

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

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

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

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

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

*“Repetitive” cases*

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

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

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

*Core rights (Articles 2 and 3)*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*Procedural issues*

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

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

**Notes**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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