50901/99; *Lorsé and Others v. the Netherlands*, no. 52750/99)

Effect of detention on family life, alleged refusal to allow a wife to visit a detainee and alleged interference with correspondence (*Pantea v. Romania*, no. 33343/96)

Legal basis for restrictions on family visits to prisoners (*Poltoratskiy v. Ukraine*, no. 38812/97; *Kuznetsov v. Ukraine*, no. 39042/97; *Khokhlich v. Ukraine*, no. 41707/98)

Expulsion of second-generation immigrants (*Yilmaz v. Germany*, no. 52853/99; *Mokrani v. France*, no. 52206/99), expulsion of a foreign national after a lengthy period of residence (*Benhebbba v. France*, no. 53441/99) and deportation of a 16-year-old to Bosnia and Herzegovina, where he had no close relatives (*Jakupovic v. Austria*, no. 36757/97)

Delay in allowing the return of a foreign national following a finding by the Court that his expulsion violated Article 8, and refusal to lift an exclusion order (*Mehemi v. France (no. 2)*, no. 53470/99)

Legal basis for restrictions on prisoners' correspondence and/or receipt of parcels (*Poltoratskiy v. Ukraine*, no. 38812/97; *Kuznetsov v. Ukraine*, no. 39042/97; *Nazarenko v. Ukraine*, no. 39483/98; *Dankevich v. Ukraine*, no. 40679/98; *Aliev v. Ukraine*, no. 41220/98; *Khokhlich v. Ukraine*, no. 41707/98)

Control of and delays by the authorities in transmitting a prisoner's correspondence with the Convention institutions, and failure to provide writing materials (*Coteț v. Romania*, no. 38565/97)

Control of detainees' correspondence with the Convention institutions (*Klamecki v. Poland (no. 2)*, no. 31583/96; *Goral v. Poland*, no. 38654/97; *Mianowski v. Poland*, no. 42083/98; *Matwiejczuk v. Poland*, no. 37641/97)

Restrictions on bankrupts' receipt of correspondence (*Luordo v. Italy*, no. 32190/96; *Bottaro v. Italy*, no. 56298/00; *Peroni v. Italy*, no. 44521/98; *Bassani v. Italy*, no. 47778/99)

## **Article 9**

### *Case concerning freedom of religion and belief*

Absence of legal basis for restrictions on prisoners being visited by a priest (*Poltoratskiy v. Ukraine*, no. 38812/97; *Kuznetsov v. Ukraine*, no. 39042/97)

## **Article 10**

### *Cases concerning freedom of expression*

Abduction and murder of a journalist (*Tepe v. Turkey*, no. 27244/95)

Conviction for insulting a public prosecutor (*Lešník v. Slovakia*, no. 35640/97)

Conviction of a journalist for defamation of a prosecutor by alleging abuse of his position for political ends (*Perna v. Italy*, no. 48898/99)

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

Conviction for insulting judges in a letter (*Skalka v. Poland*, no. 43425/98)

Conviction of journalists for defamation (*Cumpăna and Mazăre v. Romania*, no. 33348/96)

Conviction of a journalist and award of damages against a magazine for defamation (*Scharsach and News Verlagsgesellschaft v. Austria*, no. 39394/98)

Search of journalists' homes and workplaces with a view to obtaining evidence in connection with a criminal investigation concerning third parties (*Ernst and Others v. Belgium*, no. 33400/96)

Search of a journalist's home and workplace with a view to discovering his sources (*Roemen and Schmit v. Luxembourg*, no. 51772/99)

Order by an appellate court, when quashing a first-instance decision, to pay a coercive indemnity (relating to inadequate publication of notice of the proceedings) for the period of the appeal proceedings (*Krone Verlag GmbH & Co KG v. Austria (no. 2)*, no. 40284/98)

Refusal of permission to solicit signatures for a petition in a privately owned shopping mall (*Appleby and Others v. the United Kingdom*, no. 44306/98)

Refusal to authorise a religious advertisement on radio (*Murphy v. Ireland*, no. 44179/98)

Prohibition by prefectoral decision on the distribution of certain newspapers in a region subject to a state of emergency (*Çetin and Others v. Turkey*, nos. 40153/98 and 40160/98)

Seizure of a book on the ground that it contained passages inciting to racial hatred (*C.S.Y. v. Turkey*, no. 27214/95)

Convictions for incitement to hostility and hatred (*Karkın v. Turkey*, no. 43928/98; *Gökçeli v. Turkey*, nos. 27215/95 and 36194/97), incitement to hostility and hatred based on religion (*Gündüz v. Turkey*, no. 35071/97) and making separatist propaganda (*Kızılyaprak v. Turkey*, no. 27528/95)

Disciplinary action against a lawyer on account of statements made in his professional capacity during court proceedings (*Steur v. the Netherlands*, no. 39657/98)

Disciplinary punishment of a detainee for insulting officials in the draft manuscript of a book (*Yankov v. Bulgaria*, no. 39084/97)

Injunction prohibiting an advertisement comparing the prices of two newspapers without referring to their different reporting styles on certain subjects (*Krone Verlag GmbH & Co KG v. Austria (no. 3)*, no. 39069/97)

## Article 11

### *Cases concerning freedom of association*

Refusal of permission to meet in a privately owned shopping mall to solicit signatures for a petition (*Appleby and Others v. the United Kingdom*, no. 44306/98)

Refusal of permission to cross from northern to southern Cyprus to attend bi-communal meetings (*Djavit An v. Turkey*, no. 20652/92)

Dissolution of political parties (*Refah Partisi (the Welfare Party) and Others v. Turkey*, nos. 41340/98, 41342/98, 41343/98 and 41344/98; *Socialist Party of Turkey (STP) and Others v. Turkey*, no. 26482/95)

## Article 13

### *Cases concerning the availability of effective remedies*

Lack of an effective remedy to enforce the demolition of an illegal building (*Dactylidi v. Greece*, no. 52903/99)

Lack of an effective remedy to challenge the obligation to pay a receiver's fee from a bankruptcy estate, despite the quashing of the declaration of bankruptcy (*Stockholms Försäkrings- och Skadeståndsjuridik AB v. Sweden*, no. 38993/97)

Hindrance of access to an effective remedy (*Khokhlich v. Ukraine*, no. 41707/98)

Scope of judicial review (*Hatton and Others v. the United Kingdom*, no. 36022/97)

Lack of an effective remedy in respect of restrictions on a bankrupt's correspondence (*Bottaro v. Italy*, no. 56298/00)

## Article 14

### *Cases concerning the prohibition of discrimination*

Different age of consent for homosexual acts between adults and adolescents (*L. and V. v. Austria*, nos. 39392/98 and 39829/98; *S.L. v. Austria*, no. 45330/99)

Discrimination against fathers of children born out of wedlock (*Sahin v. Germany*, no. 30943/96; *Sommerfeld v. Germany*, no. 31871/96)

Absence of a right of appeal in access proceedings brought by the father of a child born out of wedlock (*Sommerfeld v. Germany*, no. 31871/96)

Fixing of children's residence with their father after divorce, on the ground of the adverse effects of being brought up by their mother, a Jehovah's Witness (*Palau-Martinez v. France*, no. 64927/01)

Discrimination in the refusal of restitution of property on the ground that the claimant was not a permanent resident (*Jantner v. Slovakia*, no. 39050/97)

Discrimination in the right of access to a court on account of the immunity enjoyed by judges (*Ernst and Others v. Belgium*, no. 33400/96)

Refusal to grant a handicap allowance to a non-national (*Koua Poirrez v. France*, no. 40892/98)

## **Article 1 of Protocol No. 1**

### *Cases concerning the right of property*

Obligation to pay a receiver's fee from a bankruptcy estate, despite the quashing of the declaration of bankruptcy (*Stockholms Försäkrings- och Skadeståndsjuridik AB v. Sweden*, no. 38993/97)

Effect of the excessive length of bankruptcy proceedings (*Luordo v. Italy*, no. 32190/96; *Bottaro v. Italy*, no. 56298/00; *Peroni v. Italy*, no. 44521/98; *S.C., V.P., F.C., M.C. and E.C. v. Italy*, no. 52985/99; *Bassani v. Italy*, no. 47778/99)

Effect of supervisory review on a claim relating to revaluation of savings (*Ryabykh v. Russia*, no. 52854/99)

Compulsory reforestation of land on the basis of a ministerial decision of 1934, without re-examination (*Papastavrou and Others v. Greece*, no. 46372/99)

Delays by the authorities in payment of sums awarded by courts (*Timofeyev v. Russia*, no. 58263/00; *Karahalios v. Greece*, no. 62503/00)

Lengthy delays in payment of tax rebates (*Buffalo Srl in liquidation v. Italy*, no. 38746/97)

Demolition of a house built unlawfully on jointly owned land, while proceedings for division of ownership were pending (*Allard v. Sweden*, no. 35179/97)

Denial of an option to extend a lease from a local authority, on the ground that the granting of the option was *ultra vires* (*Stretch v. the United Kingdom*, no. 44277/98)

Nationalisation of property by the Soviet authorities, subsequent refusal to return the property to the heirs of the original owner and non-enforcement of a court decision relating to compensation (*Jasiūnienė v. Lithuania*, no. 41510/98)

Refusal to reimburse value-added tax payments made on the basis of legislation incompatible with a directive of the European Communities (*Cabinet Diot and S.A. Gras Savoye v. France*, nos. 49217/99 and 49218/99) [see *S.A. Dangeville v. France*, no. 36677/97, ECHR 2002-III]

Refusal to order the return of confiscated gold and silver coins on account of a failure to specify their whereabouts (*Kopecký v. Slovakia*, no. 44912/98)

Presumption of benefit accruing from expropriation (*Efstathiou and Michailidis & Cie Motel Amerika v. Greece*, no. 55794/00; *Konstantopoulos AE and Others v. Greece*, no. 58634/00; *Interoliva ABEE v. Greece*, no. 58642/00; *Biozokat AE v. Greece*, no. 61582/00)

Occupation of land in 1967 and adequacy of compensation in respect of subsequent expropriation in 1999 (*Karagiannis and Others v. Greece*, no. 51354/99)

Refusal to return property registered as “property of the people” in the German Democratic Republic, or to award compensation, on the basis of a new law validating the transfer (*Forrer-Niedenthal v. Germany*, no. 47316/99)

Refusal of restitution of property on the ground that the claimant was not a permanent resident (*Jantner v. Slovakia*, no. 39050/97)

Consolidation, for the purposes of registration, of parcels of land owned by the same person (*Kienast v. Austria*, no. 23379/94)

Absence of compensation in respect of expropriation in 1973 (*Nastou v. Greece*, no. 51356/99)

Adequacy of compensation for expropriation (*Guerrera and Fusco v. Italy*, no. 40601/98; *Yıltaş Yıldız Turistik Tesisleri A.Ş. v. Turkey*, no. 30502/96)

Failure of the authorities to comply with a court order to grant a building permit (*Fraschino v. Italy*, no. 35227/97)

Prolonged restrictions on the use of property as a result of successive decrees classifying the property for public use (*Satka and Others v. Greece*, no. 55828/00)

## **Article 2 of Protocol No. 4**

### *Cases concerning freedom of movement*

Restrictions on bankrupts’ freedom of movement (*Luordo v. Italy*, no. 32190/96; *Bottaro v. Italy*, no. 56298/00; *Peroni v. Italy*, no. 44521/98; *Bassani v. Italy*, no. 47778/99)

Confiscation of passport by a customs officer and failure to return it until two years later (*Napijalo v. Croatia*, no. 66485/01)

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

202 judgments concerned the length of civil or administrative proceedings in France (56 judgments, including 5 friendly settlements), Poland (56 judgments, including 20 friendly settlements and 2 striking-out judgments), Slovakia (22 judgments, including 8 friendly settlements), Hungary (14 judgments, including 2 friendly settlements and 1 striking-out judgment), Portugal (14 judgments, including 1 friendly settlement), Greece (8 judgments, including 2 friendly settlements), Belgium (7 judgments, including 1 friendly settlement), Germany (6 judgments, including 1 friendly settlement; in 4 of the judgments, the length of proceedings before the Federal Constitutional Court was at least partly at issue), Austria (5 judgments), the Czech Republic (4 judgments), Croatia and the United Kingdom (2 judgments each), Bulgaria, Cyprus, Estonia, Ireland, the Netherlands and San Marino (1 judgment each)

33 judgments concerned the length of criminal proceedings in: France (9 judgments, including 1 friendly settlement; one case also concerned the length of several sets of administrative proceedings), Greece (4 judgments), Spain (3 judgments, in 1 of which the principal issue concerned the length of proceedings before the Constitutional Court), Poland and Austria (3 judgments, including 1 friendly settlement, each), Turkey (2 judgments, including 1 friendly settlement), Bulgaria, Lithuania and Portugal (2 judgments each; the Portuguese ones related to the effect of the length of the proceedings on civil parties (*assistentes*)), Estonia, Luxembourg and the United Kingdom (1 judgment each)

123 judgments (including 29 friendly settlements and 3 striking-out judgments) concerned the impossibility for landlords in Italy to recover possession of their properties on account of the system of staggering police assistance to enforce evictions (see the leading judgment, *Immobiliare Saffi v. Italy* [GC], no. 22774/93, ECHR 1999-V)

48 judgments (including 2 friendly settlements) concerned the lack of independence and impartiality of national security courts in Turkey (see the leading judgments, *Incal v. Turkey*, of 9 June 1998, *Reports of Judgments and Decisions* 1998-IV, and *Çıraklar v. Turkey*, of 28 October 1998, *Reports* 1998-VII) (the same issue also arose in a further 10 judgments, in 3 of which the only other issue was the length of the criminal proceedings, while in a further case the only other issues were the length of the proceedings and the length of the detention on remand)

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

12 friendly-settlement judgments and one striking-out judgment concerned deaths in custody (3 cases), ill-treatment of detainees (7 cases) or disappearances (3 cases) in Turkey

7 friendly-settlement judgments concerned the failure to bring detainees promptly before a judge in Turkey and, in some of the cases, the absence of a right to review (this issue also arose in 2 other cases, in both of which a violation was found)



A further 2 friendly settlements concerned both ill-treatment of detainees and failure to bring them promptly before a judge in Turkey

9 judgments (including 1 friendly settlement) concerned various aspects of the right to an adversarial procedure and equality of arms in proceedings before the Court of Cassation in France, in particular the non-disclosure of the reporting judge's report (see *Reinhardt and Slimane-Kaïd v. France*, judgment of 31 March 1998, *Reports* 1998-II, and *Slimane-Kaïd v. France (no. 1)*, no. 29507/95, 25 January 2000), the position of unrepresented appellants (see *Meftah and Others v. France* [GC], nos. 32911/96, 35237/97 and 34595/97, ECHR 2002-VII) and the presence of the advocate-general during the court's deliberations (see *Kress v. France* [GC], no. 39594/98, ECHR 2001-VI, which concerned the procedure before the *Conseil d'Etat*)

4 judgments (including 3 friendly settlements) concerned the destruction of possessions and homes by the security forces in Turkey (1 friendly settlement also concerned the killing of the applicant's brother)

3 judgments (including 2 friendly settlements) concerned delays in payment of compensation for expropriations in Turkey (see the leading judgment, *Akkuş v. Turkey*, judgment of 9 July 1997, *Reports* 1997-IV)

3 judgments concerned the absence of a legal basis for the installation of listening devices on private property in the United Kingdom (see *Khan v. the United Kingdom*, no. 35394/97, ECHR 2000-V)

2 judgments concerned the denial of access to property in northern Cyprus (see *Loizidou v. Turkey* (merits), judgment of 18 December 1996, *Reports* 1996-VI)

2 judgments concerned the striking out of appeals on points of law in France on the ground of the appellants' failure to implement fully the judgment appealed against (see *Annoni di Gussola and Others v. France*, nos. 31819/96 and 33293/96, ECHR 2000-XI)

2 judgments concerned the lack of an oral hearing in administrative proceedings in Austria

2 judgments concerned the lack of an oral hearing in criminal appeals in San Marino (see *Tierce and Others v. San Marino*, nos. 24954/94, 24971/94 and 24972/94, ECHR 2000-IX)

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

1 friendly settlement concerned the dismissal of a homosexual from the armed forces in the United Kingdom following an investigation into his private life (see *Lustig-Prean and Beckett v. the United Kingdom*, nos. 31417/96 and 32377/96, 27 September 1999, and *Smith and Grady v. the United Kingdom*, nos. 33985/96 and 33986/96, ECHR 1999-VI)

### C. Friendly-settlement judgments

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

Shooting of a shepherd by a soldier in 1994 and effectiveness of investigation (*Güler and Others v. Turkey*, no. 46649/99)

Killing by unknown perpetrators in 1994 and effectiveness of investigation (*Macir v. Turkey*, no. 28516/95) and effectiveness of investigation into killings carried out by unknown perpetrators (*Kara and Others v. Turkey*, no. 37446/97)

Ill-treatment in police custody, failure to bring a detainee promptly before a judge and denial of access to a lawyer (*Ülkü Doğan and Others v. Turkey*, no. 32270/96)

Ill-treatment in police custody and lawfulness of detention (*Ramazan Sarı v. Turkey*, no. 41926/98)

Conditions of detention, length of detention on remand and monitoring of prisoner's correspondence with the European Commission of Human Rights (*P.K. v. Poland*, no. 37774/97)

Failure of social services to protect children from sexual abuse by foster parents (*Z.W. v. the United Kingdom*, no. 34962/97)

Length of detention and length of criminal proceedings (*Külter v. Turkey*, no. 42560/98)

Failure of authorities to comply with a court judgment (*Halatas v. Greece*, no. 64825/01)

Access to a court – dismissal of “repetitive” cassation appeal in criminal proceedings (*Siaurusevičius v. Lithuania*, no. 50551/99)

Inadequacy of reasons given by a court (*Cohen and Smadja v. France*, no. 53607/99)

Length of criminal proceedings, independence and impartiality of a martial-law court and lack of adequate time and facilities to prepare a defence (*Değirmenci and Others v. Turkey*, no. 31879/96)

Changes in the composition of a court – in particular the lay judges – during the course of criminal proceedings (*Eerola v. Finland*, no. 42059/98)

Lack of an oral hearing in criminal proceedings (*Ercolani v. San Marino*, no. 35430/97)

Refusal to allow lawyer to represent an accused who did not appear in person, purportedly on account of old age and senile dementia (*Hyvönen v. Finland*, no. 52529/99)

Eviction of Slovak nationals from their homes, length of civil proceedings and discrimination (*Červeňáková and Others v. the Czech Republic*, no. 40226/98)

Convictions for insulting the State (*Demirtaş v. Turkey (no. 1)*, no. 37048/97; *Erkanlı v. Turkey*, no. 37721/97)

Conviction for making separatist propaganda (*Caralan v. Turkey*, no. 27529/95) and for disseminating propaganda supporting a terrorist organisation (*Zarakolu v. Turkey*, no. 32455/96) (both these cases also raised the issue of the independence and impartiality of national security courts)

Seizure of books considered to contain separatist propaganda and incitement to hatred and hostility (*Zarakolu v. Turkey (no. 1)*, no. 37059/97; *Zarakolu v. Turkey (no. 2)*, no. 37061/97; *Zarakolu v. Turkey (no. 3)*, no. 37062/97)

#### **D. Judgments striking an application out of the list**

In addition to the striking-out judgments mentioned above, a case concerning the following issue was struck out of the list:

Prohibition on male descendants of the former King of Italy entering the country (*Victor-Emmanuel de Savoie v. Italy*, no. 53360/99)

#### **E. Other judgments**

8 judgments concerning just satisfaction (2 each against France, Greece and Italy, and 1 each against Cyprus and Ukraine) and 7 judgments concerning revision (5 against Italy and 2 against France) were delivered.

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\* \*

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

2. The length of court proceedings was at issue in a total of 263 judgments, in all but 39 of which it was the sole issue, while in a further 10 the only additional issue was the availability of an effective remedy under Article 13. Moreover, almost all of the 7 revision judgments related to length-of-proceedings cases. Violations were found in all but 8 of the cases in which the merits were addressed (although in a further 2 there were findings of both violation and no violation in relation to different proceedings).

3. 428 (60%) of the 703 judgments delivered concerned four groups of cases dealing exclusively with the following issues: the length of court proceedings (including the question of effective remedies), *Immobiliare Saffi*-type issues, *Brumărescu*-type issues and the independence and impartiality of national security courts in Turkey. The judgments referred to under B, C, D and E above, totalling 520, account for almost 75% of those delivered in 2003.

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

Italy	148	(21%)
Turkey	123	(17.5%)
France	94	(13.4%)
Poland	67	(9.5%)
Romania	28	(4%)
Greece	28	(4%)
Slovakia	27	(3.8%)

The figures in brackets indicate the percentage of the total number of judgments delivered in 2003.

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

**XI. CASES ACCEPTED FOR REFERRAL  
TO THE GRAND CHAMBER  
AND CASES IN WHICH JURISDICTION  
WAS RELINQUISHED BY A CHAMBER  
IN FAVOUR OF THE GRAND CHAMBER  
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TO THE GRAND CHAMBER  
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**A. Cases accepted for referral to the Grand Chamber**

In 2003 the five-member panel of the Grand Chamber (Article 43 § 2 of the Convention and Rule 24 § 5 of the Rules of Court) held four meetings (on 21 May, 9 July, 24 September and 4 December 2003) to examine requests by the parties for cases to be referred to the Grand Chamber under Article 43 of the Convention. It considered requests concerning a total of 87 cases; thirteen requests were submitted by the respondent Governments (in two cases both the Government and the applicant submitted requests).

The panel accepted rehearing requests in the following nine cases:

*Smoleanu v. Romania*, no. 30324/96

*Popovici and Dumitrescu v. Romania*, no. 31549/96

*Lindner and Hammermayer v. Romania*, no. 35671/97

*Cumpănă and Mazăre v. Romania*, no. 33348/96

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

*Kopecký v. Slovakia*, no. 44912/98

*Öcalan v. Turkey*, no. 46221/99

*Mamatkulov and Abdurasulovic v. Turkey*, nos. 46827/99 and 46951/99

*Pedersen and Baadsgaard v. Denmark*, no. 49017/99

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

*Perez v. France*, no. 47287/99 [First Section]

The case concerned the applicability of Article 6 § 1 to the civil party in criminal proceedings and the alleged unfairness of the proceedings. The judgment was delivered by the Grand Chamber on 12 February 2004.

*Assanidze v. Georgia*, no. 71503/01 [Second Section]

The applicant is unlawfully detained in the Autonomous Republic of Ajaria, which is under Georgian responsibility for the purposes of the Convention. The regional authorities refuse to execute a pardon which the applicant was granted by the President of Georgia and his acquittal by the Supreme Court. (Article 5 §§ 1, 3 and 4 and Articles 6, 10 and 13 of the Convention, and Article 2 of Protocol No. 4). The case was declared admissible on 12 November 2002.

*Vo v. France*, no. 53924/00 [Third Section]

The case concerns the impossibility of classifying as involuntary homicide an imprudent or negligent act by a hospital doctor causing the death of a 20- to 24-week foetus in perfect health (Article 2 of the Convention).

*Cooper v. the United Kingdom*, no. 48843/99 [Fourth Section]

The case concerned the fairness of court-martial proceedings under the Armed Forces Act 1996 and the independence and impartiality of a Royal Air Force court martial (Article 6 § 1 of the Convention). The judgment was delivered by the Grand Chamber on 16 December 2003.

*Grievés v. the United Kingdom*, no. 57067/00 [Fourth Section]

The case concerned the fairness of court-martial proceedings and the independence and impartiality of a Royal Navy court martial (Article 6 § 1 of the Convention). The judgment was delivered by the Grand Chamber on 16 December 2003.

## **XII. STATISTICAL INFORMATION**



## STATISTICAL INFORMATION

<b>Judgments delivered in 2003<sup>1</sup></b>	
Grand Chamber	12 (19)
Section I	230 (236)
Section II	165 (172)
Section III	127 (132)
Section IV	155 (159)
Sections in former compositions	14
<b>Total</b>	<b>703 (732)</b>

<b>Type of judgment</b>					
	Merits	Friendly settlement	Striking out	Other	Total
Grand Chamber	11 (18)	0	0	1	12 (19)
Former Section I	4	0	0	0	4
Former Section II	1	0	0	2	3
Former Section III	4	0	0	0	4
Former Section IV	1	0	0	2	3
Section I	179 (185)	43	3	5	230 (236)
Section II	133 (140)	23	4	5	165 (172)
Section III	111 (116)	15	0	1	127 (132)
Section IV	104 (106)	47 (49)	4	0	155 (159)
<b>Total</b>	<b>548 (575)</b>	<b>128 (130)</b>	<b>11</b>	<b>16</b>	<b>703 (732)</b>

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1. A judgment or decision may concern more than one application: when both figures are given, the number of applications is shown in brackets. The statistical information provided in this and the following section is provisional. For a number of reasons (in particular, different methods of calculation of unjoined applications dealt with in a single decision), discrepancies may arise between the different tables.

<b>Decisions adopted in 2003</b>		
<b>I. Applications declared admissible</b>		
Grand Chamber		3 (6)
Section I		142 (152)
Section II		155 (165)
Section III		135 (138)
Section IV		176 (288)
Former Sections		1
<b>Total</b>		<b>612 (750)</b>
<b>II. Applications declared inadmissible</b>		
Section I	Chamber	72 (77)
	Committee	5,493
Section II	Chamber	86 (101)
	Committee	4,536 (4,550)
Section III	Chamber	108 (119)
	Committee	2,761
Section IV	Chamber	102 (113)
	Committee	3,566
<b>Total</b>		<b>16,724 (16,780)</b>
<b>III. Applications struck out</b>		
Section I	Chamber	44 (72)
	Committee	31
Section II	Chamber	45
	Committee	47
Section III	Chamber	125
	Committee	28
Section IV	Chamber	96 (112)
	Committee	35
<b>Total</b>		<b>451 (495)</b>
<b>Total number of decisions (excluding partial decisions)</b>		<b>17,787 (18,025)</b>

<b>Applications communicated in 2003</b>	
Section I	455 (460)
Section II	400 (408)
Section III	452 (471)
Section IV	303 (351)
<b>Total number of applications communicated</b>	<b>1,610 (1,690)</b>

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

	1955-1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	Total
Applications lodged	44,199	4,923	5,279	6,104	6,456	9,759	10,335	11,236	12,704	14,166	18,164	22,617	30,069	31,228	34,618	35,613 (prov.)	297,470
Applications allocated to a decision body	14,466	1,445	1,657	1,648	1,861	2,037	2,944	3,481	4,758	4,750	5,981	8,400	10,482	13,845	28,214	27,281	133,250
Decisions taken	12,911	1,338	1,216	1,659	1,704	1,765	2,372	2,990	3,400	3,777	4,420	4,251	7,862	9,728	18,450	18,034	95,877
Applications declared inadmissible or struck out	12,328	1,243	1,065	1,441	1,515	1,547	1,789	2,182	2,776	3,073	3,658	3,520	6,776	8,989	17,868	17,280	87,050
Applications declared admissible	575	95	151	217	189	218	582	807	624	703	762	731	1,086	739	578	753	8,810
Applications terminated by a decision to reject in the course of the examination of the merits	8	0	0	1	0	1	1	0	0	1	0	0	0	0	5	1	18
Judgments delivered by the Court	180	25	30	72	81	60	50	56	72	106	105	177	695	889	844	703	4,145

### **XIII. STATISTICAL TABLES BY STATE**

## STATISTICAL TABLES BY STATE

### Evolution of cases – Applications

State	Applications lodged (provisional statistics)			Applications allocated to a decision body			Applications declared inadmissible or struck out			Applications referred to Government			Applications declared admissible		
	2001	2002	2003	2001	2002	2003	2001	2002	2003	2001	2002	2003	2001	2002	2003
Albania	21	23	24	3	15	17	1	3	11	-	1	1	-	-	1
Andorra	1	-	2	2	-	2	4	-	1	-	1	-	-	-	1
Armenia	7	31	79	-	7	68	-	-	28	-	-	1	-	-	-
Austria	385	434	436	230	309	324	208	371	401	13	51	71	24	14	19
Azerbaijan	43	272	238	-	-	242	-	-	45	-	-	3	-	-	-
Belgium	239	264	210	108	139	116	79	124	118	8	31	11	25	3	12
Bosnia and Herzegovina	12	47	84	-	4	60	-	-	-	-	-	-	-	-	-
Bulgaria	467	619	682	403	461	517	232	394	293	13	43	37	1	15	26
Croatia	184	862	747	116	666	664	75	338	349	14	49	38	6	8	25
Cyprus	51	38	40	20	47	36	14	44	11	6	7	6	7	2	4
Czech Republic	437	490	921	367	329	630	267	437	280	16	54	16	3	2	7
Denmark	115	127	140	52	86	73	50	40	65	10	3	4	3	2	6
Estonia	128	116	171	89	89	131	24	57	138	1	1	5	1	2	1
Finland	196	229	280	106	184	260	123	151	97	28	22	12	2	8	12
France	2,829	2,940	2,828	1,117	1,606	1,486	892	1,254	1,451	89	125	91	51	66	89
Georgia	29	42	41	22	29	35	3	13	24	4	4	6	-	2	1
Germany	1,620	1,775	1,875	718	1,019	998	528	748	462	11	58	17	8	13	10
Greece	274	378	426	192	311	354	96	134	171	49	74	73	32	29	26
Hungary	374	318	435	173	307	330	86	198	293	12	31	25	2	10	15
Iceland	7	5	17	3	5	10	6	2	5	2	-	-	1	2	1
Ireland	56	85	74	16	45	29	24	43	31	2	1	2	1	3	2
Italy	3,779	1,369	1,767	587	1,302	1,335	265	1,126	1,009	251	89	89	341	133	16
Latvia	226	261	292	125	208	133	58	102	152	11	15	10	3	3	7

### Evolution of cases – Applications (continued)

State	Applications lodged (provisional statistics)			Applications allocated to a decision body			Applications declared inadmissible or struck out			Applications referred to Government			Applications declared admissible		
	2001	2002	2003	2001	2002	2003	2001	2002	2003	2001	2002	2003	2001	2002	2003
Liechtenstein	2	3	5	-	3	3	1	1	3	-	2	-	-	-	1
Lithuania	326	439	442	151	529	354	150	166	199	2	6	21	-	3	5
Luxembourg	55	47	55	11	25	21	11	11	28	1	2	5	2	2	2
Malta	9	9	18	3	4	4	1	2	-	-	2	3	1	-	1
Moldova	212	256	582	44	245	240	23	31	105	7	4	64	3	1	2
Netherlands	333	575	67	200	317	278	218	278	237	17	14	19	5	9	7
Norway	61	79	56	49	48	51	54	20	62	1	-	3	3	-	1
Poland	3,429	4,531	5,136	1,755	4,032	3,661	1,412	2,469	1,703	94	86	123	26	46	83
Portugal	222	251	239	140	143	148	72	108	252	56	27	8	39	22	5
Romania	1,793	2,294	3,635	541	1,960	2,167	537	508	700	35	28	57	1	13	22
Russia	4,490	4,760	5,338	2,105	3,989	4,777	1,253	2,223	3,207	21	59	170	2	12	15
San Marino	3	5	2	4	6	2	2	1	2	-	3	2	-	3	3
Slovakia	546	432	518	343	406	350	159	366	277	12	39	9	8	11	28
Slovenia	251	265	259	206	270	251	78	72	62	8	7	86	1	-	3
Spain	1,099	821	596	807	798	455	231	1,345	377	386	9	12	2	7	6
Sweden	399	371	427	246	296	257	110	350	303	7	13	13	4	1	5
Switzerland	327	282	265	162	214	162	210	182	108	9	3	6	2	1	1
Former Yugoslav Republic of Macedonia	59	95	134	34	90	98	13	16	57	7	6	1	4	-	-
Turkey	2,530	3,887	2,616	1,059	3,866	3,588	385	1,639	1,633	251	375	355	90	102	142
Ukraine	2,108	2,958	2,041	1,057	2,819	1,858	510	1,764	1,665	13	18	158	1	3	6
United Kingdom	1,494	1,533	1,373	479	986	686	529	737	865	99	312	87	34	25	134
<b>Total</b>	<b>31,228</b>	<b>34,618</b>	<b>35,613</b>	<b>13,845</b>	<b>28,214</b>	<b>27,281</b>	<b>8,994</b>	<b>17,868</b>	<b>17,280</b>	<b>1,566</b>	<b>1,675</b>	<b>1,720</b>	<b>739</b>	<b>578</b>	<b>753</b>

### Evolution of cases – Judgments

State	Judgments (Chamber and Grand Chamber)			Judgments (final – after referral to Grand Chamber)			Judgments (friendly settlements)			Judgments (striking out)		
	2001	2002	2003	2001	2002	2003	2001	2002	2003	2001	2002	2003
Albania	-	-	-	-	-	-	-	-	-	-	-	-
Andorra	-	-	-	-	-	-	-	-	-	-	-	-
Armenia	-	-	-	-	-	-	-	-	-	-	-	-
Austria	17	15	17	-	-	-	1	5	2	-	-	-
Azerbaijan	-	-	-	-	-	-	-	-	-	-	-	-
Belgium	4	13	7	-	-	-	1	-	1	-	1	-
Bosnia and Herzegovina	-	-	-	-	-	-	-	-	-	-	-	-
Bulgaria	2	2	11	-	-	-	1	1	-	-	-	-
Croatia	5	6	6	-	-	-	-	3	-	-	-	-
Cyprus	1	5	2	-	-	-	1	1	-	-	-	-
Czech Republic	1	4	5	-	-	-	1	-	1	-	-	-
Denmark	-	1	2	-	-	-	1	1	-	-	-	-
Estonia	1	1	3	-	-	-	-	-	-	-	-	-
Finland	3	5	3	1	-	-	-	-	2	-	-	-
France	34	66	83	-	1	-	8	6	7	2	2	-
Georgia	-	-	-	-	-	-	-	-	-	-	-	-
Germany	16	8	9	-	-	2	-	-	1	1	1	-
Greece	16	17	23	-	-	-	5	3	3	-	-	-
Hungary	2	1	13	-	-	-	-	2	2	1	-	1
Iceland	-	-	2	-	-	-	-	-	-	-	-	-
Ireland	1	1	2	-	-	-	-	-	-	-	-	-
Italy	365	330	108	-	1	1	45	49	28	-	2	4
Latvia	-	2	1	-	-	-	1	-	-	-	-	-

### Evolution of cases – Judgments (continued)

State	Judgments (Chamber and Grand Chamber)			Judgments (final – after referral to Grand Chamber)			Judgments (friendly settlements)			Judgments (striking out)		
	2001	2002	2003	2001	2002	2003	2001	2002	2003	2001	2002	2003
Liechtenstein	-	-	-	-	-	-	-	-	-	-	-	-
Lithuania	2	5	3	-	-	-	-	-	1	-	-	-
Luxembourg	2	-	4	-	-	-	-	1	-	-	-	-
Malta	-	-	1	-	-	-	-	-	-	-	-	-
Moldova	1	-	-	-	-	-	-	-	-	-	-	-
Netherlands	3	9	7	-	-	-	4	1	-	-	-	-
Norway	1	-	5	-	-	-	-	-	-	-	-	-
Poland	19	22	43	-	-	-	1	3	22	-	-	2
Portugal	10	14	16	-	-	-	15	18	1	-	1	-
Romania	-	26	25	-	-	-	-	-	-	-	1	3
Russia	-	2	5	-	-	-	-	-	-	-	-	-
San Marino	-	-	3	-	-	-	-	-	1	-	-	-
Slovakia	5	4	19	-	-	-	3	3	8	-	-	-
Slovenia	1	-	-	-	-	-	-	1	-	-	-	-
Spain	2	3	9	-	-	-	-	-	-	-	-	-
Sweden	-	6	3	-	-	-	3	1	-	-	-	-
Switzerland	7	4	1	-	-	-	1	-	-	-	-	-
Former Yugoslav Republic of Macedonia	1	-	-	-	-	-	-	1	-	-	-	-
Turkey	170	55	76	-	1	1	58	45	44	1	4	1
Ukraine	-	1	6	-	-	-	1	-	-	-	-	-
United Kingdom	30	33	20	-	1	2	1	6	3	1	-	-
<b>Total</b>	<b>722</b>	<b>664</b>	<b>543</b>	<b>1</b>	<b>4</b>	<b>6</b>	<b>152</b>	<b>151</b>	<b>127</b>	<b>6</b>	<b>11</b>	<b>11</b>



**Evolution of cases – Judgments (continued)**

State	Judgments (just satisfaction)			Judgments (preliminary objections)			Judgments (interpretation)			Judgments (revision)		
	2001	2002	2003	2001	2002	2003	2001	2002	2003	2001	2002	2003
Albania	-	-	-	-	-	-	-	-	-	-	-	-
Andorra	-	-	-	-	-	-	-	-	-	-	-	-
Armenia	-	-	-	-	-	-	-	-	-	-	-	-
Austria	-	-	-	-	-	-	-	-	-	-	-	-
Azerbaijan	-	-	-	-	-	-	-	-	-	-	-	-
Belgium	-	-	-	-	-	-	-	-	-	-	-	-
Bosnia and Herzegovina	-	-	-	-	-	-	-	-	-	-	-	-
Bulgaria	-	-	-	-	-	-	-	-	-	-	-	-
Croatia	-	-	-	-	-	-	-	-	-	-	-	-
Cyprus	-	-	1	-	-	-	-	-	-	-	-	-
Czech Republic	-	-	-	-	-	-	-	-	-	-	-	-
Denmark	-	-	-	-	-	-	-	-	-	-	-	-
Estonia	-	-	-	-	-	-	-	-	-	-	-	-
Finland	-	-	-	-	-	-	-	-	-	-	-	-
France	-	-	2	-	-	-	-	-	-	-	-	2
Georgia	-	-	-	-	-	-	-	-	-	-	-	-
Germany	-	-	-	-	-	-	-	-	-	-	-	-
Greece	-	5	2	-	-	-	-	-	-	-	-	-
Hungary	-	-	-	-	-	-	-	-	-	-	-	-
Iceland	-	-	-	-	-	-	-	-	-	-	-	-
Ireland	-	-	-	-	-	-	-	-	-	-	-	-
Italy	-	1	2	-	-	-	-	-	-	2	8	5
Latvia	-	-	-	-	-	-	-	-	-	-	-	-

### Evolution of cases – Judgments (continued)

State	Judgments (just satisfaction)			Judgments (preliminary objections)			Judgments (interpretation)			Judgments (revision)		
	2001	2002	2003	2001	2002	2003	2001	2002	2003	2001	2002	2003
Liechtenstein	-	-	-	-	-	-	-	-	-	-	-	-
Lithuania	-	-	-	-	-	-	-	-	-	-	-	-
Luxembourg	-	-	-	-	-	-	-	-	-	-	-	-
Malta	-	-	-	-	-	-	-	-	-	-	-	-
Moldova	-	-	-	-	-	-	-	-	-	-	-	-
Netherlands	-	1	-	-	-	-	-	-	-	-	-	-
Norway	-	-	-	-	-	-	-	-	-	-	-	-
Poland	-	1	-	-	-	-	-	-	-	-	-	-
Portugal	1	-	-	-	-	-	-	-	-	-	-	-
Romania	1	-	-	-	-	-	-	-	-	-	-	-
Russia	-	-	-	-	-	-	-	-	-	-	-	-
San Marino	-	-	-	-	-	-	-	-	-	-	-	-
Slovakia	-	-	-	-	-	-	-	-	-	-	-	-
Slovenia	-	-	-	-	-	-	-	-	-	-	-	-
Spain	-	-	-	-	-	-	-	-	-	-	-	-
Sweden	-	-	-	-	-	-	-	-	-	-	-	-
Switzerland	-	-	-	-	-	-	-	-	-	-	-	-
Former Yugoslav Republic of Macedonia	-	-	-	-	-	-	-	-	-	-	-	-
Turkey	-	-	-	-	-	1	-	-	-	-	-	-
Ukraine	-	-	1	-	-	-	-	-	-	-	-	-
United Kingdom	1	-	-	-	-	-	-	-	-	-	-	-
<b>Total</b>	<b>3</b>	<b>8</b>	<b>8</b>	<b>-</b>	<b>-</b>	<b>1</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>2</b>	<b>8</b>	<b>7</b>

## Judgments 2003

State concerned	Cases which gave rise to a finding of		Cases which gave rise to no finding on the merits		Just satisfaction	Revision	Total
	at least one violation	no violation	Friendly settlement	Striking out			
Albania	-	-	-	-	-	-	-
Andorra	-	-	-	-	-	-	-
Armenia	-	-	-	-	-	-	-
Austria	16	1	2	-	-	-	19
Azerbaijan	-	-	-	-	-	-	-
Belgium	7	0	1	-	-	-	8
Bosnia and Herzegovina	-	-	-	-	-	-	-
Bulgaria	10	1	-	-	-	-	11
Croatia	6	-	-	-	-	-	6
Cyprus	1	1	-	-	1	-	3
Czech Republic	5	-	1	-	-	-	6
Denmark	1	1	-	-	-	-	2
Estonia	2	1	-	-	-	-	3
Finland	3	-	2	-	-	-	5
France	76	7	7	-	2	2	94
Georgia	-	-	-	-	-	-	-
Germany	10	1	1	-	-	-	12
Greece	23	-	3	-	2	-	28
Hungary	13	-	2	1	-	-	16
Iceland	2	-	-	-	-	-	2
Ireland	1	1	-	-	-	-	2
Italy	106	2	29	4	2	5	148
Latvia	1	-	-	-	-	-	1
Liechtenstein	-	-	-	-	-	-	-
Lithuania	3	-	1	-	-	-	4
Luxembourg	4	-	-	-	-	-	4
Former Yugoslav Republic of Macedonia	-	-	-	-	-	-	-
Malta	1	-	-	-	-	-	1
Moldova	-	-	-	-	-	-	-
Netherlands	6	1	-	-	-	-	7
Norway	4	1	-	-	-	-	5
Poland	43	-	22	2	-	-	67
Portugal	16	-	1	-	-	-	17
Romania	24	1	-	3	-	-	28
Russia	5	-	-	-	-	-	5
San Marino	3	-	1	-	-	-	4
Slovakia	17	2	8	-	-	-	27
Slovenia	-	-	-	-	-	-	-
Spain	8	1	-	-	-	-	9
Sweden	2	1	-	-	-	-	3
Switzerland	-	1	-	-	-	-	1
Turkey	76	1	44	1	-	-	123 <sup>1</sup>
Ukraine	6	-	-	-	1	-	7
United Kingdom	20	2	3	-	-	-	25
<b>Total</b>	<b>521</b>	<b>27</b>	<b>128</b>	<b>11</b>	<b>8</b>	<b>7</b>	<b>703<sup>1</sup></b>

1. The figure includes a further judgment which concerned preliminary issues.

## Violations by Article and by country 1999-2003

<b>1999-2003</b>	Judgments finding at least one violation																Other Articles of the Convention				Number of judgments	Total					
	Total	Total	Total	Total	2	2	3	3	3	4	5	6	6	7	8	9	10	11	12	13	14		P1-1	P1-2	P1-3	P7-4	Total
	Judgments finding at least one violation	Friendly-settlement judgments	Right to life – deprivation of life	Lack of effective investigation	Inhuman or degrading treatment or punishment	Prohibition of torture	Lack of effective investigation	Right to liberty and security	Right to a fair trial	Length of proceedings	No punishment without law	Right to respect for private and family life	Freedom of thought, religion and conscience	Freedom of assembly and association	Freedom of expression	Right to an effective remedy	Prohibition of discrimination	Protection of property	Right to education	Right to free elections	Right not to be tried or punished twice	Other Articles of the Convention	Right not to be tried or punished twice	Right to education	Right to free elections	Number of judgments	Total
Albania																											0
Andorra			1																								1
Armenia																											0
Austria	60	4	14	3						1	28	22		7		9				3					3	81	
Azerbaijan																											0
Belgium	23	4	4							2	11	16		1		1			2							1	31
Bosnia and Herzegovina																											0
Bulgaria	18	1	2		3	2		2	1		26		7	2	1	1	1		5								21
Croatia	16	1	3									4	11		1				5								20
Cyprus	11	1	3	1				2			1	1	7		1				1	1	2				1	16	
Czech Republic	14	1	2								3	5	5						1	1	3						17
Denmark	3	2	7								1		1		1												12
Estonia	3	2	1									1	1	1													6
Finland	17		5									9	4		4		1				1						22
France	234	25	41	10			1	2			9	52	173		6	4	2		8	5	9				2	310	
Georgia																											0
Germany	31	9	4								5	7	14		12		1			6							44
Greece	73	2	16	10				2			2	27	37		1	3			3	1	26						101
Hungary	16	2	6						1		1	1	13														24
Iceland	2		2									2															4
Ireland	4	2	1								2	4	1						1								7
Italy	1,065	17	314	23				1	1		7	146	893		16		1	2		7	141		1		5	1,419	
Latvia	3		1								2	2	1		2								1				4

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

## Violations by Article and by country 1999-2003 (continued)

<b>1999-2003</b>	Judgments finding at least one violation				Other Articles of the Convention																				Number of judgments			
	Total	Total	Total	Total	2	2	3	3	3	4	5	6	6	7	8	9	10	11	12	13	14	P1-1	P1-2	P1-3	P7-4	Total		
Judgments finding at least one violation	Friendly-settlement judgments	Right to life – deprivation of life	Lack of effective investigation	Inhuman or degrading treatment or punishment	Prohibition of torture	Lack of effective investigation	Right to liberty and security	Right to a fair trial	No punishment without law	Length of proceedings	Right to respect for private and family life	Freedom of thought, conscience and religion	Freedom of assembly and association	Freedom of expression	Right to marry	Prohibition of discrimination	Protection of property	Right to education	Right to free elections	Right not to be tried or punished twice	Other Articles of the Convention	Total						
Liechtenstein	1																1				1						1	
Lithuania	13	1	2				1		12	4	4		2								1						16	
Luxembourg	7		1									5		2		2											8	
Malta	4										5																4	
Moldova	1														1					1							1	
Netherlands	17	7	8	1			2		1	3	4		6		1				1	2	1					33		
Norway	7	2									5						3										9	
Poland	93	6	35	1			1		33	6	72		11		2				4		1					135		
Portugal	59		49	1					1	2	53		2		1				1	1						109		
Romania	55	1	4	1			1	1	5	79	1		5		1				1		41				1	61		
Russia	7						1		5	4	2		1							2						7		
San Marino	6		1							5	1				1												7	
Slovakia	30	2	18						2	3	22						2			1		1				50		
Slovenia	2	1	1				1		2		1		1													4		
Spain	14	5	1	1					1	5	4	1	2		1											21		
Sweden	6	3	5							4	2								1		2					14		
Switzerland	13	5	2						4	4	2		3		1											20		
Former Yugoslav Republic of Macedonia			1	1																						2		
Turkey	340	8	166	1	20	24	5	26	4		35	94	39	3	11	1	29	5		31		164	1	1		12	515	
Ukraine	7		1	1				6	2			1			6	2				1		1				9		
United Kingdom	97	20	21	4	1	7		6			26	41	10		25		1	1	2	18	1	2		1		142		
<b>Sub-total</b>	<b>2,372</b>	<b>135</b>	<b>743</b>	<b>58</b>	<b>24</b>	<b>33</b>	<b>6</b>	<b>64</b>	<b>10</b>	<b>0</b>	<b>194</b>	<b>560</b>	<b>1,428</b>	<b>5</b>	<b>131</b>	<b>9</b>	<b>63</b>	<b>11</b>	<b>2</b>	<b>93</b>	<b>21</b>	<b>399</b>	<b>1</b>	<b>4</b>	<b>3</b>	<b>23</b>	<b>3,308</b>	
<b>Total</b>	<b>3,308</b>																											

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



