

SHORT SURVEY OF CASES EXAMINED BY THE COURT IN 2004

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

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

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

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

As far as the other principal groups of judgments in 2004 are concerned, the main increase related to those dealing with the independence and impartiality of national security courts in Turkey, including those in which the only other issue was freedom of expression^{vi}. However, it should be noted in this connection that the participation of military judges in national security courts ended in June 1999^{vii} and that the national security courts themselves were abolished in 2004^{viii}. Other important increases related to cases concerning delays in paying compensation for expropriation in Turkey^{ix}, and cases concerning the staying of civil proceedings in Croatia^x. Conversely, the number of cases concerning the problem of enforcing the eviction of tenants in Italy dropped from 123 to only 18, while cases concerning the annulment of final and binding judgments in Romania more or less disappeared^{xi}.

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

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

A further major development took place with the delivery of the Grand Chamber’s judgment in *Broniowski v. Poland*^{xvii}. The case concerned successive undertakings by the Polish authorities to provide compensation, in the form of discounted entitlement to property, in respect of land “beyond the Bug river” which had ceased to be Polish territory after the Second World War. The transfer of most State-owned land to local authorities under the Local Self-Government Act of 1990 and the further reduction of the available property designated for compensation as a result of legislative measures between 1993 and 2001 made it virtually impossible for the State to fulfil these undertakings and the Constitutional Court held in 2002 that the “right to credit”, affecting tens of thousands of people, had been rendered illusory. The European Court not only found that there had been a violation of Article 1 of Protocol No. 1 but also concluded that “the violation ha[d] originated in a systemic problem connected with the malfunctioning of domestic legislation and practice caused by the failure to set up an effective mechanism to implement the ‘right to credit’ of Bug River claimants”. The Court defined a systemic problem as a situation “where the facts of the case disclose the existence, within the [national] legal order, of a shortcoming as a consequence of which a whole class of individuals have been or are still denied [their

Convention rights]” and “where the deficiencies in national law and practice identified ... may give rise to numerous subsequent well-founded applications”.

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

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

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

Deficiencies in domestic practice, which the Court identified as part of the problem in *Broniowski*, cited above, can be identified as an important feature in several recent judgments in which the Court has recognised that, while the legal system provides a sufficient framework to ensure the effective protection of rights, there has in practice been a failure – deliberate or otherwise – of certain authorities to implement the law and regulations properly.

Thus, in *Öneriyıldız v. Turkey*^{xxi}, which concerned deaths resulting from an explosion at a rubbish tip, although the domestic law provided for the prosecution of the responsible officials, the prosecutor limited the charges to negligence in the performance of their duties, with the result that there was no examination of responsibility for the deaths, and the fines ultimately imposed were very modest. In *Taşkın and Others v. Turkey*^{xxii}, permits to operate a gold mine were renewed by the authorities without going through the correct procedure, circumventing a court judgment, while similarly in *Moreno Gómez v. Spain*^{xxiii}, despite recognition of a serious problem of noise pollution, the authorities not only tolerated the situation but actually granted new permits for discotheques and bars in the vicinity. Finally, in *Prokopovich v. Russia*^{xxiv}, the Court found a violation of Article 8 of the Convention where the partner of a deceased tenant had been evicted without the proper procedures being respected.

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

The situation was considered to be different in *Ilaşcu and Others v. Moldova and Russia*^{xxv}, in which the Grand Chamber was called upon to determine whether Moldova and/or Russia exercised “jurisdiction” over the separatist “Moldavian Republic of Transdniestria”, where Russian troops had remained following Moldova’s declaration of independence in 1991. As far as Moldova was concerned, the principle established by the Court was that the aforementioned presumption that “jurisdiction” was exercised throughout a State’s territory could be limited in exceptional circumstances, in particular when the State was prevented from exercising its authority over part of its territory, but that the State remained under a positive obligation to take appropriate steps to ensure respect for human rights within its territory. Consequently, while the Moldovan government, which was the only legitimate one under international law, did not exercise authority over part of its territory, it remained under a positive obligation to take the measures within its power to protect the applicants’ rights, in particular by securing their release from detention. Thus, the State did not cease to have “jurisdiction”. However, since the scope of that jurisdiction was reduced by the factual situation, the State’s undertaking under Article 1 of the Convention had to be considered only in the light of its positive obligations. This implied an obligation to take measures both to re-establish control over Transdniestria and to ensure respect for the individual applicants’ rights. The Court accepted that there was little the Moldovan authorities could do against a regime sustained by a power such as the Russian Federation and also acknowledged the efforts which had been made on the diplomatic level, as well as the measures which had been taken to try and secure the applicants’ release. However, it found that after May 2001, when one of the applicants was released, these efforts had been weaker and concluded that Moldova’s responsibility could be engaged on account of its failure to discharge its positive obligations after that date.

As to the jurisdiction of the Russian Federation, the Court reiterated the principle that in exceptional circumstances the acts of a State which take place or produce effects outside its

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

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

“Core” rights (Articles 2 and 3)

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

In the important case of *Öneryıldız*, which has already been mentioned, the Grand Chamber extended to the field of dangerous activities the notion of the State’s obligation to take appropriate action to protect life against a real and imminent threat of which the

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

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

The absence of adequate planning and control of an arrest operation was also a relevant consideration in the finding of a substantive violation of the right to life in *Nachova and Others v. Bulgaria*^{xxix}, which was subsequently referred to the Grand Chamber. The case concerned the fatal shooting by military police of two Roma who had escaped from detention after being absent without leave from compulsory military service. The Chamber took into account the fact that the officers had been able to observe that the conscripts were unarmed and were not showing any signs of threatening behaviour in concluding that the use of

firearms was not “absolutely necessary” within the meaning of Article 2 § 2. The Chamber also found that there had been a procedural violation of Article 2. However, the most significant development in the case was its finding that there had been a double violation of Article 14 of the Convention, in that the authorities had not offered any satisfactory explanation showing that the events had not been the result of a prohibited discriminatory attitude on the part of State agents and in that there had been insufficient investigation of that possibility^{xxx}.

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

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

Under Article 3 of the Convention, there were a number of more or less standard cases concerning ill-treatment^{xxxvii} and conditions of detention^{xxxviii}. In several judgments, the Court concluded that the treatment to which the applicants had been subjected amounted to

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

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

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

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

The Court is frequently required to examine situations in which deportees allege that they will be at risk of ill-treatment or even death if returned to their country of origin and requests for its intervention under Rule 39 of the Rules of Court to stay deportation are regularly submitted. Applicants often invoke not only the original grounds on which they sought asylum but also their poor psychiatric health and the adverse effect which expulsion will have on their mental state. The large majority of these requests are refused by the Presidents of the respective Sections of the Court. In principle, it is insufficient to show that the general situation in the country of destination is dangerous; an applicant must establish that he runs a direct and personal risk, for example by showing that he has previously been subjected to ill-treatment and that he is actively being sought by the authorities. In addition, there is normally less likelihood of an interim measure being applied if the deportation is to another

Contracting State. Many applications concerning expulsion are declared inadmissible. Examples in 2004 include deportation to Iran of a purported political activist^l and of a homosexual^{li}. Conversely, the Court declared admissible an application concerning the deportation to Eritrea of an individual who had deserted from military service and had criticised the army^{lii}.

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

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

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

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

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

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

The Court’s case-law concerning the grounds which justify keeping an accused person in pre-trial detention is well established. Firstly, the domestic courts must, in their decisions prolonging such detention, give relevant and sufficient reasons. The grounds most commonly relied on in that respect are the risk of absconding, the possibility of reoffending and the danger of the accused interfering with the evidence, for example by intimidating witnesses. However, even when such grounds justify detention for an initial period, the Court has emphasised that their relevance diminishes with the passage of time, so that at a certain stage they can no longer be relied on to keep the accused in detention. Moreover, because of the importance of the right to liberty – and, indeed, of the presumption of innocence – the authorities are under an obligation to act with special diligence when the accused is in detention. On the basis of these criteria, the Court has found a violation of Article 5 § 3 in a large number of cases, many of which have involved detention lasting for several years. In *Belchev v. Bulgaria*^{lxv}, however, the Court went a step further in concluding that there had been a violation although the detention had lasted only four and a half months. The Court recognised that the period was much shorter than those normally examined previously, but stressed: “Article 5 § 3 cannot be seen as authorising pre-trial detention unconditionally provided that it lasts no longer than a certain minimum period. Justification for any period of detention, no matter how short, must be convincingly demonstrated by the authorities.”

There were relatively few judgments concerning procedural rights under Article 5 § 4, one exception being *Frommelt v. Liechtenstein*^{lxvi}, concerning the lack of a hearing in connection with the prolongation of detention on remand. Mention should be made in this connection of *Reinprecht v. Austria*^{lxvii}, in which the applicant complained that the lack of a public hearing in connection with the prolongation of his detention on remand violated Article 6 of the Convention. The Court declared the application admissible and will have the opportunity to clarify in its judgment the extent to which Article 6 applies to matters relating to deprivation

of liberty. For many years, it was considered that the right to liberty was not a “civil right” bringing Article 6 into play and that Article 5 § 4 was the *lex specialis*, but some confusion was created by the Court’s apparently unequivocal statement in *Aerts v. Belgium*^{lxviii} that “the right to liberty, which was thus at stake, is a civil right”.

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

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

Reference may also be made in this connection to *Pini and Others v. Romania*^{lxxxiv}, which concerned the non-enforcement of decisions allowing Italian couples to adopt Romanian children. The Court recognised that it was the vigorous opposition of the private institution where the children had been placed which had in effect thwarted all attempts by bailiffs to enforce the court decisions and acknowledged that resort to the use of force would have been very delicate. Nevertheless, it found that the State had not taken sufficient action to ensure that the decisions were respected, in particular by failing to impose any sanction on those responsible for the institute. The Court consequently held that there had been a violation of Article 6 of the Convention although, interestingly, it concluded that there had not been a violation of Article 8 on account of the non-enforcement.

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

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

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

The Court similarly found that there had been no violation in *Gorraiz Lizarraga and Others v. Spain*^{xcii}. The applicants had successfully secured the temporary suspension of work on a dam which would have resulted in their village being flooded, but a law on natural sites was then enacted with the effect, according to the applicants, of allowing the construction work to resume. The Supreme Court cancelled the construction project in part, but the Constitutional Court subsequently held that the new law was not unconstitutional and that enforcement of the Supreme Court's judgment had consequently become impossible. The European Court considered that the law, which was of general application, had not been passed for the purpose of circumventing the principle of the rule of law and in particular had not been intended to remove the courts' power to rule on the lawfulness of the proposed dam. As the applicants had been able to have the compliance of certain of the law's provisions with the Constitution examined on the merits, the principle of a fair trial had been satisfied. A further important aspect of this case was the acceptance by the Court that both the applicant association, which had been party to the proceedings at the national level, and the individual applicants, who had not, could claim to be victims of the alleged violation of Article 6. This marked a departure from previous case-law, according to which applicants who had not been parties to the domestic proceedings could not claim to be victims in respect of any alleged unfairness of those proceedings. In adopting this new approach, the Court referred to the fact that the applicant association had been created with the specific purpose of defending the interests of its members, namely the consequences of the construction of the dam on their homes and way of life. The Court underlined in this respect the importance in modern society of the role of associations in defending the rights of groups of individuals.

In contrast to these judgments, the Court held that there had been a violation on account of legislative intervention in *Scordino v. Italy (no. 1)*^{xciii}, which is now pending before the Grand

Chamber. Moreover, two French cases raising this issue were declared admissible, and the Chamber dealing with them subsequently relinquished jurisdiction in favour of the Grand Chamber^{xciii}.

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

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

By way of contrast, the Court found no violation of Article 6 in a case concerning the reopening of criminal proceedings which had ended in the applicant’s acquittal^{ciii}. It observed that “the requirements of legal certainty are not absolute” but had to be read “in conjunction with, for example, Article 4 § 2 of Protocol No. 7 which expressly permits a State to reopen a case due to the emergence of new facts, or where a fundamental defect is detected in the previous proceedings, which could affect the outcome of the case”. It referred moreover to the fact that, in the context of the execution of the Court’s judgments, the Committee of Ministers of the Council of Europe regarded the possibility of re-examination or reopening of cases as a guarantee of restitution. Consequently, the mere possibility of reopening a criminal case was not *prima facie* incompatible with the Convention and it was necessary to assess in each case whether a fair balance had been struck. In the circumstances of the particular case, in which the request for supervisory review had in fact been dismissed, a fair balance had been struck. The Court further found that there had been no violation of Article 4 of Protocol No. 7, which guarantees the right not to be tried or punished twice.

As far as general issues of fairness of proceedings are concerned, there were no particular themes of note in 2004, although two small groups of cases raised matters of relevance to both civil and criminal proceedings. The first group related to the participation of judges at different stages of the same proceedings. In *Pitkänen v. Finland*^{civ}, the applicant complained that there had been a different presiding judge at each of the hearings in the civil proceedings in which he was involved. The Court reiterated that in criminal proceedings the possibility for an accused to be confronted with witnesses in the presence of the judge who ultimately decided the case was an important element, so that, when a change in the composition of the court occurred after an important witness has been heard, there should normally be a

rehearing of that witness^{cv}. However, it then pointed out that the requirements of a fair hearing were not necessarily the same in the civil context and concluded that “the fact that the various presiding judges had at their disposal the recordings and transcriptions of the previous hearings where [the witnesses] had been heard sufficed to compensate for the lack of immediacy in the proceedings”^{cvii}.

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

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

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

examine the merits of the criminal charge against the applicant but had had to address different points of law in each of the appeals^{cxxix}.

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

There were a number of judgments, in particular concerning the United Kingdom, raising new aspects of matters which the Court had examined previously. These included cases concerning the non-disclosure of material by the prosecuting authorities^{cxxxiii}, the ability of a minor to participate effectively in a criminal trial^{cxxxiv}, the use in a criminal trial of evidence previously given to a receiver in bankruptcy on pain of a sanction^{cxxxv} and the independence and impartiality of courts-martial^{cxxxvi}. Mention has already been made of the continuing high number of cases concerning the independence and impartiality of the former national security courts in Turkey. An interesting development in that respect was the extension of the Court's case-law to proceedings before a national security court which had no specific security element. In *Canevi and Others v. Turkey*^{cxxxvii}, the applicants had been prosecuted for drug offences. The Court nevertheless took the view that the same considerations which applied to offences involving a security aspect extended to normal criminal offences, so that the presence of a military judge tainted the national security court with a doubt as to its objective impartiality, since the accused could legitimately fear that the court would allow considerations alien to the subject matter of the case to influence its decision.

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

With regard to cases concerning the length of court proceedings, reference has already been made to continuing high numbers of cases, in particular against Poland^{cxxxv} and France.

In that connection, it may also be noted that in judgments relating to several States the Court concluded that there were no effective remedies at domestic level for complaints about the excessive length of court proceedings: Bulgaria^{cxv}, the Czech Republic^{cxvii}, Finland^{cxviii}, Greece^{cxix}, Ireland^{cxl}, Poland^{cxli}, Russia^{cxlii}, Slovakia^{cxliii} and Ukraine^{cxliv}. In view of the high proportion of applications in which the problem of the excessive length of court proceedings is raised, the creation of effective remedies at the national level is one of the most important contributions which governments can make in the context of the Court's huge workload and growing backlog.

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

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

As far as respect for private life in the more classic sense is concerned, *Von Hannover v. Germany* raised important issues with regard to the balance between freedom of the press and the right to protection against invasions of privacy^{cxlvii}. The applicant, Princess Caroline of Monaco, had been only partly successful in the German courts with her application for an injunction to prevent tabloid magazines publishing photographs, taken without her knowledge and showing her going about her daily business, alone or in company, outside her home. The German courts had accepted that "figures of contemporary society" were entitled to respect for their private life even outside their home, but only if they had retired to a "secluded place" where it was objectively clear to everyone that they wanted to be alone and where they behaved in a manner in which they would not behave in a public place. The applicant had been successful with regard to photographs showing her with her male friend at the far end of a restaurant courtyard but unsuccessful with regard to the publication of photographs showing her in a "non-isolated place". In finding a violation of Article 8, the Court placed emphasis on the fact that the photographs and accompanying commentaries had been published for the purposes of satisfying the curiosity of a particular readership as to the details of the private life of the princess, who was not a public figure and did not fulfil any official function on behalf of Monaco, so that the publication had not contributed to any debate of general interest to society, in the proper sense of that notion. It thus held that the State had failed in its positive obligation to ensure the effective protection of the applicant's private life.

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

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

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

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

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

Freedom of thought, conscience and religion was in issue in only a handful of judgments, the most significant of which was *Leyla Şahin v. Turkey*^{clxiv}, another case which has been referred to the Grand Chamber. It concerns restrictions on the wearing of the Muslim

headscarf in Turkish universities and thus raises issues which are of contemporary interest in other countries, notably France, which has adopted legislation regulating the wearing of religious symbols in State schools. In concluding that there had been no violation of Article 9, the Chamber accepted that the “notion of secularism appears ... to be consistent with the values underpinning the Convention” and that “upholding that principle may be regarded as necessary for the protection of the democratic system in Turkey”^{clxv}.

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

Other cases of note under Article 9 include two applications declared admissible by the Court, one in which it joined to the merits the question of the applicability of that provision to conscientious objection^{clxviii} and one concerning an attack on a meeting of Jehovah’s Witnesses in Georgia^{clxix}.

Issues under Article 10 have often arisen out of defamation cases and 2004 was no exception. Indeed, two of the Grand Chamber judgments involved balancing freedom of expression with the right to protection of reputation. *Cumpănă and Mazăre v. Romania*^{clxx} was particularly interesting in that respect. It involved the criminal conviction of a journalist and an editor for defaming two public figures by imputing wrong-doing to them, in words and in a cartoon. On the substance of the question of the justification for the interference with the right to freedom of expression, the Court found that the domestic courts had given relevant and sufficient reasons for the convictions, which corresponded to a “pressing social need”, since the applicants had made serious allegations of activity amounting to a criminal offence, for which they had been unable to provide any sufficient factual basis in the court proceedings. However, it nevertheless found that there had been a violation of Article 10, on account of the severity of the penalties imposed, namely seven months’ imprisonment, temporary prohibition on the exercise of certain civic rights and a prohibition on working as journalists for one year, in addition to payment of damages to the plaintiffs. Although the applicants had not served their sentences, having been pardoned by the President, and had continued to work as journalists, the Court made it clear that both these penalties were quite inappropriate in pursuing the legitimate aim of protecting the reputation of others, given the chilling effect which they would have on the role of the press.

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

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

Other judgments concerning defamation included cases relating to the conviction of journalists for defaming a prosecutor^{clxxv}, a judge^{clxxvi} and civil servants^{clxxvii}, in each of which violations were found. Similarly, the Court held that Article 10 had been violated where an award of damages had been made against an environmental association for defaming a mayor in a resolution which it had published in a newspaper^{clxxviii}, where an administrative fine had been imposed on a lawyer because of his criticism of a decision of the Constitutional Court in an interview with a journalist^{clxxix} and where a publisher/editor had been convicted for publishing a series of articles criticising a Supreme Court judge^{clxxx}. In two cases against France, however, the Court held that there had been no violation of Article 10. In *Radio France and Others v. France*^{clxxxi}, a radio journalist and an editor had been convicted in respect of news bulletins which had inaccurately reported the contents of a press article as attributing to a former senior civil servant a role in the deportation of Jews during the Second World War. In *Chauvy and Others v. France*^{clxxxii}, an author, a publishing company and the director of the company had been convicted of defaming members of the French Resistance.

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

There were three judgments dealing with the rights of associations or political parties. In *Gorzelik and Others v. Poland*^{clxxxiv}, the Grand Chamber held that the refusal to register an

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

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

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

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

to take account of the profound social, economic and legal changes that had occurred in the intervening period.

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

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

Several judgments dealt with issues under Article 3 of Protocol No. 1, and in particular the right to vote and the right to stand for election which are inherent in that provision. Two cases concerned the exclusion of certain groups of citizens from the right to vote. In *Hirst v. the United Kingdom (no. 2)*^{cx ciii}, the Court found that the blanket disenfranchisement of convicted prisoners was incompatible with the right to vote. The case has been referred to the Grand Chamber. In *Aziz v. Cyprus*^{cx civ}, the applicant, as a member of the Turkish-Cypriot community, had been unable to participate in elections because of the inexistence of a Turkish-Cypriot electoral roll and the refusal of the authorities to register him on the Greek-Cypriot electoral roll. The Court, noting that this situation stemmed from the fact that the constitutional provisions regulating the voting rights between members of the two communities had become impossible to implement in practice, held that there had been a violation of Article 3 of Protocol No. 1 and a violation of Article 14 of the Convention.

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

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

Property issues (Article 1 of Protocol No. 1)

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

The other main judgment delivered by the Grand Chamber in this area was in the case of *Kopecký v. Slovakia*^{ccii}. The applicant had sought to recover gold and silver coins which had been confiscated following his father's conviction in 1959. However, his claim had been dismissed on the ground that he had failed to show where the coins were deposited when the Extra-Judicial Rehabilitations Act 1991 came into force. In its Chamber judgment of 7 January 2003, the Court had found that there had been a violation of Article 1 of Protocol No. 1, considering that the requirement to show where the coins had been had imposed an excessive burden on the applicant. However, the Grand Chamber held that there had been no violation. It reiterated its approach in previous cases dealing with restitution of property in the following terms: "Article 1 of Protocol No. 1 cannot be interpreted as imposing any general obligation on the Contracting States to restore property which was transferred to them before they ratified the Convention. Nor does Article 1 of Protocol No. 1 impose any restrictions on the Contracting States' freedom to determine the scope of property restitution and to choose the conditions under which they agree to restore property rights of former owners ... In particular, the Contracting States enjoy a wide margin of appreciation with regard to the exclusion of certain categories of former owners from such entitlement. Where categories of owners are excluded in this way, their claims for restitution cannot provide the basis for a 'legitimate expectation' attracting the protection of Article 1 of Protocol No. 1." The Court went on to review its case-law relating to the notion of "legitimate expectation", concluding that it did not "contemplate the existence of a 'genuine dispute' or an 'arguable claim' as a criterion for determining whether there is a 'legitimate expectation' protected by Article 1 of Protocol No. 1". It disagreed with the Chamber's reasoning in that respect, taking the view rather that "where the proprietary interest is in the nature of a claim it may be regarded as an 'asset' only where it has a sufficient basis in national law, for example where there is settled case-law of the domestic courts confirming it". Noting that the applicant's restitution claim had been a conditional one from the outset and that in the domestic proceedings the courts had found that he did not comply with the statutory requirements, the Court concluded that the claim had "not been sufficiently established to qualify as an 'asset' attracting the protection of Article 1 of Protocol No. 1".

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

Reference has already been made in the context of Article 6 to the effect on property rights of both the prolonged non-enforcement and the annulment of final and binding court decisions. In that connection it may be noted that, although the number of *Brumărescu*-type

cases fell dramatically, a related issue arose in *Androne v. Romania*^{cciv}. Moreover, in one case involving the reopening of proceedings, no complaint had been made under Article 6 in that respect but the Court found a violation of Article 1 of Protocol No. 1^{ccv}. Similarly, in one non-enforcement case, the finding of a violation related only to Article 1 of Protocol No. 1^{ccvi}.

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

Further judgments of some interest with regard to property rights are *Bäck v. Finland*^{ccix}, concerning the virtual extinction of a guarantor's claim against the principal debtor as a result of debt adjustment, in which the Court held that there had not been a violation, and three cases in which it found that there had been a violation: *Beneficio Cappella Paolini v. San Marino*^{ccx}, concerning the refusal of the authorities to return part of an expropriated property which had not been used for the purposes for which the expropriation had been granted, *Kliafas and Others v. Greece*^{ccxi}, concerning the obligation of accountants to remit earnings to the State following the annulment of a law liberalising the profession, and *I.R.S. and Others v. Turkey*^{ccxii}, concerning prescription of property rights on the basis of twenty years' adverse possession by the State, without payment of any compensation.

Other cases of interest

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

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

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

Decision on a request for an advisory opinion

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

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

Notes

i. One judgment concerned two States.

ii. In 2003 the same four States accounted for over 60% of all judgments.

iii. The so-called “Pinto Act”, Law no. 89 of 24 March 2001.

iv. *Scordino v. Italy* (dec.), no. 36813/97, ECHR 2003-IV.

v. *Riccardi Pizzati v. Italy*, no. 62361/00, *Musci v. Italy*, no. 64699/01, *Giuseppe Mostacciolo v. Italy* (no. 1), no. 64705/01, *Cocchiarella v. Italy*, no. 64886/01, *Apicella v. Italy*, no. 64890/01, *Ernestina Zullo v. Italy*, no. 64897/01, *Giuseppina and Orestina Procaccini v. Italy*, no. 65075/01, and *Giuseppe Mostacciolo v. Italy* (no. 2), no. 65102/01, judgments of 10 November 2004.

vi. 70 judgments, compared to 48 in 2003.

vii. Law no. 4388 of 18 June 1999, amending Article 143 of the Constitution, and Law no. 4390 of 22 June 1999, amending Law no. 2845 on the national security courts. By virtue of provisional section 1 of Law no. 4390, the terms of office of the military judges and military prosecutors in service in the national security courts ended on 22 June 1999.

viii. Law no. 5190 of 16 June 2004, published in the Official Gazette on 30 June 2004.

ix. 35 judgments, compared to only 3 in 2003, while there had been 34 judgments dealing with this issue in 2002.

x. 27 judgments, although 20 of these were friendly settlements.

xi. There were only 3 of these judgments, compared to 22 in 2003 and 27 in 2002.

xii. *Belvedere Alberghiera S.r.l. v. Italy*, no. 31524/96, ECHR 2000-VI.

xiii. See *Brumărescu v. Romania* (just satisfaction) [GC], no. 28342/95, ECHR 2001-I. See also in this respect *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, ECHR 2000-VIII.

- ^{xiv}. See, for example, *Üküncü and Güneş v. Turkey*, no. 42775/98, judgment of 18 December 2003. The first case in which this formula was used was *Gençel v. Turkey*, no. 53431/99, judgment of 23 October 2003.
- ^{xv}. *Somogyi v. Italy*, no. 67972/01, judgment of 18 May 2004, to be reported in ECHR 2004-IV, and *Sejdovic v. Italy*, no. 56581/00, judgment of 10 November 2004. The latter case is now pending before the Grand Chamber. A request for referral of *Somogyi* was refused by the panel.
- ^{xvi}. [GC], no. 71503/01, judgment of 8 April 2004, to be reported in ECHR 2004-II.
- ^{xvii}. [GC], no. 31443/96, judgment of 22 June 2004, to be reported in ECHR 2004-V.
- ^{xviii}. *Hutten-Czapska v. Poland*, no. 35014/97. Judgment was delivered on 22 February 2005. It was estimated that 100,000 landlords were affected.
- ^{xix}. *Sejdovic v. Italy*, cited above, note 15.
- ^{xx}. No. 29865/96, judgment of 16 November 2004, to be reported in ECHR 2004-X (extracts).
- ^{xxi}. [GC], no. 48939/99, judgment of 30 November 2004, to be reported in ECHR 2004-XII.
- ^{xxii}. No. 46117/99, judgment of 10 November 2004, to be reported in ECHR 2004-X.
- ^{xxiii}. No. 4143/02, judgment of 16 November 2004, to be reported in ECHR 2004-X.
- ^{xxiv}. No. 58255/00, judgment of 18 November 2004, to be reported in ECHR 2004-XI (extracts).
- ^{xxv}. [GC], no. 48787/99, judgment of 8 July 2004, to be reported in ECHR 2004-VII.
- ^{xxvi}. No. 31821/96, judgment of 16 November 2004.
- ^{xxvii}. [GC], No. 53924/00, judgment of 8 July 2004, to be reported in ECHR 2004-VIII.
- ^{xxviii}. [GC], no. 50385/99, judgment of 20 December 2004, to be reported in ECHR 2004-XI.
- ^{xxix}. Nos. 43577/98 and 43579/98, judgment of 26 February 2004.
- ^{xxx}. See also *Bekos and Koutropoulos v. Greece* (dec.), no. 15250/02, 23 November 2004 (admissible).
- ^{xxxi}. No. 57671/00, judgment of 27 July 2004, to be reported in ECHR 2004-IX (extracts).
- ^{xxxii}. *İpek v. Turkey*, no. 25760/94, judgment of 17 February 2004, to be reported in ECHR 2004-II (extracts). The Court held that there had been a violation of Article 2 “on account of the presumed death of the applicant’s two sons”.
- ^{xxxiii}. See, in particular, *Tahsin Acar v. Turkey* [GC], no. 26307/95, judgment of 8 April 2004, to be reported in ECHR 2004-III. The Grand Chamber had earlier found in a judgment of 6 May 2003 that the application could not be struck out of the list on the basis of a unilateral declaration by the Government. See also the Chamber judgment of 9 April 2002 striking the application out of the list.
- ^{xxxiv}. See *Zengin v. Turkey*, no. 46928/99, judgment of 28 October 2004, and *Şirin Yılmaz v. Turkey*, no. 35875/97, judgment of 29 July 2004. In both cases, the Court held that there had been a procedural violation of Article 2 but not a substantive violation.
- ^{xxxv}. *Ahmet Özkan and Others v. Turkey*, no. 21689/93, judgment of 6 April 2004.
- ^{xxxvi}. With regard to ill-treatment of detainees, see, for example, *Çolak and Filizer v. Turkey*, nos. 32578/96 and 32579/96, judgment of 8 January 2004, and *Balogh v. Hungary*, no. 47940/99, judgment of 20 July 2004. See also *Martinez Sala and Others v. Spain*, no. 58438/00, judgment of 2 November 2004, in which the Court held that there had been a procedural violation but not a substantive violation. Several cases concerned ill-treatment during arrest: *R.L. and M.-J.D. v. France*, no. 44568/98, and *Toteva v. Bulgaria*, no. 42027/98, judgments of 19 May 2004, *Krastanov v. Bulgaria*, no. 50222/99, judgment of 30 September 2004, and *Barbu Anghelescu v. Romania*, no. 46430/99, judgment of 5 October 2004.
- ^{xxxvii}. See, for example, *Iorgov v. Bulgaria*, no. 40653/98, and *B. v. Bulgaria*, no. 42346/98, judgments of 11 March 2004, concerning prisoners sentenced to death.
- ^{xxxviii}. See *Bati and Others v. Turkey*, nos. 33097/96 and 57834/00, judgment of 3 June 2004, to be reported in ECHR 2004-IV (extracts), *Ilaşcu and Others v. Moldova and Russia*, cited above, note 25, *Bursuc v. Romania*, no. 42066/98, judgment of 12 October 2004, and *Abdülşamet Yaman v. Turkey*, no. 32446/96, judgment of 2 November 2004.
- ^{xxxix}. No. 67263/01, ECHR 2002-IX. The case concerned a prisoner undergoing treatment for cancer. The Court found a violation of Article 3.
- ^{xl}. No. 65436/01, ECHR 2003-XI. The case concerned the conditions in which an elderly detainee was hospitalised. The Court found a violation of Article 3.
- ^{xli}. See *Priebke v. Italy* (dec.), no. 48799/99, 5 April 2001, *Sawoniuk v. the United Kingdom* (dec.), no. 63716/00, ECHR 2001-VI, and *Papon v. France (no. 1)* (dec.), no. 64666/01, ECHR 2001-VI, concerning the continued detention of very old persons. The first case concerned detention on remand, the others imprisonment following conviction.
- ^{xlii}. No. 4672/02, judgment of 2 December 2004. A request for referral of the case to the Grand Chamber is pending.
- ^{xliiii}. See *Sakkopoulos v. Greece*, no. 61828/00, judgment of 15 January 2004. See also *Koval v. Ukraine* (dec.), no. 65550/01, 30 March 2004 (admissible), and *Biç v. Turkey* (dec.), no. 55955/00, 2 December 2004, concerning continued detention despite a serious illness, from which the detainee in fact died: a complaint under

Article 2 was declared inadmissible for non-exhaustion of domestic remedies but a complaint about the length of the detention was declared admissible.

^{xliv}. No. 58749/00, judgment of 15 January 2004.

^{xlv}. No. 25875/03, judgment of 14 December 2004.

^{xlvi}. See, for example, *Hun v. Turkey* (dec.), no. 5142/04, 2 September 2004.

^{xlvii}. *Léger v. France* (dec.), no. 19324/02, 21 September 2004.

^{xlviii}. *Pyrah v. the United Kingdom*, no. 17413/03.

^{xlix}. *Venkadajalararma v. the Netherlands*, no. 58510/00, and *Thampibillai v. the Netherlands*, no. 61350/00, judgments of 17 February 2004.

^l. *Nasimi v. Sweden* (dec.), no. 38865/02, 16 March 2004.

^{li}. *F. v. the United Kingdom* (dec.), no. 17341/03, 22 June 2004.

^{lii}. *Said v. the Netherlands* (dec.), no. 2345/02, 5 October 2004.

^{liii}. Judgment of 2 May 1997, *Reports of Judgments and Decisions* 1997-III.

^{liv}. See also *Cardoso and Johansen v. the United Kingdom* (dec.), no. 47061/99, 5 September 2000. The application was struck out of the list following a settlement between the parties providing for the first applicant to be allowed to enter the United Kingdom.

^{lv}. (dec.), no. 17868/03, 22 June 2004.

^{lvi}. (dec.), no. 25629/04, 25 November 2004.

^{lvii}. *Dragan and Others v. Germany* (dec.), no. 33743/03, 7 October 2004.

^{lviii}. *Salkic v. Sweden* (dec.), no. 7702/04, 29 June 2004.

^{lix}. No. 70276/01, judgment of 19 May 2004, to be reported in ECHR 2004-IV.

^{lx}. Cited above, note 35.

^{lxi}. Cited above, note 36.

^{lxii}. No. 40905/98, judgment of 8 June 2004.

^{lxiii}. Cf. *Witold Litwa v. Poland*, no. 26629/95, ECHR 2000-III.

^{lxiv}. No. 45508/99, judgment of 5 October 2004, to be reported in ECHR 2004-IX.

^{lxv}. No. 39270/98, judgment of 8 April 2004.

^{lxvi}. No. 49158/99, judgment of 24 June 2004.

^{lxvii}. (dec.), no. 67175/01, 12 October 2004.

^{lxviii}. Judgment of 30 July 1998, *Reports* 1998-V.

^{lxix}. See, with regard to detention on remand, *Klyakhin v. Russia*, no. 46082/99, judgment of 30 November 2004, and, with regard to psychiatric detention, *Tám v. Slovakia*, no. 50213/99, judgment of 22 June 2004. A request for referral of the former case to the Grand Chamber is pending.

^{lxx}. See *Pavletić v. Slovakia*, no. 39359/98, judgment of 22 June 2004, and *Mitev v. Bulgaria*, no. 40063/98, judgment of 22 December 2004.

^{lxxi}. See, for example, *Prodan v. Moldova*, no. 49806/99, judgment of 18 May 2004, to be reported in ECHR 2004-III (extracts).

^{lxxii}. See, for example, *Zhovner v. Ukraine*, no. 56848/00, judgment of 29 June 2004.

^{lxxiii}. *Qufaj Co. sh.p.k. v. Albania*, no. 54268/00, judgment of 18 November 2004.

^{lxxiv}. *Wasserman v. Russia*, no. 15021/02, judgment of 18 November 2004. See also *Burdov v. Russia*, no. 59498/00, ECHR 2002-III.

^{lxxv}. See, for example, *Sabin Popescu v. Romania*, no. 48102/99, judgment of 2 March 2004.

^{lxxvi}. *Mancheva v. Bulgaria*, no. 39609/98, judgment of 30 September 2004.

^{lxxvii}. See, for example, *Metaxas v. Greece*, no. 8415/02, judgment of 27 May 2004.

^{lxxviii}. See *Taşkın and Others v. Turkey*, cited above, note 22.

^{lxxix}. At the beginning of 2005, more than eighty further cases of this kind were pending before the Court.

^{lxxx}. At the beginning of 2005, some 250 applications against Ukraine were pending, around 150 of which had been communicated for observations. The equivalent figures for Russia were around 140, including some 40 which had been declared admissible or communicated for observations. These statistics, which are partly based on an initial assessment of applications, are approximate.

^{lxxxi}. Judgment of 19 March 1997, *Reports* 1997-II.

^{lxxxii}. See also in this connection *Loiseau v. France*, no. 46809/99, judgment of 28 September 2004, in which the failure to comply with a court decision was due to the inability of the authorities to locate the file. The Court held that there had been a violation of Article 6.

^{lxxxiii}. *Piven v. Ukraine*, no. 56849/00, judgment of 29 June 2004.

^{lxxxiv}. Nos. 78028/01 and 78030/01, judgment of 22 June 2004, to be reported in ECHR 2004-V (extracts).

^{lxxxv}. Cited above, note 16.

^{lxxxvi}. Judgment of 21 February 1975, Series A no. 18.

^{lxxxvii}. No. 73936/01, judgment of 3 June 2004.

- ^{lxxxviii}. *Cordova v. Italy (no. 1)*, no. 40877/98, ECHR 2003-I, and *Cordova v. Italy (no. 2)*, no. 45649/99, ECHR 2003-I (extracts).
- ^{lxxxix}. See also *A. v. the United Kingdom*, no. 35373/97, ECHR 2002-X.
- ^{xc}. *OGIS-Institut Stanislas and Others v. France*, nos. 42219/98 and 54563/00, judgment of 27 May 2004.
- ^{xci}. No. 62543/00, judgment of 27 April 2004, to be reported in ECHR 2004-III.
- ^{xcii}. No. 36813/97, judgment of 29 July 2004.
- ^{xciii}. *Maurice v. France (dec.)*, no. 11810/03, and *Draon v. France (dec.)*, no. 1513/03, 6 July 2004.
- ^{xciv}. *Tregubenko v. Ukraine*, no. 61333/00, judgment of 2 November 2004.
- ^{xcv}. *Kilián v. the Czech Republic*, no. 48309/99, judgment of 7 December 2004.
- ^{xcvi}. *Związek Nauczycielstwa Polskiego v. Poland*, no. 42049/98, judgment of 21 September 2004, to be reported in ECHR 2004-IX.
- ^{xcvii}. *Pramov v. Bulgaria*, no. 42986/98, judgment of 30 September 2004, and *Neshev v. Bulgaria*, no. 40897/98, judgment of 28 October 2004.
- ^{xcviii}. *Beneficio Cappella Paolini v. San Marino*, no. 40786/98, judgment of 13 July 2004, to be reported in ECHR 2004-VIII (extracts).
- ^{xcix}. The provision has been amended.
- ^c. [GC], no. 28342/95, ECHR 1999-VII. The number of cases of this type declined dramatically in 2004, with only three judgments. See also *Androne v. Romania*, no. 54062/00, judgment of 22 December 2004. A request for referral of that case to the Grand Chamber is pending.
- ^{ci}. *Sovtransavto Holding v. Ukraine*, no. 48553/99, ECHR 2002-VII, and *Ryabykh v. Russia*, no. 52854/99, ECHR 2003-IX. The Ukrainian term for this type of review is *protest*, while the Russian term is *nadzor*.
- ^{cii}. *Tregubenko v. Ukraine*, cited above, note 94, and *Svetlana Naumenko v. Ukraine*, no. 41984/98, judgment of 9 November 2004. In the latter case, the Court found a separate violation of Article 6 on the ground that the deputy president of the regional court had participated in the decision on the supervisory review request which he himself had submitted.
- ^{ciii}. *Nikitin v. Russia*, no. 50178/99, judgment of 20 July 2004, to be reported in ECHR 2004-VIII.
- ^{civ}. No. 30508/96, judgment of 9 March 2004.
- ^{cv}. See *P.K. v. Finland (dec.)*, no. 37442/97, 9 July 2002.
- ^{cvi}. See also *Graviano v. Italy*, no. 10075/02, judgment of 10 February 2005.
- ^{cvi}. See, for example, *Perna v. Italy [GC]*, no. 48898/99, ECHR 2003-V.
- ^{cvi}. *Laukkanen and Manninen v. Finland*, no. 50230/99, judgment of 3 February 2004, and *Morel v. France (no. 2)*, no. 43284/98, judgment of 12 February 2004.
- ^{cix}. See, for example, *Georgios Papageorgiou v. Greece*, no. 59506/00, ECHR 2003-VI (extracts).
- ^{cx}. No. 40847/98, judgment of 15 June 2004.
- ^{cx}. No. 47221/99, judgment of 22 June 2004, to be reported in ECHR 2004-V.
- ^{cxii}. No. 41579/98, judgment of 26 October 2004.
- ^{cxiii}. Judgment of 22 June 1989, Series A no. 155.
- ^{cxiv}. *Puolitaival and Pirttiaho v. Finland*, no. 54857/00, judgment of 23 November 2004.
- ^{cxv}. No. 33958/96, ECHR 2000-XII.
- ^{cxvi}. No. 77562/01, judgment of 29 July 2004, to be reported in ECHR 2004-IX.
- ^{cxvii}. Judgment of 10 June 1996, *Reports* 1996-III.
- ^{cxviii}. No. 53971/00, judgment of 10 February 2004, to be reported in ECHR 2004-I.
- ^{cxix}. By way of contrast, see *Cianetti v. Italy*, no. 55634/00, judgment of 22 April 2004, in which trial judges had previously participated in an appeal decision concerning preventive measures.
- ^{cxix}. No. 73797/01, judgment of 27 January 2004.
- ^{cxix}. The Greek word, *ravasakia*, was understood by the court as meaning a love letter, although it may also mean a simple note.
- ^{cxix}. In that connection, cf. *Weber v. Switzerland*, judgment of 22 May 1990, Series A no. 177, and *Ravnsborg v. Sweden*, judgment of 23 March 1994, Series A no. 283-B.
- ^{cxix}. *Edwards and Lewis v. the United Kingdom [GC]*, nos. 39647/98 and 40461/98, judgment of 27 October 2004, to be reported in ECHR 2004-X. See also *Rowe and Davis v. the United Kingdom [GC]*, no. 28901/95, ECHR 2000-II, *Fitt v. the United Kingdom [GC]*, no. 29777/96, ECHR 2000-II, and *Jasper v. the United Kingdom [GC]*, no. 27052/95, judgment of 16 February 2000. Concerning a question of non-disclosure in an administrative context, see *H.A.L. v. Finland*, no. 38267/97, judgment of 27 January 2004.
- ^{cxix}. *S.C. v. the United Kingdom*, no. 60958/00, judgment of 15 June 2004, to be reported in ECHR 2004-IV. See also *T. v. the United Kingdom [GC]*, no. 24724/94, judgment of 16 December 1999, and *V. v. the United Kingdom [GC]*, no. 24888/94, ECHR 1999-IX.
- ^{cxix}. *Kansal v. the United Kingdom*, no. 21413/02, judgment of 27 April 2004. See also *Saunders v. the United Kingdom*, judgment of 17 December 1996, *Reports* 1996-VI, and *I.J.L. and Others v. the United Kingdom*, nos.

29522/95, 30056/96 and 30574/96, ECHR 2000-IX, both concerning the use of evidence given to inspectors investigating a company takeover. With regard to self-incrimination, see also *Weh v. Austria*, no. 38544/97, judgment of 8 April 2004, concerning the obligation of a car owner to provide information as to the identity of the person who was driving it at the time of a road traffic offence. The Court found that there had not been a violation of Article 6. In this connection, it may be noted that two cases raising related issues with regard to a similar provision of English law were communicated for observations in 2004: *O'Halloran and Francis v. the United Kingdom*, nos. 15809/02 and 25624/02. Furthermore, an application concerning the statutory liability of a car owner was declared inadmissible: *Falk v. the Netherlands* (dec.), no. 66273/01, 19 October 2004, to be reported in ECHR 2004-XI.

^{cxxvi}. *G.W. v. the United Kingdom*, no. 34155/96, and *Le Petit v. the United Kingdom*, no. 35574/97, judgments of 15 June 2004, and *Miller and Others v. the United Kingdom*, nos. 45825/99, 45826/99 and 45827/99, judgment of 26 October 2004. See *Findlay v. the United Kingdom*, judgment of 25 February 1997, *Reports* 1997-I, *Cooper v. the United Kingdom* [GC], no. 48843/99, ECHR 2003-XII, and *Grievies v. the United Kingdom* [GC], no. 57067/00, ECHR 2003-XII (extracts). See also *Thompson v. the United Kingdom*, no. 36256/97, judgment of 15 June 2004, concerning the summary trial of a soldier by his commanding officer. Cf. *Hood v. the United Kingdom* [GC], no. 27267/95, ECHR 1999-I.

^{cxxvii}. No. 40395/98, judgment of 10 November 2004.

^{cxxviii}. [GC], no. 47287/99, judgment of 12 February 2004, to be reported in ECHR 2004-I.

^{cxxix}. See, in the French context, *Tomasi v. France*, judgment of 27 August 1992, Series A no. 241-A, and *Acquaviva v. France*, judgment of 21 November 1995, Series A no. 333-A.

^{cxxx}. In that connection, see *Garimpo v. Portugal* (dec.), no. 66752/01, 10 June 2004, concerning the position of an *assistente* (assistant to the prosecuting authority) in criminal proceedings in Portugal.

^{cxxxi}. No. 44760/98, judgment of 9 November 2004.

^{cxxxii}. See *O. v. Norway*, no. 29327/95, ECHR 2003-II, and *Hammern v. Norway*, no. 30287/96, judgment of 11 February 2003.

^{cxxxiii}. In this connection, mention should also be made of *Capeau v. Belgium*, no. 42914/98, judgment of 13 January 2005, in which the same approach was applied where the criminal proceedings had merely been discontinued.

^{cxxxiv}. No. 59335/00, judgment of 19 October 2004.

^{cxxxv}. At the beginning of 2005, there were almost 600 applications against Poland raising this issue.

^{cxxxvi}. See *Djanzozov v. Bulgaria*, no. 45950/99, judgment of 8 July 2004, *Dimitrov v. Bulgaria*, no. 47829/99, and *Rachevi v. Bulgaria*, no. 47877/99, judgments of 23 September 2004 (concerning civil proceedings), and *Osmanov and Yuseinov v. Bulgaria*, nos. 54178/00 and 59901/00, judgment of 23 September 2004, and *Mitev v. Bulgaria*, no. 40063/98, judgment of 22 December 2004 (concerning criminal proceedings).

^{cxxxvii}. See *Dostál v. the Czech Republic*, no. 52859/99, judgment of 25 May 2004, *Bartl v. the Czech Republic*, no. 50262/99, judgment of 22 June 2004, and *Konečný v. the Czech Republic*, nos. 47269/99, 64656/01 and 65002/01, judgment of 26 October 2004 (concerning civil proceedings), and *Hradecký v. the Czech Republic*, no. 76802/01, judgment of 5 October 2004. See also *Hartman v. the Czech Republic*, no. 53341/99, ECHR 2003-VIII (extracts).

^{cxxxviii}. See *Kangasluoma v. Finland*, no. 48339/99, judgment of 20 January 2004 (concerning criminal proceedings).

^{cxxxix}. See *Laloussi-Kotsovos v. Greece*, no. 65430/01, judgment of 19 May 2004, and *Nastos v. Greece*, no. 6711/02, *Theodoropoulos and Others v. Greece*, no. 16696/02, judgments of 15 July 2004, and *Karellis v. Greece*, no. 6706/02, judgment of 2 December 2004 (concerning administrative proceedings). See also *Konti-Arvaniti v. Greece*, no. 53401/99, judgment of 10 April 2003.

^{cxli}. See *O'Reilly and Others v. Ireland*, no. 54725/00, judgment of 29 July 2004 (concerning judicial review proceedings).

^{cxlii}. See *Lislawska v. Poland*, no. 37761/97, *Zynger v. Poland*, no. 66096/01, judgments of 13 July 2004, and *Lizut-Skwarek v. Poland*, no. 71625/01, judgment of 5 October 2004 (concerning civil proceedings). See also *D.M. v. Poland*, no. 13557/02, judgment of 14 October 2003, and *Kudla v. Poland* [GC], no. 30210/96, ECHR 2000-XI (concerning criminal proceedings).

^{cxliii}. See *Kormacheva v. Russia*, no. 53084/99, judgment of 29 January 2004, *Plaksin v. Russia*, no. 14949/02, judgment of 29 April 2004, *Yemanakova v. Russia*, no. 60408/00, judgment of 23 September 2004 (concerning civil proceedings), and *Klyakhin v. Russia*, cited above, note 69 (concerning criminal proceedings).

^{cxliiii}. See *E.O. and V.P. v. Slovakia*, nos. 56193/00 and 57581/00, judgment of 27 April 2004 (concerning civil proceedings).

^{cxliv}. See *Merit v. Ukraine*, no. 66561/01, judgment of 30 March 2004 (concerning criminal proceedings).

^{cxlv}. *Glass v. the United Kingdom*, no. 61827/00, judgment of 9 March 2004, to be reported in ECHR 2004-II. The Court found that there had been a violation of Article 8.

- cxlvi. *Jalloh v. Germany* (dec.), no. 54810/00, 26 October 2004. The application was declared admissible and in February 2005 the Chamber relinquished jurisdiction in favour of the Grand Chamber. See also *Wretlund v. Sweden* (dec.), no. 46210/99, 9 March 2004, concerning the obligation of an employee at a nuclear power station to undergo drug tests. The application was declared inadmissible.
- cxlvii. No. 59320/00, judgment of 24 June 2004, to be reported in ECHR 2004-VI.
- cxlviii. Cited above, note 22.
- cxlix. Cited above, note 23.
- cl. *Ashworth and Others v. the United Kingdom* (dec.), no. 39561/98, 20 January 2004. The case was distinguished from *Hatton and Others v. the United Kingdom* [GC], no. 36022/97, ECHR 2003-VIII.
- cli. *Ward v. the United Kingdom* (dec.), no. 31888/03, 9 November 2004.
- cii. The adequacy of the measures taken to ensure the applicant's right to respect for his home was in issue in *Surugiu v. Romania*, no. 48995/99, judgment of 20 April 2004.
- cliii. Cited above, note 84.
- cliv. No. 60457/00, judgment of 5 February 2004.
- clv. No. 63627/00, judgment of 29 June 2004.
- clvi. No. 74969/01, judgment of 26 February 2004.
- clvii. No. 45582/99, judgment of 1 June 2004, to be reported in ECHR 2004-IV.
- clviii. In *Görgülü v. Germany*, the Court held that there had been a violation on account of the refusal of custody and access rights but that there had been no violation with regard to the adequacy of the applicant's involvement in the decision-making process.
- clix. *Haas v. the Netherlands*, no. 36983/97, judgment of 13 January 2004, to be reported in ECHR 2004-I.
- clx. See *Couillard Maugery v. France*, no. 64796/01, judgment of 1 July 2004, which concerned the keeping of children in care and restrictions on the mother's contact with them (no violation), and *Haase v. Germany*, no. 11057/02, judgment of 8 April 2004, to be reported in ECHR 2004-III (extracts), which concerned the taking into care of seven children, including a 7-day-old baby, on an emergency basis (violation). In this latter respect, cf. *K. and T. v. Finland* [GC], no. 25702/94, ECHR 2001-VII, *P., C. and S. v. the United Kingdom*, no. 56547/00, ECHR 2002-VI, and *Covezzi and Morselli v. Italy*, no. 52763/99, judgment of 9 May 2003.
- clxi. No. 46572/99, judgment of 28 September 2004.
- clxii. No. 59532/00, judgment of 29 July 2004.
- clxiii. Cited above, note 24.
- clxiv. No. 44774/98, judgment of 29 June 2004. A similar application, *Zeynep Tekin v. Turkey*, no. 41556/98, was struck out of the list on the same date. See also *Karaduman v. Turkey*, no. 16278/90, Commission decision of 3 May 1993, Decisions and Reports 74, and *Dahlab v. Switzerland* (dec.), no. 42393/98, ECHR 2001-V.
- clxv. Cf. *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], nos. 41340/98, 41342/98, 41343/98 and 41344/98, ECHR 2003-II.
- clxvi. No. 39023/97, judgment of 16 December 2004.
- clxvii. [GC], no. 30985/96, ECHR 2000-XI.
- clxviii. *Ülke v. Turkey* (dec.), no. 39437/98, 1 June 2004.
- clxix. *Ninety-seven members of the Gldani Congregation of Jehovah's Witnesses and four Others v. Georgia* (dec.), no. 71156/01, 6 July 2004.
- clxx. [GC], no. 33348/96, judgment of 17 December 2004, to be reported in ECHR 2004-XI.
- clxxi. [GC], no. 49017/99, judgment of 17 December 2004, to be reported in ECHR 2004-XI.
- clxxii. *Selistö v. Finland*, no. 56767/00, judgment of 16 November 2004. Cf. *Bergens Tidende and Others v. Norway*, no. 26132/95, ECHR 2000-IV.
- clxxiii. *Karhuvaara and Italehti v. Finland*, no. 53678/00, judgment of 16 November 2004, to be reported in ECHR 2004-X.
- clxxiv. In that connection, reference may also be made to two more recent judgments in which the high level of damages awarded was an essential element in the finding of a violation: *Steel and Morris v. the United Kingdom*, no. 68416/01, judgment of 15 February 2005, and *Pakdemirli v. Turkey*, no. 35839/97, judgment of 22 February 2005.
- clxxv. *Rizos and Daskas v. Greece*, no. 65545/01, judgment of 27 May 2004. While the Court found a violation of Article 10, it held that the application of a special procedure for defamation via the press, with a minimum level of damages, did not violate Article 6.
- clxxvi. *Sabou and Pircălab v. Romania*, cited above, note 161. The Court found a violation of Article 10.
- clxxvii. *Busuioc v. Moldova*, no. 61513/00, judgment of 21 December 2004. The Court found several violations of Article 10. It found no violation in respect of one aspect.
- clxxviii. *Vides Aizsardzibas Klubs v. Latvia*, no. 57829/00, judgment of 27 May 2004.
- clxxix. *Amihalachioaie v. Moldova*, no. 60115/00, judgment of 20 April 2004, to be reported in ECHR 2004-III.
- clxxx. *Hrico v. Slovakia*, no. 49418/99, judgment of 20 July 2004.

- clxxxi. No. 53984/00, judgment of 30 March 2004, to be reported in ECHR 2004-II.
- clxxxii. No. 64915/01, judgment of 29 June 2004, to be reported in ECHR 2004-VI.
- clxxxiii. No. 58148/00, judgment of 18 May 2004, to be reported in ECHR 2004-IV.
- clxxxiv. [GC], no. 44158/98, judgment of 17 February 2004, to be reported in ECHR 2004-I.
- clxxxv. No. 47978/99, judgment of 7 October 2004.
- clxxxvi. No. 65659/01, judgment of 5 October 2004.
- clxxxvii. *Maestri v. Italy* [GC], no. 39748/98, judgment of 17 February 2004, to be reported in ECHR 2004-I. See also *N.F. v. Italy*, no. 37119/97, ECHR 2001-IX.
- clxxxviii. Cited above, note 29.
- clxxxix. No. 69498/01, judgment of 13 July 2004, to be reported in ECHR 2004-VIII.
- cx. No. 68864/01, judgment of 22 December 2004.
- cxci. No. 34406/97, ECHR 2000-II.
- cxcii. Cited above, note 20.
- cxci. No. 74025/01, judgment of 30 March 2004.
- cxci. No. 69949/01, judgment of 22 June 2004, to be reported in ECHR 2004-V.
- cxv. No. 58278/00, judgment of 17 June 2004.
- cxv. No. 17707/02, judgment of 19 October 2004, to be reported in ECHR 2004-X.
- cxvii. *Guliyev v. Azerbaijan* (dec.), no. 35584/02, 27 May 2004, and *Boškoski v. the former Yugoslav Republic of Macedonia* (dec.), no. 11676/04, 2 September 2004, to be reported in ECHR 2004-VI.
- cxviii. Cited above, note 17.
- cxix. In *Azinas v. Cyprus* [GC], no. 56679/00, judgment of 28 April 2004, to be reported in ECHR 2004-III, the Grand Chamber declared the application inadmissible on the ground of non-exhaustion of domestic remedies. The Chamber had found a violation of Article 1 of Protocol No. 1.
- cc. In *Ilaşcu and Others v. Moldova and Russia* (cited above, note 25), for example, the complaint concerned the confiscation of the applicants' possessions after their trial. The Court found that there had been no violation of Article 1 of Protocol No. 1.
- cci. Cited above, note 21.
- ccii. [GC], no. 44912/98, judgment of 28 September 2004, to be reported in ECHR 2004-IX. See also *Němcová and Others v. the Czech Republic* (dec.), no. 72058/01, 9 November 2004.
- cciii. Nos. 46720/99, 72203/01 and 72552/01, judgment of 22 January 2004.
- cciv. No. 54062/00, judgment of 22 December 2004. A request for referral of the case to the Grand Chamber is pending.
- ccv. *Valová and Slezák v. Slovakia*, no. 44925/98, judgment of 1 June 2004.
- ccvi. *Fotopoulou v. Greece*, no. 66725/01, judgment of 18 November 2004. The Court also found a violation of Article 13.
- ccvii. No. 60669/00, judgment of 12 October 2004, to be reported in ECHR 2004-IX.
- ccviii. No. 69529/01, judgment of 18 November 2004.
- ccix. No. 37598/97, judgment of 20 July 2004, to be reported in ECHR 2004-VIII.
- ccx. Cited above, note 98.
- ccxi. No. 66810/01, judgment of 8 July 2004.
- ccxii. No. 26338/95, judgment of 20 July 2004.
- ccxiii. Article 17 of Protocol No. 14, amending Article 59 of the Convention.
- ccxiv. (dec.) [GC], no. 56672/00, 10 March 2004, to be reported in ECHR 2004-IV. The States concerned are: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden and the United Kingdom.
- ccxv. The Court also communicated to the respondent Government *Emesa Sugar N.V. v. the Netherlands*, no. 62023/00, concerning the absence of any opportunity to submit observations on the opinion of the Advocate General in proceedings before the European Court of Justice. However, the application was declared inadmissible on 13 January 2005, on the ground that the subject matter of the dispute related to taxation and thus fell outside the scope of Article 6 of the Convention: see *Ferrazzini v. Italy* [GC], no. 44759/98, ECHR 2001-VII. Mention should also be made in this connection of *Bosphorus Airways v. Ireland* ((dec.), no. 45036/98, 13 September 2001) in which the Grand Chamber held a hearing on 29 September 2004.
- ccxvi. *Norwood v. the United Kingdom* (dec.), no. 23131/03, 16 November 2004, to be reported in ECHR 2004-XI.
- ccxvii. *W.P. and Others v. Poland* (dec.), no. 42264/98, 2 September 2004, to be reported in ECHR 2004-VII (extracts).
- ccxviii. See *İkincisoğlu v. Turkey*, no. 26144/95, judgment of 27 July 2004, and *Ilaşcu and Others v. Moldova and Russia*, cited above, note 25. In two judgments concerning Russia, a violation of Article 34 was found on

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account of interferences with the correspondence of detained applicants: *Poleshchuk v. Russia*, no. 60776/00, judgment of 7 October 2004, and *Klyakhin v. Russia*, cited above, note 69.

^{ccxix}. See *İpek v. Turkey*, cited above, note 32, and *Tahsin Acar v. Turkey*, cited above, note 33.