

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



GRAND CHAMBER

ANNUAL ACTIVITY REPORT 2003

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## CONTENTS

	Page
I. Introduction.....	3
II. Composition of the Court .....	4
III. Cases referred to the Grand Chamber by relinquishment of jurisdiction (Article 30 of the Convention and Rule 72 of the Rules of Court) .....	5
IV. Cases referred to the Grand Chamber by decision of its five-member Panel .....	6
V. Hearings .....	25
VI. Decisions on Admissibility .....	31
VII. Judgments .....	32
VIII. Third party interventions .....	43
IX. List of Article 43 requests examined by the Grand Chamber's Panel.....	44
X. List of cases pending before the Grand Chamber on 31 December 2003 .....	44

## **I. INTRODUCTION**

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

Fourteen new cases (concerning 16 applications) were referred to the Grand Chamber, five by relinquishment of jurisdiction by the respective Chamber pursuant to Article 30 of the Convention (see Chapter III below), and nine by a decision of the Grand Chamber's Panel to accept a request for re-examination under Article 43 of the Convention (see Chapter IV below).

The Grand Chamber held 28 sessions and nine oral hearings (see Chapter V below).

The Grand Chamber declared six applications admissible. All of these decisions were taken in conjunction with the judgment on the merits, by virtue of Article 29 § 3 of the Convention (see Chapter VI below).

The Grand Chamber adopted 12 judgments (concerning 19 applications, of which 11 concerned the merits (six in relinquishment cases and five in rehearing cases), and one dealt with a preliminary matter (see Chapter VII below).

## II. COMPOSITION OF THE COURT

All judges of the Court participate in the work of the Grand Chamber. Its composition for each case is determined in accordance with Rule 24 of the Rules of Court.

Luzius **Wildhaber** (Swiss), *President*,  
Christos **Rozakis** (Greek), *Vice-President*,  
Jean-Paul **Costa** (French), *Vice-President*,  
Georg **Ress** (German), *Section President*,  
Nicolas **Bratza** (British), *Section President*,  
Gaukur **Jörundsson** (Icelandic),  
Giovanni **Bonello** (Maltese),  
Lucius **Cafilisch**<sup>1</sup> (Swiss),  
Loukis **Loucaides** (Cypriot),  
Pranas **Kuris** (Lithuanian),  
Ireneu **Cabral Barreto** (Portuguese),  
Riza **Türmen** (Turkish),  
Françoise **Tulkens** (Belgian),  
Viera **Strážnická** (Slovakian),  
Corneliu **Bîrsan** (Romanian),  
Peer **Lorenzen** (Danish),  
Karel **Jungwiert** (Czech),  
Marc **Fischbach** (Luxemburger),  
Volodymyr **Butkevych** (Ukrainian),  
Josep **Casadevall** (Andorran),  
Boštjan **Zupancic** (Slovenian),  
Nina **Vajic** (Croatian),  
John **Hedigan** (Irish),  
Wilhelmina **Thomassen** (Dutch),  
Matti **Pellonpää** (Finnish),  
Margarita **Tsatsa-Nikolovska** (citizen of “the Former Yugoslav  
Republic of Macedonia”),  
Hanne Sophie **Greve** (Norwegian),  
András **Baka** (Hungarian),  
Rait **Maruste** (Estonian),  
Egils **Levits** (Latvian),  
Kristaq **Traja** (Albanian),  
Snejana **Botoucharova** (Bulgarian),  
Mindia **Ugrekhelidze** (Georgian),  
Anatoly **Kovler** (Russian),  
Vladimiro **Zagrebelsky** (Italian),  
Antonella **Mularoni** (San Marinense),  
Elisabeth **Steiner** (Austrian),

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1. Judge elected in respect of Liechtenstein.

Stanislav **Pavlovschi** (Moldovan),  
Lech **Garlicki** (Polish),  
Javier **Borrego Borrego**<sup>2</sup> (Spanish),  
Elisabet **Fura-Sandström**<sup>3</sup> (Swedish),  
Alvina **Gyulumyan** (Armenian),  
Khanlar **Hajiyev** (Azerbaijani), *Judges*,

Paul **Mahoney** (British), *Registrar*,  
Wolfgang **Strasser** (Austrian), *Deputy to the Registrar*

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

The following five cases were referred to the Grand Chamber by decisions of the respective Chambers to relinquish jurisdiction:

- (1) **Cooper v. the United Kingdom, no. 48843/99**
- (2) **Grieves v. the United Kingdom, no. 57067/00**

Referred on 6 May and 11 February 2003 respectively, by the Fourth Section (judgment of 16 December 2003, see Chapter VII below).

- (3) **Assanidze v. Georgia, no. 71503/01**

Referred on 18 March 2003 by the Second Section (hearing on 19 November 2003, see Chapter V below).

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

Referred on 22 May 2003 by the Third Section (hearing on 9 December 2003, see Chapter V below).

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

Referred on 5 June 2003 by the First Section.

The case concerns the applicability of Article 6 § 1 to the civil party in criminal proceedings and the alleged unfairness of the proceedings.

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<sup>2</sup> Took up office on 29 January 2003, replacing Mr Antonio Pastor Ridruejo

<sup>3</sup> Took up office on 1 March 2003, replacing Mrs Elisabeth Palm

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

In 2003 the five-member Panel of the Grand Chamber (Article 43 § 2 of the Convention and Rule 24 § 5 of the Rules of Court) held four meetings (on 21 May, 9 July, 24 September and 4 December 2003) to examine requests by the parties for cases to be referred to the Grand Chamber for re-examination under Article 43 of the Convention. It considered requests concerning a total of 87 cases, 13 of which were submitted by the respective Governments (in two cases both the Government and the applicant submitted requests) (see list in Appendix 1).

The Panel accepted rehearing requests in the following nine cases:

##### **(1) Smoleanu v. Romania, no. 30324/96**

Elena Smoleanu is a Romanian national. She was born in 1922 and lives in Ploiesti. In 1950, under Decree no. 92/1950, the State nationalised a house converted into two flats, a garage and adjoining land which the applicant had received as a dowry from her father in 1944.

The applicant first lodged an application for recovery of possession, which was granted by Prahova County Court. That court's judgment was quashed, however, on 13 June 1995 by Ploiesti Court of Appeal on the ground that the courts did not have jurisdiction to examine application of the nationalisation decree. In March 1996 the applicant lodged an application for restitution of property under Law no. 112/1995. The Administrative Board returned to the applicant the flat she had occupied as a tenant and awarded her compensation for the rest of the house and land, but dismissed her application in respect of the garage. The applicant, who considered that the compensation she had received was less than the value of the property, lodged a complaint with Ploiesti Court of First Instance. Examination of her complaint was adjourned because a second application for recovery of possession had been lodged at the same time. That application was refused on 30 March 1998 by Ploiesti Court of Appeal on the ground that the fact that the applicant had lodged an application for restitution meant that she accepted that the nationalisation had been lawful. The application for restitution resulted in the Administrative Board's decision being upheld.

Relying on Article 6 § 1 of the Convention, the applicant complained of the Court of Appeal's refusal to recognise that the courts had jurisdiction to determine an action for recovery of possession. She further complained, under Article 1 of Protocol No. 1, that the Court of Appeal's judgments had infringed her right to peaceful enjoyment of her possessions.

*The Chamber's judgment:*

Article 6 § 1: The Chamber ruled that the dismissal of the applicant's action for recovery as a result of the Court of Appeal's judgment of 13 June 1995 had in itself infringed the right of access to a court. In addition, by holding in its judgment of 30 March 1998 that it was not necessary to determine an action for recovery because another appeal about the disputed property was pending, the Court of Appeal had likewise denied the applicant the right of access to a court. Consequently, the Chamber held unanimously that there had been a violation of Article 6 § 1 in these two respects.

Article 1 of Protocol No. 1: The Chamber noted that the applicant could claim to be the victim of an infringement of her right of property only in respect of that part of the property which had not been returned to her. It observed in the first place that it did not have jurisdiction to examine the circumstances or continuing effects of nationalisation, which had taken place before the date when the Convention came into force with regard to Romania, namely 20 June 1994. It further noted that the actions brought by the applicant did not relate to a "present possession" and that she had not established that she had a "legitimate expectation" of securing recovery of that part of the property in respect of which her claims had not been upheld by the domestic courts. It accordingly held unanimously that there had been no violation of Article 1 of Protocol No. 1.

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

Irina Margaret Popovici, Sanda Popovici and Maria Margareta Dumitrescu are Romanian nationals. The first two applicants were born in 1930 and 1932 respectively. Mrs Dumitrescu died in 1997, but the proceedings before the Court were continued by her heir, Maria Cristina Mauc Dumitrescu, a French and Romanian national who lives in Villebon sur Yvette (France). The application concerned a property in Predeal built by the applicants' father. The building was nationalised in 1965 and transferred to the Romanian Intelligence Service in 1992.

The applicants complained of the national courts' refusal to return their former property, which had been nationalised by the State. Relying on Article 6 § 1 of the Convention, they complained of the refusal to recognise that the courts had jurisdiction to settle actions over title to property. They complained further, under Article 1 of Protocol No. 1, of an infringement of their right to the peaceful enjoyment of their possessions.

*The Chamber's judgment:*

Article 6 § 1: Finding that the refusal to recognise that the courts had jurisdiction to settle actions over title to property was in itself contrary to the right of access to a tribunal, the Chamber held unanimously that there had been a violation of Article 6 § 1.

Article 1 of Protocol No. 1: The Chamber noted that the proceedings had not concerned “existing property” of the applicants and that they had failed to establish that they had a “legitimate expectation” of owning the property claimed. The Chamber found that they were not the owners of a possession and held unanimously that there had not been a violation of Article 1 of Protocol No. 1.

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

Alexandru Lindner and Cristina Hammermayer are two Romanian nationals living in Frankfurt (Germany). In their capacity as beneficiaries of their mother's estate, they brought an application for recovery of possession of property situated in Bucharest comprising three flats purchased by their mother in 1939 and confiscated by the State in 1975 under Decree no. 223/1974. The Bucharest Court of First Instance granted their application on the ground that the administrative decision to confiscate the property had been unlawful because it had not been served on their mother. However, on an appeal by Bucharest City Council, the Bucharest Court of Appeal dismissed the applicants' claim, holding that they could avail themselves only of the provisions of Law no. 112/1995 on the restitution of certain nationalised property.

Relying on Article 2 of Protocol No. 4 (freedom of movement), the applicants submitted that the confiscation had been determined by the fact that their mother had emigrated to Germany in 1975. They further complained, under Article 6 § 1 of the Convention, of the Court of Appeal's refusal to accept that the courts had jurisdiction to determine an action for recovery of possession. They also complained that the Court of Appeal's judgment had interfered with their right to peaceful enjoyment of their possessions and relied in that connection on Article 1 of Protocol No. 1.

*The Chamber's judgment:*

As Romania had ratified the Convention on 20 June 1994, the complaint of a violation of Article 2 of Protocol No. 4 as regards the applicants' mother's freedom of movement in 1975 fell outside the jurisdiction of the Court, which accordingly declared it inadmissible.

Article 6 § 1: The Chamber noted that the Court of Appeal had not examined any of the applicants' arguments and had asked them to apply to the Administrative Board to determine their restitution claim. The fact that the Court of Appeal had found that the confiscation had been effected "by warrant" did not permit the conclusion that it had reviewed the lawfulness of the confiscation order. It followed that the Court of Appeal had excluded the applicants' action for recovery of possession from the jurisdiction of the courts, in breach of Article 6 § 1.

Article 1 of Protocol No. 1: As regards the complaint of an infringement of the right of property, the Chamber observed that on account of the date on which the Convention came into force with regard to Romania it did not have jurisdiction to examine the circumstances or continuing effects of the confiscation. It further noted that the proceedings brought by the applicants did not relate to a "present possession" and that they had not established that they had a "legitimate expectation" of securing recovery of the disputed property. The Court accordingly held unanimously that there had been no violation of Article 1 of Protocol No. 1.

**(4) *Cumpana and Mazare v. Romania, no. 33348/96***

The applicants, Constantin Cumpana and Radu Mazare, are Romanian journalists who were born in 1951 and 1968 respectively and live at Constanta. In April 1994 they published an article in the *Telegraf* newspaper, of which Mr Mazare is the editor, questioning the legality of an agreement whereby the Constanta Town Council had contracted out to a company called Vinalex the task of impounding illegally parked vehicles. The article, which appeared under the headline "Former Deputy Mayor Dan Miron and serving Judge Revi Moga commit series of offences in Vinalex scam", was accompanied by, among other things, a cartoon showing the judge (Mrs Moga) on the former deputy mayor's arm, carrying a bag containing banknotes. Mrs Moga, who had signed the contract with Vinalex on behalf of the town council, sued the applicants. She submitted that the cartoon contained an innuendo that she and the deputy mayor, both of whom were married, had had intimate relations. On 17 May 1995 the applicants were convicted of proffering insults and criminal libel and sentenced to seven months' imprisonment. An order was also made prohibiting them from working as journalists for one year after they had completed their prison sentences. Their convictions were upheld on appeal.

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

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

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

*The Chamber's judgment:*

Article 10: The Chamber noted, firstly, that the applicants had been convicted of criminal libel as a result of allegations that Mrs Moga did not know the law and had taken bribes. It was common ground that their conviction constituted an interference with their right to freedom of expression and that such interference was prescribed by the Romanian Criminal Code.

Like the domestic courts, the Chamber found that the article was damaging to Mrs Moga's public image and did not in any way contribute to a debate on a matter of general interest. Furthermore, relevant reasons had been given for the applicants' conviction for the publication of the cartoon, namely the need to protect Mrs Moga's reputation and the authority of the judiciary. The cartoon was capable of interfering with Mrs Moga's private and family life and overstepped the bounds of acceptable criticism. Lastly, the Chamber noted that while the sentence was admittedly harsh, the applicants had been spared prison as a result of the pardon. It was also apparent that they had not in fact been prevented from continuing their professional activity as a result of the ban on their working as journalists.

In those circumstances, the Chamber considered that the interference with the applicants' freedom of expression was not disproportionate to the legitimate aims pursued, namely the protection of the rights of others and of the authority of the judiciary. Accordingly, it held by five votes to two that there had been no violation of Article 10.

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

Martin John Edwards and Michael Lewis are both British nationals. Mr Edwards was born in 1946 and lives in Woking (Surrey). Mr Lewis was born in 1953 and lives in Tonbridge (Kent).

On 9 August 1994, following a surveillance and undercover operation, Mr Edwards was arrested in a van in the company of an undercover police officer. In the van was a briefcase containing 4.83 kilograms of 50% pure heroin. On 7 April 1995 he was convicted of possessing a Class A drug with intent to supply and sentenced to nine years' imprisonment. He appealed unsuccessfully.

On 25 July 1995 Mr Lewis was arrested by uniformed police officers in the car park of a public house after he had shown two undercover police officers some counterfeit bank notes. More counterfeit notes were found when his house was searched. On 12 November 1996 he pleaded guilty to three charges of possession of counterfeit currency notes with the intention of delivering them to another. He was sentenced to four and a half years' imprisonment.

In both cases an application by the prosecution to withhold material evidence had been granted on the ground that it would not assist the defence and there were genuine public-interest reasons for not disclosing it. The judge had also refused a request to exclude the evidence of the undercover officers.

Both applicants complained, under Article 6 § 1 of the Convention, that they had been deprived of a fair trial because they had been entrapped into committing offences by *agents provocateurs* and the procedure followed by the domestic courts concerning non-disclosure of evidence had been unfair.

*The Chamber's judgment:*

Article 6 § 1: The Chamber reasoned that it was essential for it to examine the procedure whereby the plea of entrapment had been determined in each case, so as to ensure that the rights of the defence had been adequately protected. In the present case the undisclosed evidence had related, or might have related, to a question of fact decided by the trial judge (namely whether the applicants had indeed been entrapped into committing the offences in question). Had the defence been able to persuade the judge that the police had acted improperly, the prosecution would in effect have had to be discontinued. The prosecution's applications to withhold the evidence had thus been of determinative importance to the applicants' trials. Despite that, the applicants had been denied access to the evidence and their lawyers had been unable to argue the case for entrapment in full before the judge. Moreover, the judges who had rejected the defence submissions on entrapment had already seen prosecution evidence that might have been relevant to that issue.

In those circumstances, the procedure followed to determine the issues of disclosure of evidence and entrapment had not complied with the requirements to provide adversarial proceedings and equality of arms and had not incorporated adequate safeguards to protect the interests of the accused. The Chamber held unanimously that there had been a violation of Article 6 § 1.

**(6) Kopecký v. Slovakia, no. 44912/98**

Juraj Kopecký is a Slovak national. On 12 February 1959 his father was fined and sentenced to one year's imprisonment for keeping 131 gold coins and 2,151 silver coins of numismatic value. The coins were also confiscated. On 1 April 1992 the judgment was quashed and, on 30 September 1992, the applicant claimed the restitution of his father's coins under the Extra-Judicial Rehabilitations Act of 1991 (the Act). On 19 September 1995 Senica District Court ordered the Ministry of the Interior to restore the coins to the applicant. The Ministry of the Interior appealed, however, arguing that all relevant documents had been destroyed and that the onus of proof concerning the location of the coins was on the applicant. On 29 January 1997 Bratislava Regional Court (*Krajský súd*) dismissed the applicant's action, finding that the applicant had failed to show where the coins had been deposited when the Act had become operative on 1 April 1991. The applicant's appeal on points of law was also dismissed.

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

*The Chamber's judgment:*

Article 1 of Protocol No. 1: The Chamber attached particular importance to the fact that the evidence submitted by the applicant comprised a detailed inventory of the coins and an official record indicating when they had been deposited with the Ministry of the Interior, which had failed to provide any plausible explanation as to why the coins were no longer in its possession.

The applicant was unable, for reasons which were imputable to public authorities, to trace the coins after they had been deposited with the Ministry of the Interior. As a result, he was deprived of any possibility of complying with the obligation to show where the coins had been at the time when the Act became operative. Finding that this requirement imposed an excessive burden on the applicant, the Chamber held, by four votes to three, that there had been a violation of Article 1 of Protocol No. 1.

**(7) Öcalan v. Turkey, no. 46221/99**

Abdullah Öcalan, a Turkish national born in 1949 and former leader of the Kurdistan Workers' Party (PKK), is currently incarcerated in Imrali Prison (Bursa, Turkey). At the time of the events in question, the Turkish courts had issued seven warrants for Mr Öcalan's arrest and a wanted notice (red notice) had been circulated by Interpol. He was accused of founding an armed gang in order to destroy the integrity of the Turkish State and of instigating terrorist acts resulting in loss of life.

On 9 October 1998 he was expelled from Syria, where he had been living for many years. From there he went to Greece, Russia, Italy and then again Russia and Greece before going to Kenya, where, on the evening of 15 February 1999, in disputed circumstances he was taken on board an aircraft at Nairobi airport and arrested by Turkish officials. He was then flown to Turkey, being kept blindfolded for most of the flight. On arrival in Turkey, a hood was placed over his head while he was taken to Imrali Prison, where he was held in police custody from 16 to 23 February 1999 and questioned by the security forces. He received no legal assistance during that period and made several self-incriminating statements which contributed to his conviction. His lawyer in Turkey was prevented from travelling to visit him by members of the security forces. 16 other lawyers were also refused permission to visit on 23 February 1999. On 23 February 1999 the applicant appeared before an Ankara State Security Court judge, who ordered him to be placed in pre-trial detention.

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

In an indictment filed on 24 April 1999 the Public Prosecutor at Ankara State Security Court accused the applicant of carrying out actions calculated to bring about the separation of a part of Turkish territory and of forming and leading an armed gang to achieve that end. The Public Prosecutor asked the court to sentence the applicant to death under Article 125 of the Criminal Code. On 29 June 1999 the applicant was found guilty as charged

and sentenced to death under Article 125. The Court of Cassation upheld the judgment.

On 30 November 1999 the European Court of Human Rights, applying Rule 39 of the Rules of Court (interim measures), requested the Turkish authorities “to take all necessary steps to ensure that the death penalty [was] not carried out so as to enable the Court to proceed effectively with the examination of the admissibility and merits of the applicant’s complaints under the Convention”.

In October 2001 Article 38 of the Turkish Constitution was amended, abolishing the death penalty except in time of war or of imminent threat of war or for acts of terrorism. Under Law no. 4771, published on 9 August 2002, the Turkish Assembly resolved to abolish the death penalty in peacetime. On 3 October 2002 Ankara State Security Court commuted the applicant’s death sentence to life imprisonment. An application to set aside the provision abolishing the death penalty in peacetime for persons convicted of terrorist offences was dismissed by the Constitutional Court on 27 December 2002. On 9 October 2002 two trade unions which had intervened in the criminal proceedings lodged an appeal on points of law against the decision to commute Mr Öcalan’s death sentence to life imprisonment. These proceedings were still pending when the Chamber delivered its judgment.

*The Chamber’s judgment:*

Article 5 § 4: The Chamber observed that, despite a 1997 amendment to Article 128 of the Turkish Code of Criminal Procedure which clearly established a right under Turkish law to challenge in the courts decisions to hold a suspect in police custody, the Government had not furnished any example of a judicial decision in which an order by the public prosecutor’s office at a State Security Court for a suspect to be held in police custody had been quashed before the end of the fourth day (the statutory maximum period for which the public prosecutor’s office may order suspects to be held). The Chamber considered that in any event the special circumstances of the case, notably the fact that the applicant had been kept in isolation and that his lawyers had been obstructed by the police, made it impossible for him to have effective recourse to this remedy. The Chamber held that there had been a violation of Article 5 § 4.

Article 5 § 1: The Chamber found that the applicant’s arrest and detention had complied with orders that had been issued by the Turkish courts “for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence” within the

meaning of Article 5 § 1(c). Moreover, it had not been established beyond all reasonable doubt that the operation carried out partly by Turkish officials and partly by Kenyan officials amounted to a violation by Turkey of Kenyan sovereignty and, consequently, of international law. It followed that the applicant's arrest on 15 February 1999 and his detention were to be regarded as having been in accordance with "a procedure prescribed by law" for the purposes of Article 5 § 1. Consequently, there had been no violation of that provision.

Article 5 § 3: The Chamber noted that the total period spent by the applicant in police custody before being brought before a judge came to a minimum of seven days. It could not accept that it was necessary for the applicant to be detained for such a period without being brought before a judge. There had accordingly been a violation of Article 5 § 3.

Article 6: *Whether the Ankara State Security Court, which convicted the applicant, was independent and impartial* – The Court had found in earlier judgments that certain aspects of the status of military judges sitting in the State Security Courts raised doubts as to the independence and impartiality of the courts concerned. In the Chamber's view, the last-minute replacement of the military judge was not capable of curing the defect in the composition of the court which had led it to find a violation on this point in previous judgments. In the exceptional circumstances of the case, moreover, the presence of a military judge could only have served to raise doubts in the accused's mind as to the independence and impartiality of the court. The Chamber concluded that the Ankara State Security Court, which had convicted the applicant, had not been an independent and impartial tribunal within the meaning of Article 6 § 1. Consequently, there had been a violation of that provision on that point.

*Whether the proceedings before the State Security Court were fair* – The Chamber noted that the applicant had not been assisted by his lawyers when questioned in police custody, had been unable to communicate with them out of hearing of third parties and had been unable to gain direct access to the case file until a very late stage in the proceedings. Furthermore, restrictions had been imposed on the number and length of his lawyers' visits and his lawyers had not been given proper access to the case file until late in the day. The overall effect of these difficulties taken as a whole had so restricted the rights of the defence that the principle of a fair trial, as set out in Article 6, had been contravened. There had therefore been a violation of Article 6 § 1, taken together with Article 6 § 3 (b) and (c).

As regards the other complaints under Article 6 of the Convention, the Court took the view that it had already dealt with the applicant's main

grievances arising out of the proceedings against him in the domestic courts. It was therefore unnecessary to examine the other complaints under Article 6 relating to the fairness of the proceedings.

Articles 2, 3 and 14 (death penalty): *Preliminary issue* – The Government had submitted that the allegations raised by the applicant under Article 2 should be rejected as inadmissible on the grounds that the death penalty had now been abolished in Turkey. The Chamber observed that in the present case the applicant had been sentenced to death and had spent more than three years detained in isolation awaiting a determination of his fate. Up until recently there had been reason to fear that the death sentence would be implemented. In addition, his complaint related not only to the question of the implementation of the sentence but also to that of its imposition. Accordingly, it was more appropriate to examine the issues raised by the death penalty on the merits. The Chamber therefore rejected the Government's plea.

*Merits – As regards the implementation of the death penalty:* The Chamber considered that the threat of implementation of the death sentence had been effectively removed. It could no longer be said that there were substantial grounds for fearing that the applicant would be executed, notwithstanding the appeal which was still pending. In those circumstances, the applicant's complaints under Articles 2, 3 and 14 based on the implementation of the death penalty were to be rejected.

*As regards the imposition of the death penalty:* It remained to be determined whether the imposition of the death penalty, in itself, gave rise to a breach of the Convention.

(i) Article 2: At the outset the Chamber considered that no separate issue arose under the present head as regards Article 2 and preferred to examine this question under Article 3.

(ii) Article 3 read against the background of Article 2:

(a) Legal significance of the practice of the Contracting States as regards the death penalty – The Chamber reiterated that the Convention was to be read as a whole and that Article 3 was to be construed in harmony with the provisions of Article 2. If Article 2 was to be read as permitting capital punishment, notwithstanding the almost universal abolition of the death penalty in Europe, Article 3 could not be interpreted as prohibiting the death penalty since that would nullify the clear wording of Article 2 § 1. Accordingly, the Chamber had first to address the applicant's submission that the practice of the Contracting States in this area could be taken as establishing an agreement to abrogate the exception provided for in the second sentence of Article 2 § 1, which explicitly permitted capital punishment under certain conditions.

In the Chamber's view, it could not now be excluded, in the light of the developments that had taken place in this area, that the States had agreed through their practice to modify the second sentence in Article 2 § 1 in so far as it permitted capital punishment in peacetime. Against this background it could also be argued that the implementation of the death penalty could be regarded as inhuman and degrading treatment contrary to Article 3. However, it was not necessary to reach any firm conclusion on this point since it would run counter to the Convention, even if Article 2 were to be construed as still permitting the death penalty, to implement a death sentence following an unfair trial.

(b) Unfair proceedings and the death penalty – Even if the death penalty were still permissible under Article 2, an arbitrary deprivation of life pursuant to capital punishment would be prohibited. This flowed from the requirement that ‘Everyone's right to life shall be protected by law’. An arbitrary act could not be lawful under the Convention. It also followed from the requirement in Article 2 § 1 that the deprivation of life be pursuant to the ‘execution of a sentence of a court’, that the ‘court’ which imposed the penalty must be an independent and impartial tribunal within the meaning of the Court's case-law and that the most rigorous standards of fairness had to be observed in the criminal proceedings both at first instance and on appeal. Since the execution of the death penalty was irreversible, it could only be through the application of such standards that an arbitrary and unlawful taking of life could be avoided.

The Chamber had then to examine the implications for the issue under Article 3 concerning the imposition of the death penalty. In the Chamber's view, to impose a death sentence on a person after an unfair trial was to subject that person wrongfully to the fear that he would be executed. The fear and uncertainty as to the future generated by a sentence of death, in circumstances where there existed a real possibility that the sentence would be enforced, as was the case for the applicant in view of his high profile and the fact that he had been convicted of the most serious crimes, must give rise to a significant degree of human anguish. Such anguish could not be dissociated from the unfairness of the proceedings underlying the sentence. Having regard to the rejection by the Contracting Parties of capital punishment, which was no longer seen as having any legitimate place in a democratic society, the imposition of a capital sentence in such circumstances had to be considered, in itself, to amount to a form of inhuman treatment. The imposition of the death sentence on the applicant following an unfair trial had therefore amounted to inhuman treatment in violation of Article 3.

*Article 3: Conditions in which the applicant was transferred from Kenya to Turkey* – The Chamber considered that it had not been established

“beyond all reasonable doubt” that the applicant’s arrest and the conditions in which he was transferred from Kenya to Turkey exceeded the usual degree of humiliation that was inherent in every arrest and detention or attained the minimum level of severity required for Article 3 to apply. Consequently, there had been no violation of that provision on this point.

*Conditions of detention on the island of Imrali* – The Chamber found that the general conditions in which the applicant was being detained at Imrali Prison had not reached the minimum level of severity necessary to constitute inhuman or degrading treatment within the meaning of Article 3. Consequently, there had been no violation of that provision on that account.

Article 34: The applicant complained of being hindered in the exercise of his right of individual application in that his legal representatives in Amsterdam had not been permitted to contact him after his arrest and/or the Government had failed to reply to the Court’s request for them to supply information. He alleged a violation of Article 34 of the Convention. As regards the applicant’s inability to communicate with his lawyers in Amsterdam following his arrest, there was nothing to indicate that the exercise of the applicant’s right to individual application was impeded to any significant extent. Moreover the Chamber found, without prejudice to its views on the binding nature of interim measures under Rule 39, that in the special circumstances of the case the refusal of the Turkish Government to provide certain information did not amount to a violation of the applicant’s right of individual application.

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

The case concerns two applications lodged by two Uzbek nationals, Rustam Mamatkulov and Askarov Abdurasulovic, who were born in 1959 and 1971 respectively. They are members of the ERK Party (an opposition party in Uzbekistan). They were extradited from Turkey to Uzbekistan on 27 March 1999 and are understood to be currently in custody there.

The case of Mamatkulov: on 3 March 1999 the applicant arrived in Istanbul from Alma-Ata (Kazakhstan) on a tourist visa. He was arrested by Turkish police at Atatürk Airport (Istanbul) under an international arrest warrant and taken into police custody on suspicion of homicide, causing injuries by the explosion of a bomb in Uzbekistan and an attempted terrorist attack on the President of Uzbekistan. Uzbekistan requested the applicant’s extradition under a bilateral treaty with Turkey. On 11 March 1999 the applicant was interviewed by the judge of Bakirköy Criminal Court. An order made by the judge on the same day under the urgent procedure

mentioned the charges against the applicant and noted that the offences concerned were not political or military in nature but ordinary criminal offences. The judge also remanded the applicant in custody pending his extradition.

The case of Abdurasulovic: the applicant entered Turkey on 13 December 1998 on a false passport. On 5 March 1999, following an extradition request made by the Republic of Uzbekistan, the Turkish police arrested him and took him into police custody. He was suspected of homicide, causing injuries by the explosion of a bomb in Uzbekistan and an attempted terrorist attack on the President of Uzbekistan. On 7 March 1999 the applicant was brought before a judge, who remanded him in custody. On 15 March 1999 Fatih Criminal Court (Istanbul) determined his nationality and ruled on the nature of the offence, under Article 9 of the Turkish Criminal Code. It held that the offences with which the applicant had been charged were not political or military in nature but ordinary criminal offences. The court also remanded the applicant in custody pending his extradition.

On 18 March 1999 the European Court of Human Rights indicated to the Government of Turkey under Rule 39 of the Rules of Court (interim measures) that it was desirable in the interest of the parties and the proper conduct of the proceedings before the Court not to extradite the applicant to Uzbekistan until the Court had had an opportunity to examine the application further at its forthcoming session on 23 March 1999. On 19 March 1999 the Turkish Cabinet issued a decree for the applicants' extradition. On 23 March 1999, the Court decided to extend the interim measure until further notice.

*The Chamber's judgment:*

Articles 2 and 3: The Chamber considered that the complaint should be examined under Article 3. It reiterated that Contracting States had the right to control the entry, residence and expulsion of aliens. There was no right to political asylum in the Convention or its Protocols. However, State responsibility might be engaged where substantial grounds existed for believing that a person would face a real risk of being subjected to treatment contrary to Article 3 if extradited.

The Chamber noted that the applicants' representatives had cited in support of their allegations the reports of international investigative bodies working in the field of human rights which had condemned an administrative practice of torture and other forms of ill-treatment of opposition-party supporters. However, the Chamber considered that despite

the serious concerns to which those reports gave rise, they only described the general situation in Uzbekistan. They did not confirm the specific allegations made by the applicants, which had to be corroborated by other evidence. It was not possible to make conclusive factual findings in the case, as the applicants had been denied an opportunity to request that certain inquiries be made to obtain evidence supporting their allegations.

The Chamber noted that the Turkish Government maintained that the request for extradition had been granted after guarantees had been obtained from the Uzbek Government, including an assurance that the applicants would not be subjected to torture or capital punishment. The Chamber noted the terms of the diplomatic notes from the Uzbek authorities that had been produced by the Turkish Government and of the judgment sentencing the applicants to prison. In addition, it noted that the applicants' representatives' allegations that the applicants had been subjected to treatment contrary to Article 3 were not corroborated by medical examinations that had been conducted by doctors in the prisons where the applicants were being held. In the light of the circumstances of the case and of the material before it, the Chamber found that there was insufficient evidence to warrant a finding a violation of Article 3.

Article 6: As regards the extradition proceedings in Turkey, the Chamber reiterated that Article 6 § 1 was not applicable to decisions relating to the entry, residence and expulsion of aliens, as such decisions did not concern the determination of civil rights and obligations or of any criminal charge against the person concerned. As to the criminal proceedings in Uzbekistan, the Chamber referred to its findings under Article 3 and held that the evidence before it did not establish that the applicants had suffered a denial of justice. Therefore, no issue arose on that point under Article 6 § 1.

Article 34: The Chamber noted that the fact that Turkey had extradited the applicants without complying with the interim measures indicated under Rule 39 of the Rules of Court raised the issue whether, in view of the special nature of Article 3, there had been a violation of Article 34. It reiterated that implicit in the notion of the effective exercise of the right of individual application was the observance of the principle of equality of arms and the provision of sufficient time and proper facilities to applicants in which to prepare their case. In the case before it, the applicants' representatives had been unable, despite their efforts, to contact the applicants, who had thus been deprived of the possibility of having further inquiries carried out to obtain evidence in support of their allegations.

The Chamber noted that, in the light of the general principles of international law, the law of treaties and international case-law, the

interpretation of the scope of interim measures could not be dissociated from the proceedings to which they related or the decision on the merits they sought to safeguard. It emphasised that the right to individual application was one of the cornerstones of the machinery for protecting the rights and freedoms set out in the Convention.

Under Article 34, applicants were entitled to exercise their right to individual application effectively, which meant that Contracting States should not prevent the Court from carrying out an effective examination of applications. Further, an applicant who complained of a violation of Article 3 was entitled to an effective examination of an allegation that a proposed extradition or expulsion would entail a violation of Article 3. Indications given by the Court under Rule 39 of the Rules of Court were intended to permit it to carry out an effective examination of the application and to ensure that the protection afforded by the Convention was effective. They also subsequently allowed the Committee of Ministers to supervise execution of the final judgment. Interim measures thus enabled the State concerned to discharge its obligation to comply with the final judgment of the Court, as it was legally bound to do by Article 46 (binding force and execution of judgments) of the Convention.

In the case before the Court, compliance with the indications would undoubtedly have helped the applicants to present their application. The fact that they had been unable to take part in the proceedings or to speak to their representatives had hindered them in contesting the Government's arguments on the factual issues and in obtaining evidence. In view of the duty of all State Parties to the Convention to refrain from any act or omission that might adversely affect the cohesion and effectiveness of the final judgment (see Article 46) and in view of the foregoing, the Chamber found that the extradition of Mr Mamatkulov and Mr Abdurasulovic, in disregard of the indication that had been given under Rule 39, rendered nugatory the applicants' right to individual application.

The Chamber concluded that any State Party to the Convention to which interim measures had been indicated in order to avoid irreparable harm being caused to the victim of an alleged violation had to comply with those measures and refrain from any act or omission that might adversely affect the cohesion and effectiveness of the final judgment. Accordingly, by failing to comply with the interim measures indicated by the Court, Turkey was in breach of its obligations under Article 34 of the Convention.

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

At the relevant time Jørgen Pedersen and Sten Kristian Baadsgaard, two Danish nationals from Copenhagen, born in 1939 and 1942 respectively, were journalists for Danmarks Radio, which is one of the two national TV stations in Denmark. They produced two programmes about a murder trial in which a man had been sentenced to 12 years' imprisonment for murdering his wife. The programmes were broadcast on 17 September 1990 and 22 April 1991. They criticised the Frederikshaven police's handling of the investigation. The second one showed Mr Baadsgaard interviewing a witness – a taxi driver – during which the commentator asked the following questions: 'Why did the vital part of the taxi driver's evidence disappear and who in the police or public prosecutor's office should carry the responsibility for this?... Was it [the named Chief Superintendent] who decided that the report should not be included in the case? Or did he and the Chief Inspector of the Flying Squad conceal the witness's statement from the defence, the judges and the jury?' The Chief Superintendent and Chief Inspector of the Flying Squad in charge of the investigation were named and photographs of them shown. On 23 May 1991 the Chief Superintendent reported the applicants and the TV station to the police for defamation. On 29 November 1991 the Special Court of Revision decided to reopen the murder case. In the meantime, following the TV programmes, an inquiry had been started into the police investigation; the conclusion, on 20 December 1991, was that they had not complied with the statutory provision that a witness be given the opportunity to read his or her statement. The defendant in the murder trial was acquitted on 13 April 1992 after a retrial.

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

The application was lodged with the European Court of Human Rights on 30 December 1998. In the summer of 1999 the second applicant died. His daughter and sole heir, Trine Baadsgaard, decided to pursue the application. Third-party comments were received from the Danish Union of Journalists on 17 December 2001.

*The Chamber's judgment:*

Article 6: The Chamber noted that the criminal proceedings had lasted five years, nine months and nine days. As certain features of the proceedings had been complex and time-consuming and the applicants had to some extent contributed to their length, it did not find that there had been a violation of the "reasonable time" requirement.

Article 10: Both parties agreed that there had been an interference with the journalists' freedom of expression. The dispute in the case related to whether that interference had been necessary in a democratic society. The applicants argued that they had left it to viewers to decide who was responsible for the deficiencies in handling the murder case. They contended that the programmes had been serious, well-researched documentaries and, moreover, that the taxi driver's account of events had been a crucial element in the reopening of the case and the subsequent acquittal. The Government maintained that the journalists had not been convicted for their criticism of the police, but exclusively for aiming specific, unsubstantiated and extremely serious allegations at a named individual.

The Chamber found, like the Supreme Court, that in the programme in question the journalists had taken a stand on the truth of the taxi driver's statement and presented matters in such a way that viewers were given the impression that they were proven facts and that the police had suppressed evidence. The particular slant chosen by the journalists had left viewers with only two possible interpretations: vital evidence had been suppressed either by the Chief Superintendent alone or by him and the Chief Inspector of the Flying Squad jointly. The Chamber noted that they had not left open the possibility that the taxi driver's evidence might have been inaccurate. Such a serious allegation could not be interpreted as a value judgment, but had consisted of a factual statement. As to whether the journalists had acted in good faith, the Chamber noted the unanimous findings of the Supreme Court that the truth of the allegation had never been proved. It observed that the inquiry into the police investigation had not indicated that anybody within the Frederikshaven police had suppressed any evidence in the case and there had been no indication in the police report itself that something might have been deleted from it.

The Chamber took into consideration that the programme had been broadcast at peak viewing time and found it doubtful that the journalists' research had been sufficiently thorough to substantiate their concluding allegation that the Chief Superintendent had deliberately suppressed vital evidence in a murder case. The Supreme Court had clearly recognised that

the case involved a conflict between the right to impart information and the reputation or rights of others and had been entitled to consider the interference necessary in a democratic society for the protection of the reputation and rights of others.

## V. HEARINGS

In 2003 hearings were held in the following nine cases (a summary is given only for those cases in which a judgment has not been issued by the end of the year):

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

Rehearing case. Hearing on the merits on 29 January 2003 limited to applicability of Article 37. Judgment on that preliminary question was delivered on 6 May 2003 (see Chapter VII below).

**(2) Ezeh and Connors v. the United Kingdom, nos. 39665/98 and 40086/98**

Rehearing case. Hearing on the merits on 5 March 2003. Judgment was delivered on 9 October 2003 (see Chapter VII below).

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

Relinquishment case. Hearing on the merits on 25 June 2003. The case concerns an application brought by Angelo Massimo Maestri, an Italian national, who was born in 1944 and lives in Viareggio (Italy). He is a judge who was acting president of the La Spezia District Court when he lodged his application.

In November 1993, disciplinary proceedings were instituted against the applicant under Article 18 of the Royal Legislative Decree of 31 May 1946 for having been a member of the *Grande Oriente d'Italia di Palazzo Giustiniani* masonic order from 1981 until March 1993. In a decision of 10 October 1995 the Disciplinary Section of the National Council of the Judiciary found the applicant guilty of the offence of which he was accused and gave him a warning (*censura*). It observed that it was contrary to disciplinary rules for a judge to be a member of the Freemasons, on account of the conflict between the oath sworn by Freemasons and that sworn by judges, the hierarchical relationship between Freemasons, the rejection of State justice in favour of Masonic justice, and the indissoluble nature of the bond between Freemasons.

The applicant appealed on points of law to the Court of Cassation, which found against him. He asserts that since the Disciplinary Section gave its decision his career has been at a standstill.

The applicant complains that a disciplinary sanction was imposed on him on account of his membership of the Freemasons. He alleges a violation of Articles 9, 10 and 11 of the Convention.

The application was declared admissible on 4 July 2002. On 10 October 2002 the Chamber relinquished jurisdiction in favour of the Grand Chamber, neither party having objected.

**(4) Gorzelik and others v. Poland, no. 44158/98**

Rehearing case. Hearing on the merits on 2 July 2003. The case concerns an application brought by three Polish nationals who are all from Upper Silesia. They are Jerzy Gorzelik, born in 1971, who is a university lecturer living in Katowice (Poland), Rudolf Kolodziejczyk, born in 1940, who is an economist living in Rybnik (Poland) and Erwin Sowa, born in 1944, who is a steelworker living in Katowice.

The applicants and 190 others attempted to form an association called the “Union of People of Silesian Nationality” (*Związek Ludności Narodowości Śląskiej*). The Polish authorities refused to register the association on the ground that both the intended name and certain provisions of the union’s memorandum of association, which characterised Silesians as a “national minority”, suggested that their real intention was to circumvent the provisions of the electoral law. Also, had the members of the Union been recognised as a “national minority”, they would automatically have gained unqualified and legally enforceable privileges. The appeals against that decision failed.

The applicants complain that the decision not to register their association violated their right to freedom of association, guaranteed by Article 11 of the Convention.

In its judgment of 20 December 2001, considering that the Polish authorities had acted reasonably, in order to protect the country’s electoral system, the Chamber held unanimously that there had been no violation of Article 11. The applicants requested that the case be referred to the Grand Chamber and the panel of the Grand Chamber accepted the request on 10 July 2002.

**(5) Cooper v. the United Kingdom, no. 48843/99  
Grieves v. the United Kingdom, no. 57067/00**

Relinquishment cases. Hearing on the admissibility and merits on 1 October 2003. Judgments were delivered on 16 December 2003 (see Chapter VII below).

**(6) Öneriyildiz v. Turkey, no. 48939/99**

Rehearing case. Hearing on the merits on 7 May 2003. The application was brought by Masallah Öneriyildiz, a Turkish national, who was born in 1955. At the material time he and the 12 members of his family were living in the slum area of Kazim Karabekir in Ümraniye (Istanbul).

The slum area of Kazim Karabekir was part of a collection of rudimentary dwellings built haphazardly on land surrounding a rubbish tip which had been used jointly by four district councils since the 1970s and was under the authority and responsibility of the main City Council of Istanbul. An expert report drawn up on 7 May 1991 at the request of the Üsküdar District Court, to which the case had been referred by the Ümraniye District Council, drew the authorities' attention to, among other things, the fact that no measure had been taken at the tip in question to prevent a possible explosion of the methane gas being given off by the decomposing refuse. The report gave rise to a series of disputes between the mayors concerned. Before the proceedings instituted by any of them had been concluded, a methane explosion occurred on 28 April 1993 at the waste-collection site and the refuse erupting from the pile of waste buried more than ten houses situated below it, including the one belonging to the applicant, who lost nine members of his family.

Criminal and administrative investigations were carried out into the case, following which the mayors of Ümraniye and Istanbul were brought before the courts, the former for failing to comply with his duty to have the illegal huts surrounding the tip destroyed and the latter for failing to rehabilitate the rubbish tip or order its closure, despite the conclusions of the expert's report of 7 May 1991. On 4 April 1996 the mayors in question were both convicted of "negligence in the exercise of their duties" and sentenced to a fine of 160,000 Turkish liras (TRL) each (the equivalent at the material time of approximately 9.7 euros (EUR) and the minimum three-month prison sentence provided for in Article 230 of the Criminal Code, which was, moreover, commuted to a fine. The court decided to suspend the enforcement of those penalties.

Subsequently, the applicant, in his own name and on behalf of his three surviving children, brought an action for damages in the Istanbul Administrative Court against the authorities which he deemed liable for the death of his relatives and the destruction of his property. In a judgment of 30 November 1995 the authorities were ordered to pay the applicant and his children TRL 100,000,000 in non-pecuniary damages and TRL 10,000,000 in pecuniary damages (the equivalent at the material time of approximately EUR 2,077 and 208 respectively), the latter amount being limited to the destruction of a certain type of household goods. Those amounts have not been paid to the applicant, however, as he does not appear to have brought enforcement proceedings.

The applicant alleges that the facts complained of in the present case amount to a violation of Articles 2, 6 § 1, 8 and 13 of the Convention, and of Article 1 of Protocol No. 1.

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

The Government requested that the case be referred to the Grand Chamber on 13 September 2002. The panel of the Grand Chamber accepted the request on 6 November 2002.

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

Rehearing case. Hearing on the merits on 4 June 2003. The case concerns an application brought by a Cypriot national, Andreas Azinas, who was born in 1927 and lives in Nicosia (Cyprus).

Mr Azinas worked as Governor of the Department of Co-operative Development of the Public Service in Nicosia from the establishment of the Republic of Cyprus in 1960 until his dismissal in 1981. On 28 July 1982 the Public Service Commission instituted disciplinary proceedings against him and decided to dismiss him retrospectively due to the fact that on 8 April 1981 he had been found guilty by the District Court of Nicosia of theft, breach of trust and abuse of authority and sentenced to 18 months' imprisonment. The Public Service Commission held that Mr Azinas had managed the department's funds as if they were his private property. Under a statutory provision, his dismissal resulted in the forfeiture of his retirement benefits, including his pension, from the date of his conviction by the

District Court. Mr Azinas applied to the Supreme Court for judicial review of that decision.

On 12 June 1991 the Supreme Court upheld the Public Service Commission's decision, stating that it could review neither the severity of the penalty imposed by a disciplinary body (unless the latter had exceeded the limits of its margin of appreciation) nor the manner in which the body had assessed the facts of the case. It held that the Public Service Commission had merely determined the nature of the penalty, and that the loss of the retirement benefits was an automatic consequence of the particular penalty it had imposed. Mr Azinas appealed unsuccessfully.

Mr Azinas complains that the forfeiture of his pension rights following his dismissal from the public service violated his right to the peaceful enjoyment of his possessions, as guaranteed by Article 1 of Protocol No.1.

In its judgment delivered on 20 June 2002, the Chamber held, by six votes to one, that there had been a violation of Article 1 of Protocol No. 1.

On 13 September 2002 the Government requested that the case be referred to the Grand Chamber and on 6 November 2002 the panel of the Grand Chamber accepted that request.

**(8) Assanidze v. Georgia, no. 71503/01**

Relinquishment case. Hearing on the merits on 19 November 2003. The case concerns an application brought by a Georgian national, Tengviz Assanidze, who was born in 1944 and is currently in custody in Batumi (Georgia).

The applicant was the mayor of the town of Batumi, capital of the Ajarian Autonomous Republic, Georgia, and a member of the Ajarian Parliament. He was arrested on 4 October 1993 and charged with illegal financial dealings in the Batumi Tobacco Manufacturing Company and the unlawful possession and handling of firearms. On 28 November 1994 he was sentenced to eight years' imprisonment and orders were made for the confiscation of his assets and reimbursement of the company's losses. On 27 April 1995 his conviction for illegal financial dealings was upheld, but the other convictions were quashed. The applicant was pardoned by the President of the Republic on 1 October 1999, but was not released by the local Ajarian authorities.

On 11 December 1999 the applicant, who was still in custody despite the presidential pardon, was charged in a new case. On 2 October 2000 he was

sentenced to twelve years' imprisonment by the Supreme Court of the Ajarian Autonomous Republic. Although his conviction was quashed on 29 January 2001 by the Georgian Supreme Court, the applicant remains in the custody of the Ajarian authorities. His health is deteriorating, and he has now been held at Batumi, in a cell for remand prisoners at the local security ministry, for nearly three years.

The applicant complains under Article 5 §§ 1, 3 and 4, 6 § 1, 10 and 13 of the Convention, and also Article 2 of Protocol No. 4, that his detention is unlawful and that he has no effective remedy before a national authority to secure his release.

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

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

Relinquishment case. Hearing on the merits on 9 December 2003.

On 27 November 1991, when she was six months' pregnant, the applicant went to Hôtel-Dieu Hospital in Lyons for a medical examination. On the same day another woman, Mrs Thanh Van Vo, was due to have a coil removed at the same hospital. Owing to a mix-up caused by the fact that both women shared the same surname, the doctor who examined the applicant pierced her amniotic sac, making a therapeutic abortion necessary.

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

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

On 22 May 2003 the Chamber of the Court dealing with the case relinquished jurisdiction in favour of the Grand Chamber. On 25 November 2003 the President of the Grand Chamber granted two non-governmental organisations, the Family Planning Association (London) and the Centre for Reproductive Rights (New York), leave to intervene as third parties in the proceedings.

## **VII. DECISIONS ON ADMISSIBILITY**

The Grand Chamber declared three cases (concerning six applications) admissible, but adopted no separate admissibility decision; the decision was each time incorporated in the judgment.

**Kleyn and Others v. the Netherlands,  
nos. 39343/98, 39651/98, 43147/98 and 46664/99**

On 9 April the Grand Chamber declared the above applications admissible. Judgment was delivered on 6 May 2003 (see Chapter VII below).

**Cooper v. the United Kingdom, no. 48843/99  
Grieves v. the United Kingdom, no. 57067/00**

On 3 December 2003 the Grand Chamber declared the above applications admissible. Judgments were delivered on 16 December 2003 (see Chapter VII below).

## **VII. JUDGMENTS**

### **(1) Refah Partisi v. Turkey, nos. 41340/98, 41342/98, 41343/98 and 41344/98**

The first applicant, Refah Partisi (the Welfare Party – “Refah”) was a political party founded on 19 July 1983. The second applicant is its former Chairman, Necmettin Erbakan, a Member of Parliament at the material time. The third and fourth applicants, Sevket Kazan and Ahmet Tekdal, are politicians and lawyers and were Members of Parliament and Refah Vice-Chairmen at the time.

On 21 May 1997 Principal State Counsel at the Court of Cassation brought proceedings in the Turkish Constitutional Court to dissolve Refah, which he accused of having become “a centre of activities against the principle of secularism”. In support of his application, he relied on various acts and declarations by leaders and members of Refah which he said indicated that some of the party’s objectives, such as the introduction of sharia and a theocratic regime, were incompatible with the requirements of a democratic society.

Before the Constitutional Court the applicants’ representatives argued that the prosecution had relied on mere extracts from the speeches concerned, distorting their meaning and taking them out of context. They also maintained that Refah, which at the time had been in power for a year as part of a coalition government, had consistently observed the principle of secularism and respected all religious beliefs and consequently was not to be confused with political parties that sought the establishment of a totalitarian regime. They added that Refah’s leaders had only become aware of certain of the offending remarks in the case after Principal State Counsel’s application for the dissolution of the party was served on them and that they had nonetheless expelled those responsible from the party to prevent Refah being seen as a “centre” of illegal activities for the purposes of the Law on the regulation of political parties.

In its judgment of 16 January 1998 the Constitutional Court dissolved Refah on the ground that it had become a ‘centre of activities against the principle of secularism’. It also declared that Refah’s assets were to be transferred to the Treasury. The Constitutional Court further held that the public declarations of Refah’s leaders, and in particular Necmettin Erbakan, Sevket Kazan and Ahmet Tekdal, had directly engaged Refah’s responsibility as regards the constitutionality of its activities. Consequently,

it banned them from sitting in Parliament or holding certain political posts for five years.

The applications were lodged with the European Commission of Human Rights on 22 May 1998 and transmitted to the Court on 1 November 1998. They were joined and declared partly admissible on 3 October 2000. In its Chamber judgment (Third Section) of 31 July 2001 the Court held, by four votes to three, that there had been no violation of Article 11 and, unanimously, that no separate issues arose under Articles 9, 10, 14, 17 and 18 and Articles 1 and 3 of Protocol No. 1. On 30 October 2001 the applicants requested that the case be referred to the Grand Chamber and on 12 December 2001 the panel of the Grand Chamber accepted that request. A hearing was held on 19 June 2002.

In a judgment delivered on 13 February 2003, the Grand Chamber held unanimously that there had been no violation of Article 11; that it was not necessary to examine separately the complaints under Articles 9, 10, 14, 17 and 18 and Articles 1 and 3 of Protocol No. 1.

**(2) Odièvre v. France, no. 42326/98**

The applicant, Pascale Odièvre, is a French national, who was born in 1965 and lives in Paris. She is unemployed. Her application concerns the rules governing confidentiality on birth, which have prevented her from obtaining information about her natural family. She was born on 23 March 1965 in Paris. Her mother requested that the birth be kept secret and completed a form at the Health and Social Security Department abandoning her rights to her child. The applicant was placed in the care of the Children's Welfare and Youth-Protection Service and registered as being in State care. She was subsequently fully adopted by Mr and Mrs Odièvre, whose surname she continues to use.

The applicant consulted her file at the Children's Welfare Service of the *département* of Seine in 1990 and was able to obtain non-identifying information about her natural family. On 27 January 1998 she applied to the Paris *tribunal de grande instance* for an order "for disclosure of confidential information concerning her birth and permission to obtain copies of any documents, public records or full birth certificates". She explained to the court that she had learnt that her natural parents had had a son in 1963 and two other sons after 1965. However, the Children's Welfare Service had refused to provide her with details regarding her brothers' identity on the ground that it would entail a breach of confidence. She submitted that having discovered the existence of her brothers, her application for disclosure of information about her birth was well-founded.

On 2 February 1998 the court registrar returned the case file to the applicant's lawyer stating "... it appears that the applicant should perhaps apply to the administrative court to obtain, if possible, an order requiring the authorities to disclose the information, although such an order would in any event contravene the Law of 8 January 1993". (The statute lays down that an application for disclosure of details identifying the natural mother is inadmissible if confidentiality was agreed at birth).

The application was lodged with the European Commission of Human Rights on 12 March 1998 and transmitted to the Court on 1 November 1998. Following a hearing on admissibility and the merits, it was declared admissible by a Chamber from the Third Section on 16 October 2001. On 24 June 2002 the Chamber relinquished jurisdiction in favour of the Grand Chamber, neither of the parties being opposed thereto. A hearing was held on 9 October 2002.

In a judgment delivered on 13 February 2003, the Grand Chamber held by ten votes to seven that there had been no violation of Article 8, and by ten votes to seven that there had been no violation of Article 14, taken together with Article 8.

### **(3) Tahsin Acar v. Turkey, no. 26307/95**

The applicant, Tahsin Acar, is a Turkish national who was born in 1970 and lives in Sollentuna (Sweden). The case concerns the disappearance of the applicant's brother, Mehmet Salim Acar, who was a farmer in Ambar, a village in the Bismil district in south-east Turkey. According to the applicant, his brother was abducted on 20 August 1994 by two unidentified persons, allegedly plain-clothes police officers. Mehmet Salim Acar's family lodged a series of petitions and complaints about his disappearance with the authorities in order to find out where and why he was being detained. According to the Government, effective investigations were carried out by the relevant authorities following the abduction and disappearance of the applicant's brother. His name is still on the list of persons being searched for by the gendarme forces in Turkey.

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

admission that there had been any Convention violation in respect of his application or that Mehmet Salim Acar had been abducted by State agents and was to be presumed dead, that it did not contain any undertaking to investigate the circumstances of the case and that the compensation was to be paid *ex gratia*.

In a judgment of 9 April 2002 a Chamber of the Court decided by six votes to one to strike the case out. On 8 July 2002 the applicant requested that the case be referred to the Grand Chamber. On 4 September 2002 the panel of the Grand Chamber accepted that request

In a judgment of 6 May 2003 the Grand Chamber decided, by 16 votes to 1 to reject the Government's request to strike the application out of the list and to pursue the examination of the merits of the case.

**(4) Kleyen and others v. the Netherlands,  
nos. 39343/98, 39651/98, 43147/98 and 46664/99**

The case concerns four joined applications brought by 23 Netherlands nationals and 12 Dutch companies, whose homes or business premises are located on or near the track of a new railway, the Betuweroute railway, which is currently being constructed and which runs across the Netherlands from the Rotterdam harbour to the German border.

All applicants took part in proceedings objecting to the decision on the determination of the exact routing of the Betuweroute railway, the so-called Routing Decision (*Tracébesluit*). This Routing Decision was taken under the procedure provided for in the Transport Infrastructure Planning Act (*Tracéwet*), as in force since 1 January 1994. In its decision of 28 May 1998, the Administrative Jurisdiction Division of the Council of State rejected most of the applicants' complaints. In so far as the complaints were considered well-founded, new partial routing decisions were taken in 1998. Appeals against these new partial decisions were dismissed by the Administrative Jurisdiction Division in separate decisions taken between 16 April 1999 and 25 July 2000.

The applications were lodged with the European Commission of Human Rights between 8 July 1997 and 16 March 1998 and were transmitted to the Court on 1 November 1998. On 2 July 2002 the Chamber relinquished jurisdiction in favour of the Grand Chamber. Requests by the Governments of Italy and France to make written third party submissions under Article 36 § 2 of the Convention were granted. A hearing was held on 27 November 2002.

In a judgment delivered on 6 May 2003, the Grand Chamber held unanimously that the applicants' complaint under Article 6 § 1 was admissible, and by twelve votes to five that there had been no violation of Article 6 § 1.

**(5) Perna v. Italy, no. 48898/99**

The applicant, Giancarlo Perna, is an Italian journalist, who was born in 1940 and lives in Rome. On 21 November 1993 he published in the Italian daily newspaper *Il Giornale* an article about a judicial officer, Mr Giancarlo Caselli, who was at that time the Public Prosecutor in Palermo. The article was entitled "Caselli, the judge with the white quiff" (*Caselli, il ciuffo bianco della giustizia*) and bore the sub-title "Catholic schooling, communist militancy – like his friend Violante..." (*Scuola dai preti, militanza comunista come l'amico Violante...*). The article first contained a criticism of Mr Caselli's political militancy, referring to "a threefold oath of obedience – to God, to the Law and to via Botteghe Oscure [formerly the headquarters of the Italian Communist Party, now those of the Democratic Party of the Left]" (*un triplo giuramento di obbedienza. A Dio, alla Legge, a Botteghe Oscure*). It then accused Mr Caselli of taking part in a plan to gain control of the public prosecutors' offices in all Italian cities and of using the criminal-turned-informer (*pentito*) T. Buscetta in an attempt to destroy the political career of Mr Giulio Andreotti, a former Italian prime minister, by charging him with aiding and abetting a mafia-type organisation (*appoggio esterno alla mafia*), in the full knowledge that he would eventually have to discontinue the case for lack of evidence.

On 10 January 1996, following a complaint for defamation lodged by Mr Caselli, the Monza District Court found the applicant and the then manager of the newspaper guilty of aggravated defamation. They were sentenced to fines of 1,500,000 and 1,000,000 Italian lire (ITL) respectively (about 775 and 515 euros) and ordered to pay damages and costs in the sum of ITL 60,000,000 (about 31,000 euros), reimburse the complainant's costs and publish the judgment. Mr Perna appealed. The Milan Court of Appeal gave judgment against the applicant on 28 October 1997. It held that the passage concerning the oath of obedience was defamatory because it indicated dependence on the instructions of a political party. With regard to the remainder of the article, it held that the allegations concerning Mr Caselli's conduct in the performance of his duties as a member of the State legal service were very serious and highly defamatory in that they were not backed up by any evidence. It further held that it was not necessary to consider the evidence the applicant had sought to adduce because his remarks about Mr Caselli's political allegiance and the use of a *pentito* in the proceedings against Mr Andreotti were not defamatory and therefore

had no bearing on the proceedings. The Court of Cassation upheld the Court of Appeal's decision.

The application was lodged on 22 March 1999 and declared admissible on 14 December 2000. In its Chamber judgment of 25 July 2001 the Court held unanimously that there had been no violation of Article 6 §§ 1 and 3 (d). On the other hand, it held unanimously that there had been a violation of Article 10 on account of the applicant's conviction for alleging, in the form of a symbolic expression, that a senior member of the Italian State legal service had taken an oath of obedience to the former Communist Party.

The Government and the applicant requested that the case be referred to the Grand Chamber. On 12 December 2001 the panel of the Grand Chamber accepted those requests. A hearing was held on 25 September 2002, in which connection Mr Caselli submitted written comments; he also took part in the hearing as a third-party intervener (Rule 61 § 3 of the Rules of Court).

In a judgment delivered on 6 May 2003, the Grand Chamber held unanimously that there had been no violation of Article 6 §§ 1 and 3 (d); and by sixteen votes to one that there had been no violation of Article 10.

**(6) Sahin v. Germany, no. 30943/96**

**(7) Sommerfeld v. Germany, no. 31871/96**

Asim Sahin, born in 1950, was a Turkish national at the relevant time. He subsequently acquired German nationality. He is the father of a child born outside marriage in June 1988. He acknowledged paternity and regularly fetched his daughter for visits until October 1990, when the mother prohibited further contact. In December 1990 he applied unsuccessfully to the Wiesbaden District Court for a right of access. His subsequent appeals were dismissed.

Manfred Sommerfeld, born in 1953, is a German national. He is the father of a child born outside marriage in 1981. He acknowledged paternity and lived with the child's mother until they separated in 1986. The mother then prohibited any contact with the child. On 2 October 1990 Mr Sommerfeld applied to the Rostock District Court for access, but withdrew the request on 1 July 1992 after his daughter had repeatedly said that she did not want contact with him. He submitted a second application in September 1993. This was refused by the District Court in June 1994 and Mr Sommerfeld's subsequent appeals were dismissed.

The applications were lodged with the European Commission of Human Rights on 16 June 1993 and 7 June 1995 respectively and transmitted to the Court on 1 November 1998. On 12 December 2000 both cases were declared partly admissible. In its Chamber judgments in these cases, delivered on 11 October 2001, the Court held, by five votes to two, that there had been a violation of Articles 8 and 14 in both cases. In Sommerfeld the Court further held, by six votes to one, that there had been a violation of Article 6 § 1.

On 9 January 2002 the Government requested that both cases be referred to the Grand Chamber and on 27 March 2002 the panel of the Grand Chamber accepted that request.

In the Sahin case, delivered on 8 July 2003, the Grand Chamber held by twelve votes to five that there had been no violation of Article 8, and unanimously that there had been a violation of Article 14 taken together with Article 8.

In the Sommerfeld case, also delivered on 8 July 2003, the Grand Chamber held by fourteen votes to three that there had been no violation of Article 8; by ten votes to seven that there had been a violation of Article 14 taken together with Article 8; unanimously that there had been a violation of Article 14 taken together with Article 8 in that the possibility of a further appeal in the access proceedings had been excluded under a former statutory provision; and unanimously that it was not necessary to examine separately the applicant's complaint under Article 6, whether taken alone or in conjunction with Article 14.

#### **(8) Hatton v. the United Kingdom, no. 36022/97**

The eight applicants, all British citizens, live or lived near Heathrow Airport, London. They are Ruth Hatton, born in 1963 and living in East Sheen; Peter Thake, born in 1965 and living in Hounslow; John Hartley, born in 1948 and living in Richmond; Philippa Edmunds, born in 1954 and living in East Twickenham; John Cavalla, born in 1925 who, from 1970 to 1996, lived in Isleworth; Jeffray Thomas, born in 1928 and living in Kew; Richard Bird, born in 1933 and living in Windsor; and Tony Anderson, born in 1932 and living in Touchen End.

Before October 1993 the noise caused by night flying at Heathrow had been controlled through restrictions on the total number of take-offs and landings; but after that date, noise was regulated through a system of noise quotas, which assigned each aircraft type a "Quota Count" (QC); the noisier the aircraft the higher the QC. This allowed aircraft operators to select a

greater number of quieter aeroplanes or fewer noisier aeroplanes, provided the noise quota was not exceeded. The new scheme imposed these controls strictly between 11.30 p.m. and 6 a.m. with more lenient “shoulder periods” allowed between 11 and 11.30 p.m. and between 6 and 7 a.m.

Following an application for judicial review brought by a number of local authorities affected, the scheme was found to be contrary to a statutory provision which required that a precise number of aircraft be specified, as opposed to a noise quota. The Government therefore included a limit on the number of aircraft movements allowed at night. A second judicial review found that the Government’s consultation exercise concerning the scheme had been conducted unlawfully and in March and June 1995 the Government issued further consultation papers. On 16 August 1995 the Secretary of State for Transport announced that the details of the new scheme would be as previously announced. The decision was challenged unsuccessfully by the local authorities.

The application was lodged with the European Commission of Human Rights on 6 May 1997 and transmitted to the Court on 1 November 1998. It was declared admissible on 16 May 2000.

In its Chamber judgment in the case, delivered on 2 October 2001, the Court held, by five votes to two, that there had been a violation of Article 8, and, by six votes to one, that there had been a violation of Article 13.

On 19 December 2001 the Government requested that the case be referred to the Grand Chamber and on 27 March 2002 the panel of the Grand Chamber accepted that request. A hearing was held on 13 November 2002.

In a judgment delivered on 8 July 2003, the Grand Chamber held by twelve votes to five that there had been no violation of Article 8; and by sixteen votes to one that there had been a violation of Article 13.

**(9) Ezeh and Connors v. the United Kingdom,  
nos. 39665/98 and 40086/98**

The applicants, both United Kingdom nationals, are Okechukwiw Ezeh, born in 1967, and Lawrence Connors, born in 1954. Both are currently in prison in the United Kingdom.

While serving lengthy prison sentences the applicants were charged with prison disciplinary offences under the prison rules. Mr Ezeh was charged with using threatening language and Mr Connors with assault of a prison

officer. It is argued that each charge had an equivalent in domestic criminal law. The applicants' requests to be allowed legal representation for their respective adjudication hearings were refused by the prison governor.

Both were found guilty after a hearing before the prison governor, in which neither was legally represented. The maximum potential sentence was 42 additional days' detention: Mr Ezeh was sentenced to 40 days detention and Mr Connors to seven days detention. They were subsequently refused leave to apply for judicial review.

The applications were lodged with the European Commission of Human Rights on 23 and 29 January 1998 and were transmitted to the Court on 1 November 1998.

In its Chamber judgment in the case, delivered on 15 July 2002, the Court held unanimously that there had been a violation of Article 6 § 3 (c) in respect of both applicants.

On 8 October 2002 the United Kingdom Government requested that the case be referred to the Grand Chamber and on 6 November 2002 the panel of the Grand Chamber accepted that request. A hearing was held on 5 March 2003.

In a judgment delivered on 9 October 2003, the Grand Chamber held, by 11 votes to six, that there had been a violation of Article 6 § 3 (c) of the Convention.

#### **(10) Slivenko and others v. Latvia, no. 48321/98**

The applicants, Tatjana Slivenko and her daughter Karina Slivenko, are former Latvian residents of Russian origin. They now live in Kursk, Russia. Tatjana Slivenko, whose father was an officer in the army of the Soviet Union, was born in Estonia in 1959 and moved to Latvia with her parents when she was one month old. She married another Soviet officer, Nikolaj Slivenko, in 1980 and Karina was born in Latvia in 1981. After Latvia regained its independence, the applicants were entered on the register of Latvian residents as "ex-USSR citizens". In 1994 the first applicant's husband, who had been discharged from the army during that year (the Russian Federation having assumed jurisdiction over the former Soviet armed forces in January 1992), applied for a temporary residence permit on the basis of his marriage to a permanent resident. His application was refused on the ground that he was required to leave Latvia in accordance with the treaty of April 1994 on the withdrawal of Russian troops which

applied in particular to Russian officers in service on 28 January 1992. As a result, the registration of the applicants was annulled.

The deportation of all three family members was ordered in August 1996. They were evicted from their flat in Riga and Nikolaj Slivenko subsequently moved to Russia. The applicants, however, brought a court action challenging their removal from Latvia. The Latvian courts ultimately found that Nikolaj Slivenko was required to leave and that the decision to annul the applicants' registration was lawful. On 28 October 1998 the applicants were arrested and detained in a centre for illegal immigrants. They were released the following day on the order of the Director of the Citizenship and Migration Authority, on the ground that their arrest was "premature", since an appeal had been lodged with the authority. However, they were later ordered to leave the country and on 16 March 1999 the second applicant was again detained for 30 hours. On 11 July 1999 they moved to Russia to join Nikolaj Slivenko and subsequently adopted Russian citizenship. The applicants' deportation order prevented them from returning to Latvia for five years (until August 2001) and then limited their visiting time to 90 days a year. Tatjana Slivenko's parents, who, she maintained, were seriously ill, remained in Latvia.

The application was lodged with the European Court of Human Rights on 28 January 1999 and transmitted to the Grand Chamber of the Court on 14 June 2001. A hearing on the admissibility and merits of the case took place on 14 November 2001. It was declared partly admissible on 23 January 2002.

In a judgment delivered on 9 October 2003, the Grand Chamber held by 11 votes to six, that there had been a violation of Article 8; by 11 votes to six, that it was not necessary to deal separately with the applicants' complaints under Article 14; by 16 votes to one, that there had been no violation of Article 5 § 1; unanimously, that it was not necessary to consider the applicants' complaints under Article 5 § 4.

**(11) Cooper v. the United Kingdom, no. 48843/99**

**(12) Grieves v. the United Kingdom, no. 57067/00**

The two cases concerned whether trial by court martial in the United Kingdom – under the system in place since the coming into force of the 1996 Armed Forces Act – was compatible with Article 6 § 1 of the Convention.

Graham Cooper, a United Kingdom national, was born in 1968 and lives in Birmingham. At the relevant time, he was a serving member of the Royal

Air Force (RAF). On 18 February 1998 Mr Cooper was convicted of theft under the 1968 Theft Act by an Air Force district court martial (DCM). He was sentenced to 56 days' imprisonment, to be reduced to the ranks and dismissed from the service. The DCM comprised a permanent president, two other officers lower in rank and a judge advocate. The permanent president was on his last posting prior to retirement and had ceased to be the subject of appraisal reports from August 1997. The two ordinary members had attended a course in 1993 which included training in disciplinary procedures. On 3 April 1998 the Reviewing Authority, having received advice from the Judge Advocate General, upheld the DCM's finding and sentence. The applicant appealed unsuccessfully to the Courts Martial Appeal Court (CMAC).

Mark Anthony Grieves, a United Kingdom national, was born in 1968 and lives in Devon. At the relevant time, he was a serving member of the Royal Navy. On 18 June 1998 Mr Grieves was convicted by a Royal Navy Court Martial of unlawfully and maliciously wounding with intent to do grievous bodily harm, contrary to the Offences Against the Person Act 1861. He was sentenced to three years' imprisonment, reduced in rank, dismissed from the service and ordered to pay 700 pounds sterling in compensation. The court martial comprised a president (a Royal Navy captain), four naval officers and a judge advocate, who was a serving naval officer and barrister working as the naval legal advisor to FLEET (the command responsible for the organisation and deployment of all ships at sea). On 29 September 1998 the Admiralty Board, having received advice from the Judge Advocate of the Fleet (JAF), upheld the court martial's finding and sentence. The applicant appealed unsuccessfully to the CMAC.

In the Cooper judgment, delivered on 16 December 2003, the Grand Chamber held unanimously that there had been no violation of Article 6 § 1.

In the Grieves judgment, also delivered on 16 December 2003, the Grand Chamber held unanimously that there had been a violation of Article 6 § 1.

### **VIII. THIRD PARTY INTERVENTIONS**

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

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

(see Chapter IV above)

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

(see Chapter V above)

- (3) Senator Lines v. 15 Contracting States**

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

See appendix.

**X. LIST OF CASES PENDING BEFORE THE GRAND CHAMBER ON 31 DECEMBER 2003**

- |      |           |  |
|------|-----------|--|
| (1)  | 48787/99  | Ilascu v. Moldova and Russia           |
| (2)  | 31443/96  | Broniowski v. Poland                   |
| (3)  | 44158/98  | Gorzelik v. Poland                     |
| (4)  | 26307/95  | Tahsin Acar v. Turkey                  |
| (5)  | 39748/98  | Maestri v. Italy                       |
| (6)  | 48939/99  | Öneryildiz v. Turkey                   |
| (7)  | 56679/00  | Azinas v. Cyprus                       |
| (8)  | 56672/00  | Senator Lines v. 15 States             |
| (9)  |           | Advisory Opinion                       |
| (10) | 71503/01  | Assanidze v. Georgia                   |
| (11) | 44912/98  | Kopeccky v. Slovakia                   |
| (12) | 46827/99  | Mamatkulov and Abdurasulovic v. Turkey |
| (13) | 53924/00  | Vo v. France                           |
| (14) | 47287/99  | Perez v. France                        |
| (15) | 46221/99  | Öcalan v. Turkey                       |
| (16) | 30324/96  | Smoleanu v. Romania                    |
|      | 35671/97) | Lindner and Hammermayer v. Romania     |
|      | 31549/96) | Popovic and Dumitrescu v. Romania      |
| (17) | 33348/96  | Cumpana and Mazare v. Romania          |
| (18) | 39647/98) | Edwards v. the United Kingdom          |
|      | 40461/98) | Lewis v. the United Kingdom            |
| (19) | 49017/99  | Pedersen and Baadsgaard v. Denmark     |

<b>LIST OF REHEARING REQUESTS</b>							
<b>(by Governments and applicants in 2003)</b>							
<b>Appl. No.</b>	<b>Applicant</b>	<b>State</b>	<b>Section</b>	<b>Judgment</b>	<b>Request</b>	<b>Panel date</b>	<b>Panel Result</b>
20652/92	Djavit An	Turkey	III	20.2.03	Gvt	9.7.03	rejected
25141/94	DEP & Dicle	Turkey	IV	10.12.02	Gvt	21.5.03	rejected
27265/95	Terazzi S.A.S	Italy	IV	17.10.02	Gvt	21.5.03	rejected
27824/95	Posti & Rahko	Finland	IV	24.9.02	appl & Gvt	21.5.03	rejected
29973/96	Golea	Romania	II	17.12.02	appl	21.5.03	rejected
30324/96	Smoleanu	Romania	II	3.12.02	appl	21.5.03 adjourned 24.09.03	<b>ACCEPTED</b>
30502/96	Yiltas Yildiz Turistik Tesisleri A. S.	Turkey	III	24.04.03	Gvt	24.09.03	rejected
31549/96	Popovici & Dumitrescu	Romania	II	4.3.03	appl	9.7.03 adjourned 24.09.03	<b>ACCEPTED</b>
31678/96	Gheorghiu	Romania	II	17.12.02	appl	21.5.03	rejected
32926/96	Canciovici a.o.	Romania	II	26.11.02	appl	21.5.03 adjourned 24.09.03	rejected
33348/96	Cumpana & Mazare	Romania	II	29.07.03	app	03.12.03	<b>ACCEPTED</b>
33993/96	Messina (3)	Italy	I	24.10.02	appl	21.5.03	rejected
34619/97	Jänosevic	Sweden	F.I	23.7.02	appl	21.5.03	rejected
35671/97	Lindner & Hammermayer	Romania	II	3.12.02	appl	21.5.03 adjourned 24.09.03	<b>ACCEPTED</b>
36186/97	Timar	Hungary	II	25.2.03	appl	9.7.03	rejected
36268/97	Clucher	Italy	I	17.04.03	Gvt	24.09.03	rejected
36378/97	Bertuzzi	France	II	13.2.03	appl	21.5.03	rejected
36985/97	Västberga Taxi AB & Vulic	Sweden	F.I	23.7.02	appl	21.5.03	rejected

Annual Report 2003: Grand Chamber

37021/97	Zeynep Avci	Turkey	III	6.2.03	appl	9.7.03	rejected
37290/97	Wittek	Germany	III	12.12.02	appl	9.7.03	rejected
37372/97	Walston	Norway	IV	03.06.03	app	03.12.03	rejected
37568/97	Böhmer	Germany	III	3.10.02	appl	21.5.03	rejected
38365/97	Thieme	Germany	III	17.10.02	appl	21.5.03	rejected
39050/97	Jantner	Slovakia	IV	4.3.03	appl	9.7.03	rejected
39269/98	Kepenerov	Bulgaria	I	31.07.03	app	03.12.03	rejected
39339/98	M.M.	NL	II	08.04.03	Gvt	24.09.03	rejected
39482/98	Dowsett	UK	II	24.06.03	app	24.09.03	rejected
39597/98	Biskupska	Poland	IV	22.07.03	app	03.12.03	rejected
39647/98 & 40461/98	Edwards & Lewis	UK	IV	22.07.03	Gvt	03.12.03	<b>ACCEPTED</b>
40694/98	Sobanski	Poland	IV	21.1.03	appl	9.7.03	rejected
41486/98	Borankova	Czech Republic	II	7.1.03	appl	21.5.03	rejected
42276/98	Julien	France	III	14.11.02	appl	21.5.03	rejected
42405/98	C.D.	France	II	7.1.03	appl	21.5.03	rejected
43185/98	Price & Lowe	United Kingdom	II	29.07.03	app	03.12.03	rejected
43580/98	G.G.	Italy	I	3.4.03	appl	9.7.03	rejected
43657/98	Levai & Nagy	Hungary	II	08.04.02	app	24.09.03	rejected
43719/98	Scotti	France	II	7.1.03	appl	21.5.03	rejected
44179/98	Murphy	Ireland	III	10.07.03	app	03.12.03	rejected
44277/98	Stretch	UK	II	24.06.03	app	03.12.03	rejected
44306/98	Appleby and Others	UK	IV	06.05.03	app	24.09.03	rejected
44565/98	Theraube	France	III	10.10.02	appl	21.5.03	rejected
44672/98	Herz	Germany	III	12.06.03	app	03.12.03	rejected
44730/98	Serghides	Cyprus	II	10.06.03	app	24.09.03	rejected
44808/98	Mitchell & Holloway	UK	II	17.12.02	appl	21.5.03	rejected

Annual Report 2003: Grand Chamber

44912/98	Kopecky	Slovakia	IV	7.1.03	Gvt	21.5.03	<b>ACCEPTED</b>
45356/99	Conti	Italy	I	10.07.03	app	03.12.03	rejected
45835/99	Hesse-Anger	Germany	III	6.2.03	appl	21.5.03	rejected
46215/99	Faivre	France	II	17.2.02	appl	21.5.03	rejected
46221/99	Öcalan	Turkey	F. I	12.3.03	Gvt & appl	9.7.03	<b>ACCEPTED</b>
46355/99	Tsirikakis	Greece	I	just sat. 23.1.03	appl	9.7.03	rejected
46827/99 & 46951/99	Mamatkulov & Abdurasulovic	Turkey	F.I	6.2.03	Gvt	21.5.03	<b>ACCEPTED</b>
47227/99	Bakova	Slovakia	IV	12.11.02	appl	21.5.03	rejected
47541/99	Vasilopoulou	Greece	I	26.9.02	appl	21.5.03	rejected
48161/99	Motais de Narbonne	France	II	27.05.03	Gvt	24.09.03	rejected
48221/99	Berger	France	II	3.12.02	appl	21.5.03	rejected
48568/99	Schmidtova	Czech Republic	II	22.07.03	app	03.12.03	rejected
49017/99	Pedersen & Baadsgaard	Denmark	I	19.06.03	app	03.12.03	<b>ACCEPTED</b>
49198/99	Schiettecatte	France	II	8.4.03	appl	9.7.03	rejected
49285/99	Rablat	France	II	29.04.03	app	24.09.03	rejected
50533/99	Motsnik	Estonia	IV	29.04.03	app	24.09.03	rejected
50824/99	Azas	Greece	I	19.9.02	appl	21.5.03	rejected
51392/99	Göcer	NL	III	3.10.02	appl	21.5.03	rejected
52116/99	Vieziez	France	II	15.10.02	appl	21.5.03	<i>back to the Section</i>
52464/99	Papadopoulos	Greece	I	6.2.03	appl	21.5.03	rejected
52518/99	Koral	Poland	IV	5.11.02	appl	21.5.03	rejected
52763/99	Covezzi & Morselli	Italy	I	09.05.03	app	24.09.03	rejected
52848/99	Papadopoulos	Greece	I	9.1.03	appl	21.5.03	rejected
52854/99	Ryabykh	Russia	I	24.07.03	app	03.12.03	rejected
52903/99	Dactylidi	Greece	I	27.3.03	appl	9.7.03	rejected
53112/99	Borderie	France	II	27.05.03	app	24.09.03	rejected

Annual Report 2003: Grand Chamber

53341/99	Hartman	Czech Republic	II	10.07.03	app	03.12.03	rejected
53652/00	Raf	Spain	IV	17.06.03	app	24.09.03	rejected
54283/00	G.L.	Italy	III	3.10.02	appl	21.5.03	rejected
54367/00	Bufferne	France	II	11.2.03	appl	9.7.03	rejected
54528/00	Korellis	Cyprus	II	7.1.03	appl	21.5.03	rejected
56927/00	Appietto	France	II	25.2.03	appl	9.7.03	rejected
57030/00	Asnar	France	II	17.06.03	app	03.12.03	rejected
57734/00	Raitiere	France	II	17.06.03	app	24.09.03	rejected
60545/00	Perhirin	France	II	4.2.03	appl	21.5.03	rejected
62242/00	Gregoriou	Cyprus	II	25.3.03	appl	9.7.03	rejected
62435/00	Pescador Valero	Spain	IV	17.06.03	app	24.09.03	rejected
65567/01	Piskura	Slovakia	IV	27.05.03	app	24.09.03	rejected
65811/01	Lemoine	France	II	29.04.03	app	24.09.03	rejected
67263/01	Mouisel	France	I	14.11.02	app	21.5.03	rejected
69145/01	Sika	Slovakia	IV	24.06.03	app	24.09.03	rejected
69700/01	Tierce	San Marino	II	17.06.03	Gvt	03.12.03	rejected
77746/01	Kroenitz	Poland	IV	25.02.02	app	24.09.03	rejected