

European Court
of Human Rights

*Annual
Report
2002*

Registry of the European Court
of Human Rights
Strasbourg, 2003

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FOREWORD

Looking at the Court's activity in 2002 there are grounds for pessimism and grounds for optimism. On the pessimistic front, clearly the volume of cases continues to rise and a large proportion of the Court's judgments still deals with the issue of length of proceedings and other categories of repetitive cases. There is further evidence of structural problems in various Contracting States which may generate large numbers of applications. Yet, at the same time, we have seen more optimistic signs that the Kudła v. Poland¹ jurisprudence to the effect that Article 13 of the Convention requires the availability of a domestic remedy in relation to the excessive length of proceedings is beginning to bear fruit. In the short survey of cases which this report contains there are several examples of Contracting States which have now introduced such remedies, and this is a healthy development which is entirely consistent with the subsidiary nature of the Convention system.

Kudła was important because the Court expressly reacted to the threat posed to the effectiveness of the Convention system by the accumulation of large numbers of same issue cases, the so-called repetitive or clone cases. It also pointed to what, in the long term, will be the only solution to this problem, namely the introduction of effective remedies at the national level. Kudła reminded us of the crucial role of Article 13 in the Convention scheme as "giving direct expression to the States' obligation to protect human rights first and foremost within their own legal system". Its purpose is "to provide a means whereby individuals can obtain relief at national level for violations of their Convention rights before having to set in motion the international machinery of complaint before the Court". In situations of structural or systemic violation, this aspect of the Convention system is clearly fundamental. That is why once such a situation has been identified the execution process must concentrate not only on the elimination of the causes of the violation but also on the obligation to introduce an effective remedy, ideally with retrospective effect so as to relieve the international machinery of cases that can and should be dealt with at the domestic level.

2003 may well be a critical year for the future of the Convention system. A Ministerial Declaration of 7 November 2002 injected new energy into the reform process commenced by the Convention's 50th anniversary conference in Rome in 2000. Proposals will be submitted by the Steering Committee for Human Rights to the Ministers at their meeting in May 2003, which may then lead to the drafting of a new Protocol. The Court will continue to work for its part both on proposals to streamline further its internal working methods and on its contribution to the reform discussion. Its primary concern remains to preserve the effectiveness of the human rights protection system set up by the European Convention on Human Rights in a way which ensures that there is no dilution of the standards which the Convention machinery has developed over the last five decades.

My thanks go to Stanley Naismith of the Registry and his team for their work in preparing this report.

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

1. *Kudła v. Poland* [GC], no. 30210/96, ECHR 2000-XI.

I. HISTORICAL BACKGROUND, ORGANISATION AND PROCEDURE

HISTORICAL BACKGROUND, ORGANISATION AND PROCEDURE

Historical background

A. The European Convention on Human Rights of 1950

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

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

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

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

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

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

B. Subsequent developments

5. Since the Convention's entry into force, thirteen Protocols have been adopted. Protocols Nos. 1, 4, 6, 7, 12 and 13 added further rights and liberties to those guaranteed by the Convention, while Protocol No. 2 conferred on the Court the power to give advisory opinions. Protocol No. 9 enabled individual applicants to bring their cases before the Court subject to ratification by the respondent State and acceptance by a screening panel. Protocol No. 11 restructured the enforcement machinery (see below). The remaining Protocols concerned the organisation of and procedure before the Convention institutions.

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

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

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

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

A Ministerial Conference on Human Rights, held in Rome on 3 and 4 November 2000 to mark the 50th anniversary of the opening of the Convention for signature, had initiated a process of reflection on reform of the system. In November 2002, as a follow-up to a Ministerial Declaration on "the Court of Human Rights for Europe", the Ministers' Deputies issued terms of reference to the Steering Committee for Human Rights (CDDH) to draw up a set of concrete and coherent proposals covering measures that could be implemented without delay and possible amendments to the Convention.

The European Court of Human Rights

A. Organisation of the Court

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

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

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

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

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

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

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

B. Procedure before the Court

1. General

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

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

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

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

2. Admissibility procedure

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

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

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

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

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

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

3. Procedure on the merits

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

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

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

4. Judgments

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

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

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

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

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

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

5. Advisory opinions

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

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

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

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Note on the recording and numbering of applications

1. With effect from 1 January 2002, the Court, upon recommendation of its former Working Party on Working Methods (Standing Committee on Working Methods since December 2001), introduced a new method of numbering and registering applications. A new application is recorded in the Court's Case Management Information System (CMIS) with a sequential number and the last two digits of the year of recording. Thus, the first number assigned to an application in 2002 was 1/02 and number 2222/02 was the 2222nd application recorded in 2002. The numbering starts anew each year, i.e. with 1/03 for the first application recorded in 2003. The application number remains the same throughout the proceedings before the Court.

2. Under the previous practice, which followed that of the European Commission of Human Rights, the Court did not register an application immediately upon receipt. An application was not formally registered until completion of preliminary correspondence between the Registry and the individual concerned (for which purpose the application was attributed a "provisional file" number). On formal registration, the application was assigned a composite number indicating, first, the application's position on the list of applications registered since the creation of the Commission and, second, the year of the application's registration. Applications with provisional file numbers are now assigned a number in accordance with the new numbering system if and when they are ready for examination by the Court.

3. The object of this change was to achieve more efficiency and transparency in handling individual applications at the pre-judicial stage. In sifting the applications submitted to the Court, the pre-judicial exchange of correspondence had limited the ratio of applications requiring judicial processing. However, with the increasing volume of new applications lodged, this workload lacked transparency. The Court therefore decided to reduce the amount of pre-judicial work in order to increase the overall case-processing capacity of the Registry.

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Headings of substantive Articles of the Convention

Convention of 1950

| | |
|-----------|--|
| Article 2 | Right to life |
| Article 3 | Prohibition of torture |
| Article 4 | Prohibition of slavery and forced labour |
| Article 5 | Right to liberty and security |
| Article 6 | Right to a fair trial |

- Article 7 No punishment without law
- Article 8 Right to respect for private and family life
- Article 9 Freedom of thought, conscience and religion
- Article 10 Freedom of expression
- Article 11 Freedom of assembly and association
- Article 12 Right to marry
- Article 13 Right to an effective remedy
- Article 14 Prohibition of discrimination

Protocol No. 1

- Article 1 Protection of property
- Article 2 Right to education
- Article 3 Right to free elections

Protocol No. 4

- Article 1 Prohibition of imprisonment for debt
- Article 2 Freedom of movement
- Article 3 Prohibition of expulsion of nationals
- Article 4 Prohibition of collective expulsion of aliens

Protocol No. 6

- Article 1 Abolition of the death penalty

Protocol No. 7

- Article 1 Procedural safeguards relating to expulsion of aliens
- Article 2 Right of appeal in criminal matters
- Article 3 Compensation for wrongful conviction
- Article 4 Right not to be tried or punished twice
- Article 5 Equality between spouses

Protocol No. 12

- Article 1 General prohibition of discrimination

II. COMPOSITION OF THE COURT

COMPOSITION OF THE COURT

At 31 December 2002 the Court was composed as follows (in order of precedence)¹:

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

1. The seats of judges in respect of Azerbaijan, Armenia, and Bosnia and Herzegovina were vacant.

2. Elected as judge in respect of Liechtenstein.

III. COMPOSITION OF THE SECTIONS

COMPOSITION OF THE SECTIONS
(in order of precedence)

At 31 December 2002

| | Section I | Section II | Section III | Section IV |
|--------------------------|---------------------|----------------------|--------------------------|-----------------------|
| <i>President</i> | Mr C.L. Rozakis | Mr J.-P. Costa | Mr G. Ress | Sir Nicolas Bratza |
| <i>Vice-President</i> | Mrs F. Tulkens | Mr A.B. Baka | Mr I. Cabral Barreto | Mr M. Pellonpää |
| | Mr G. Bonello | Mr L. Wildhaber | Mr L. Caflisch | Mr A. Pastor Ridruejo |
| | Mr P. Lorenzen | Mr Gaukur Jörundsson | Mr P. Kūris | Mrs E. Palm |
| | Mrs N. Vajić | Mr L. Loucaides | Mr R. Türmen | Mrs V. Strážnická |
| | Mr E. Levits | Mr C. Bîrsan | Mr B. Zupančič | Mr M. Fischbach |
| | Mrs S. Botoucharova | Mr K. Jungwiert | Mr J. Hedigan | Mr J. Casadevall |
| | Mr A. Kovler | Mr V. Butkevych | Mrs M. Tsatsa-Nikolovska | Mr R. Maruste |
| | Mr V. Zagrebelsky | Mrs W. Thomassen | Mrs H.S. Greve | Mr S. Pavlovski |
| | Mrs E. Steiner | Mr M. Ugrehelidze | Mr K. Traja | Mr L. Garlicki |
| | | Mrs A. Mularoni | | |
| <i>Section Registrar</i> | | Mrs S. Dollé | Mr V. Berger | Mr M. O'Boyle |

**IV. SPEECH GIVEN BY
Mr LUZIUS WILDHABER,
PRESIDENT OF THE EUROPEAN COURT
OF HUMAN RIGHTS,
ON THE OCCASION OF THE OPENING
OF THE JUDICIAL YEAR,
23 JANUARY 2003**

**SPEECH GIVEN BY Mr LUZIUS WILDHABER,
PRESIDENT OF THE EUROPEAN COURT OF HUMAN RIGHTS,
ON THE OCCASION OF THE OPENING OF THE JUDICIAL YEAR,
23 JANUARY 2003**

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

Once again it falls to me to address you on the occasion of the formal opening of the judicial year and once again I would like to express my gratitude to all of you who have shown your support for the Court over the past year and by joining us tonight. I offer particularly warm greetings to colleagues from national courts and other international courts, particularly this evening the Presidents of the European Court of Justice and of the International Tribunal for the Law of the Sea. I would also like to extend a special welcome to our guest speaker, the Lord Chief Justice of England and Wales, Lord Woolf.

The message that I have to give you this evening is very similar to that which I have given you in previous years; indeed I am running out of words and images to convey the Court's situation, which is in any case familiar to you. I do not intend to read out figures. Suffice it to say that the volume of incoming cases continues to rise and, despite greatly increased productivity, there remains a substantial shortfall between new applications and applications disposed of. The parameters of the problem are unchanged.

The process of discussion of reform has continued over the last year both within the Court and elsewhere, notably within the working group set up by the Steering Committee for Human Rights. In November the Ministers at their 111th Session issued a ringing declaration in which they reiterated the conviction expressed in their declaration of the previous year that the European Convention on Human Rights must remain the essential reference point for the protection of human rights everywhere in Europe, as well as their determination, in the interest of legal certainty and coherence, to guarantee the central role that the Convention and the Court must continue to play in the protection of the human rights and fundamental freedoms of 800 million Europeans. The Ministers instructed their Deputies to accelerate their work and to issue revised terms of reference to the Steering Committee which should report no later than 17 April 2003 with concrete proposals.

The Court has discussed the issues both in its Sections and in plenary administrative session. A number of ideas have been put forward, including an accelerated procedure for repetitive cases and the setting up of a fifth Section with specific and exclusive competence for unmeritorious cases, on the one hand, and repetitive or clone cases, on the other. Judges have generally expressed themselves to have been in favour of abandoning a purely chronological approach to processing cases and giving priority to important cases. Whichever way you look at it, hard choices will have to be made, as indeed they already have been to some extent with regard to the Court's internal procedure and work processes. At the risk of repeating myself, the key word is, as I said last year, effectiveness: effectiveness in terms of internal efficiency, but also effectiveness in terms of attaining the aims of the European Convention on Human Rights in a rapidly changing world. Just as the substantive rights have evolved through the Court's case-law to ensure in the Court's words that they remain practical and effective and not merely theoretical and illusory, so must the

machinery and the procedure through which it operates evolve in the light of different circumstances. Protection offered perhaps several years after the event will often be illusory, and not only for the individual applicant concerned. There is a vicious circle of sorts whereby the more applicants that come to Strasbourg, the longer it will take for the Convention system to identify and correct situations giving rise to violations and yet more applications, well-founded ones, will be generated. I have tried on various occasions to portray the Court's role as a doctor, diagnosing the ill and even, where appropriate, prescribing the cure. It is not its role to administer the cure itself and it should not alone bear the consequences of a failure to do so.

So the system must evolve. But what form should such evolution take? It still seems to me that the guiding principle must be to direct the Court's best and fullest efforts to cases which serve to identify the underlying problems in the legal protection of fundamental rights in our different societies. Once again, the principal overriding aim of the Convention system is to bring about a situation in which in each and every Contracting State the rights and freedoms are effectively protected, that is primarily that the relevant structures and procedures are in place to allow individual citizens to vindicate those rights and to assert those freedoms in the national courts. This is the first level at which Convention protection should operate, but it is not the only one. In every forum in which the Convention has been discussed it has been repeatedly emphasised that the individual lies at the heart of the system, that the quantum leap achieved by the Convention was the recognition of the individual as a subject of international law, the offering of international protection to individuals, and that that protection should not be weakened.

Is it possible to reconcile effectiveness in pursuing the goals of the Convention and individual protection? I believe that it is, but only by redefining what we mean by individual protection, by accepting that the great mass of unmeritorious applications can be dealt with under the most summary of processes, requiring minimal judicial input. Indeed ultimately, and I know that many of my colleagues agree with me on this, a separate filtering mechanism could – should – be envisaged. The other main area which needs to be explored is that of repetitive violations, that is violations of a systemic nature, where general measures are necessary at national level both to remove the structural causes and to offer a remedy for existing victims. Again, such cases should be dealt with summarily; they are in a sense also unmeritorious cases in that the respondent Government's defence will almost inevitably be unmeritorious, the application being manifestly well-founded. Speedy, summary processing coupled with more effective and more rapid execution, plus the provision if possible of a specific national remedy: these are all measures that must be contemplated. A separate mechanism dealing with unmeritorious cases could also examine and determine manifestly well-founded applications.

We have now reached a critical stage; over the next few months intensive work will be carried out on the different reform proposals. What is clear, what has been clear all along, is that there is no miracle solution. There is no way of simply turning off the tap. There is however a much wider understanding of the problem and the governments have shown their willingness to seek a solution. In the first place the Ministers' Deputies approved in principle a three-year budget programme which will enable the Registry to increase its work force and I take this opportunity to thank those Ambassadors who are here this evening. I must also express my gratitude here to the Secretary General and the Director General of Administration of the Council of Europe for their considerable efforts towards achieving this result. There is a cost to maintaining a system of effective international

human rights protection and we should not fool ourselves that it will not rise in the years to come once the present three-year programme has been completed, regardless of the type of reform implemented. Secondly, work is, as I have said, progressing in the working groups of the Steering Committee for Human Rights. The Court has indicated its readiness to be involved in the process and particularly with regard to testing the practical impact of any of the proposals, which is of course vitally important. Thirdly, two proposals have been received from governments for amendment of the Convention and this again is an indication of heightened awareness that action has to be taken and that governments have to be involved in shaping the future of the Convention system.

One aspect of that future will be the system's relationship with the European Union and particularly the enlarged Union. Again, this is a recurring topic and I make no apologies for reiterating my call for the Union to accede to the Convention. On this front, the latest news is encouraging. In his report to the Copenhagen Summit on 12 December last, the Chairman of the Convention, Mr Giscard d'Estaing, spoke of a "very strong tendency" in favour of accession within the Convention on the future of Europe. This comes as no surprise in view of the excellent report of the Convention working group chaired by Commissioner António Vitorino. On the basis of cogent argument, the working group comes down unanimously in favour of inserting into the new European Union Treaty a constitutional clause allowing accession.

The desirable next move is to give practical effect to this recommendation and, in so doing, to maintain the parallelism that has generally been established between the European Union Charter of Fundamental Rights and accession, notably in the European Council's Laeken Declaration, which set up the Convention on the future of Europe. Such parallelism is in reality no more than the logical outcome of the inherent link between the Charter and the European Convention on Human Rights, a link that was formalised in the Charter itself. The practical consequences must now be dealt with.

Ideally, we would combine a reform of the system and accession by the European Union in a single process of amendment of the Convention. The two objectives go hand in hand, and that means that current work on reform should not delay preparations for accession. Accession is the response to an urgent independent need for external review, legal certainty and European Union participation in proceedings before our Court. To those who might be tempted to cite our Court's excessive workload and the consequent length of proceedings before it as reasons for delaying accession, I would say that there is nothing to be gained from waiting, because doing so would not achieve anything. Not only would it leave unresolved all the problems caused by not acceding, but it would not prevent a large proportion of Community litigation coming to Strasbourg anyway, because at present a good number of the Court of Justice's judgments are delivered on requests for preliminary rulings, and once domestic remedies have been exhausted, such cases can already be brought to our Court as things stand and thus add to its workload. It is for this reason that both processes – reform and accession – must be carried forward together at once.

Let me now look at some of the cases that have stood out over the last year. This is a choice that becomes increasingly difficult with the growing volume of judgments and decisions.

I should like to consider the cases under three headings: evolutive interpretation, separation of powers and human dignity. If these themes provide only a glimpse of the

Court's judicial activity last year, they are each fundamental to the effectiveness of the Convention system and the Court's authority.

On the question of evolutive interpretation, it is precisely the genius of the Convention that it is indeed a dynamic and a living instrument, which has shown its capacity to evolve in the light of social and technological developments that its drafters, however far-sighted, could never have imagined. The Convention has shown that it is capable of growing with society; and in this respect its formulations have proved their worth over five decades. It has remained a live and modern instrument. The "living instrument" doctrine is one of the best known principles of Strasbourg case-law, the principle that the Convention is interpreted "in the light of present day conditions", that it evolves, through the interpretation of the Court.

The line of cases dating back to 1986¹ concerning the legal recognition of transsexuals' new sexual identity clearly illustrates the operation of this evolutive process. The Court had until last year, by a small and dwindling majority and with one exception distinguished on the facts², found that there was no positive obligation for the States to modify their civil status systems so as to have the register of births updated or annotated to record changed sexual identity³. However, the Court never closed the door on the possibility of requiring legal recognition of new sexual identity. It reiterated the need for Contracting States to keep the question under review. In the *Christine Goodwin* judgment delivered last summer⁴, the Court finally reached the conclusion that the fair balance now tilted in favour of such recognition. It recalled that it had to have regard to the changing conditions within the respondent State and within Contracting States generally and to respond to any evolving convergence as to standards to be achieved. A failure by the Court to maintain a dynamic and evolutive approach would risk rendering it a bar to reform or improvement. No concrete or substantial hardship or detriment to the public interest had been demonstrated as likely to flow from the changes to the status of transsexuals. Society could indeed reasonably be expected to tolerate a certain inconvenience to enable individuals to live in dignity and worth in accordance with sexual identity chosen by them at great personal cost or, to put it another way, the individual interest claimed did not impose an excessive or unreasonable burden in relation to the general interest of society as a whole.

Another, rather different example, of the living instrument approach can be seen in *Stafford v. the United Kingdom* also decided last year⁵, where the Court revisited its earlier finding that mandatory life sentences for murder in the United Kingdom constituted punishment for life and therefore that re-detention after release on licence could be justified on the basis of the original conviction and need not be the subject of new judicial proceedings. The Court took judicial notice of the evolving position of the British courts as to the nature of life sentences in an interesting example of a two-way process whereby developments in the domestic legal system influence Strasbourg to change its case-law, which in turn results in the consolidation of the evolution at national level, what one might call jurisprudential osmosis.

1. *Rees v. the United Kingdom*, judgment of 17 October 1986, Series A no. 106.

2. *B. v. France*, judgment of 25 March 1992, Series A no. 232-C.

3. *Rees v. the United Kingdom*, judgment of 17 October 1986, Series A no. 106; *Cossey v. the United Kingdom*, judgment of 27 September 1990, Series A no. 184; *Sheffield and Horsham v. the United Kingdom*, judgment of 30 July 1998, *Reports of Judgments and Decisions* 1998-V.

4. *Christine Goodwin v. the United Kingdom*[GC], 28957/95, ECHR 2002-VI.

5. *Stafford v. the United Kingdom* [GC], no. 46295/99, ECHR 2002-IV.

The *Stafford* case brings me to the second theme which I wish to address briefly this evening, namely the separation of powers. Again this is a crucial element in the Convention system as one of the fundamental pillars of the rule of law. At the same time it is a principle which has also to apply, admittedly in a rather different way, to the functioning of the Strasbourg Court. There is no room for even the perception of external interference or of any lack of independence of the Court, and in this respect it has to be recognised that there are still unresolved questions about the Court's status and its true position within the Council of Europe architecture. I should also say that we in Strasbourg have ourselves on occasion had to remind governments of the special character of the Court's judicial function, which should command the same respect owed to a national judiciary. I take this opportunity to thank the governments of the European Union member States for their declaration of support for the Court, with which the central and east European countries associated with the European Union, as well as Cyprus, Malta and Turkey, aligned themselves and to whom I also express my gratitude. I would also like to thank the Secretary General for his very clear position in this matter.

In *Stafford*, the Court confirmed the growing importance of the notion of the separation of powers in its case-law. It held that there had been a breach of the Convention in that the power of decision concerning the applicant's release lay with a member of the executive, the Home Secretary. It is not acceptable in a State governed by the rule of law for decisions concerning sentencing and detention to be taken by a government minister rather than through proper judicial process.

The question not so much of the formal separation of powers but more specifically of the practical independence of the judiciary has arisen in other circumstances. Last year the Court found a violation of the fair trial guarantee in *Sovtransavto Holding*, a Ukrainian case in which there had been in the domestic proceedings numerous interventions by the Ukrainian authorities at the highest political level. Such interventions disclosed a lack of respect for the very function of the judiciary¹.

My third theme is a recurring one in the Court's case-law, namely the notion of human dignity which lies at the heart of the Convention. Thus, the Court held last year that a State must ensure that a person is imprisoned in conditions which are compatible with respect for his human dignity. The manner and execution of the measure should not subject him to distress and hardship of an intensity exceeding the unavoidable level of suffering inherent in detention. In *Kalashnikov v. Russia*, the Court found that at any given time the overcrowding was such that each inmate in the applicant's cell had between 0.9 and 1.9 sq. m of space, that the inmates in the applicant's cell had to sleep taking turns, on the basis of eight-hour shifts, that the cell was infested with pests and that the toilet facilities in the cell were filthy and dilapidated with no privacy. The absence of any positive intention to humiliate or debase the detainee, although a factor to be taken into account, could not exclude a finding of inhuman and degrading treatment prohibited by Article 3 of the Convention².

1. *Sovtransavto Holding v. Ukraine*, no. 48553/99, to be reported in ECHR 2002-VII.

2. *Kalashnikov v. Russia*, no. 47095/99, to be reported in ECHR 2002-VI.

Human dignity was at issue in other contexts in 2002. Early in the year the Court had a particularly poignant case to decide. The applicant, a British national in the terminal stages of motor neurone disease, had sought an undertaking from the Director of Public Prosecutions that her husband would not be criminally prosecuted if he assisted her to commit suicide. The applicant claimed that his refusal infringed, among other things, her right to life under Article 2 of the Convention, the prohibition of inhuman or degrading treatment under Article 3 and the right to respect for private life under Article 8.

The Court looked primarily at the plain meaning of the Convention terms. Thus, it could not read into the “the right to life” guaranteed in Article 2 a right to die. Nor could the notion of inhuman and degrading treatment prohibited under Article 3 of the Convention be extended to cover the refusal to give the undertaking which the applicant sought. The positive obligation on the part of the State which was invoked would require that the State sanction actions intended to terminate life, an obligation that could not be derived from Article 3 of the Convention.

The Court nevertheless reiterated, in its consideration of the complaint under Article 8, that the very essence of the Convention was respect for human dignity and human freedom. Without negating the principle of sanctity of life protected under the Convention, it was under Article 8 that notions of the quality of life took on significance. In an era of growing medical sophistication combined with longer life expectancy, many people were concerned that they should not be forced to linger on in old age or in states of advanced physical or mental decrepitude which conflicted with strongly held ideas of self and personal identity. The Court was not prepared to exclude that the circumstances of the case could give rise to an interference with the right to respect for private life.

This meant that under the second paragraph of Article 8 the Court had to determine the necessity of such interference. It found that States were entitled to regulate through the operation of the general criminal law activities which were detrimental to the life and safety of other individuals. The law in issue was designed to safeguard life by protecting the weak and vulnerable and especially those who were not in a condition to take informed decisions against acts intended to end life or to assist in ending life. It was primarily for each State to assess the risk and the likely incidence of abuse within its society if the general prohibition on assisted suicides were relaxed or if exceptions were to be created. The contested measure came within the spectrum of those that could be considered “necessary in a democratic society”.

This sensitive and difficult case provides a further example of the Court’s cautious approach to the living instrument doctrine in areas which are still the matter of intense legal, moral and scientific debate. Moreover, it reminds us that there are areas of action within which States must retain a degree of discretion both as the local authorities best placed to carry out certain assessments and also in accordance with the principles of a democratic society.

Ladies and gentlemen, that brings me back to my earlier comment about the fundamental goal of the Convention system. That system will never provide an adequate substitute for effective human rights protection at national level; it has to be complementary to such protection. It should come into play where the national protection breaks down, but it cannot wholly replace national protection or even one area of national protection. Although the Convention is concerned with individuals, it is not only concerned with the

tiny proportion of individuals who bring their cases to Strasbourg, and it will never be more than a tiny proportion who do. As long as we remain too wedded to the idea of purely individual justice, we actually make it more difficult for the system to protect a greater number. Yet, while keeping constantly in mind the overall picture and objectives, we cannot forget two images from last year: a dying woman in a wheelchair whose first and last trip abroad was to the hearing of her case in Strasbourg, whose own dignity and courage provoked universal admiration; and a woman who was born a man and whose suffering over many years, although on a different level, it is difficult for most of us to imagine. She came, with her adult children, to the public delivery of the Court's judgment and again impressed us by her quiet dignity. Individuals such as these have always been the heroes of the Convention's history and whatever changes are introduced there must still be a place for them in its operation.

It is now my great pleasure to give the floor to Lord Woolf, as an old personal friend and particularly as a senior figure in the British judiciary. Before the Convention was incorporated into United Kingdom law, we argued that incorporation when it came would greatly enrich the Convention jurisprudence, that British judges deciding directly on Convention issues would make a major contribution to the development of Convention law. Just over two years after the entry into force of the Human Rights Act, that is indeed proving to be the case. This is how a subsidiary system should work, with the national courts exercising effective Convention control and only exceptional cases coming to Strasbourg.

But this evening it is Lord Woolf who will have the last word.

**V. SPEECH GIVEN BY
LORD WOOLF OF BARNES,
LORD CHIEF JUSTICE
OF ENGLAND AND WALES,
ON THE OCCASION OF THE OPENING
OF THE JUDICIAL YEAR,
23 JANUARY 2003**

**SPEECH GIVEN BY LORD WOOLF OF BARNES,
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ON THE OCCASION OF THE OPENING OF THE JUDICIAL YEAR,
23 JANUARY 2003**

I am honoured and delighted to have this opportunity briefly to address the members of this Court as the Court is embarking on what is no doubt going to be another challenging year. I have to begin by asking for your indulgence. There was a time when I was accustomed to appearing before judges as an advocate but this is no longer the case. Instead, nowadays I sit as a judge or preside over meetings of judges. I certainly have never before had to appear before judges, particularly judges of forty-four nations who have the responsibility of correcting my judgments. I can assure you it is an awesome experience.

However, it is a convenient time for a British judge to be able to address you. As a result of the Human Rights Act, the European Convention on Human Rights has now been part of our domestic law for over two years. So it is already possible to report upon the Act's impact on the law of the United Kingdom. I refer to the United Kingdom deliberately, although you will be aware that the United Kingdom has three independent legal systems. However, so far as human rights are concerned, it is not necessary to draw any distinction between the three systems.

It is my firm impression that, while there was considerable nervousness in the United Kingdom prior to the implementation of the Human Rights Act, the informed view is that making the European Convention part of our domestic law has proved to be a great success. Furthermore, that process of implementation has gone extremely smoothly.

You are no doubt aware that, prior to the coming into force of the Human Rights Act, the United Kingdom, alone among European States, had no written constitution. The statutory recognition of human rights as part of domestic law involved a seismic change in our approach to the protection of human rights. A change of this nature can be as difficult for a mature legal system as it is for a new legal system. For a mature system the change can be unwelcome. As a 19th century judge said "change – do not talk to me about change – things are bad enough already".

There are at least five reasons why, notwithstanding the scale of the change involved in the United Kingdom in making the Human Rights Act enforceable for the first time, the transition has been achieved remarkably smoothly.

1. The first reason, and perhaps the most important, is that the values to which the European Convention on Human Rights gives effect are very much the same values that have been recognised by the common law for hundreds of years. Although prior to the present administration, no government of the United Kingdom had been prepared to give its citizens the right to enforce human rights directly, it was wrongly assumed that United Kingdom citizens were just as well off under the common law as if they had such a right. This assumption was surprising since, while those rights were not expressly conferred on our citizens, when former colonies were about to become independent from Britain, it was thought that their citizens did need such rights and many of the nations which now make up the British Commonwealth were given on independence a written constitution containing

such rights. Furthermore, while our citizens, if they wished to enforce their human rights had to come here to Strasbourg to enforce them, for many years the new independent members of the British Commonwealth still had to come to a United Kingdom court, the Privy Council, in order to have their rights finally adjudicated upon. This is fortunate because it has meant that our most senior judiciary were therefore very familiar with the different techniques which a final court of appeal has to employ in order to give effect to human rights.

2. While that is true of the most senior judiciary, for the great majority of the judiciary, all of whom would be faced with having to apply human rights directly, this was a totally new experience. For this reason, before the Human Rights Act was brought into force there was a breathing space of two years during which intensive training took place. Preparation for legislation on this scale was unprecedented in the United Kingdom. The training for the judiciary was accompanied by public bodies conducting an audit of their activities with the intention of identifying any practices which were not human rights compatible so that they could be changed before the Act came into force. This preparation in itself was very worthwhile since it meant not only judges, but officials, ministers and advocates were immersed in a human rights culture. Change of culture is the most important aspect of the introduction of the Human Rights Act.

3. This process of change was facilitated by the fact that English lawyers and our judiciary, as common lawyers, felt instinctively at home with the manner in which the Strasbourg jurisprudence had been developed. On the framework provided by the Articles of the Convention, it appeared to our judges that the judges of the Strasbourg Court by their decisions had been extremely creative in very much a common-law manner: developing the law by giving pragmatic decisions on the facts of the cases that came before them.

4. The fact that the United Kingdom had already for many years been a member of the European Union, applying the Luxembourg jurisprudence, also assisted.

5. Finally, the very sophisticated approach adopted by the legislator when making the European Convention on Human Rights part of our domestic law assisted. The legislator, instead of giving the United Kingdom courts power to strike down domestic legislation, limited the courts' power to declaring that the legislation was incompatible with the Convention. The Act then provided a fast track enabling Parliament to remedy the situation. Despite these advantages, the scale of the change should not be underestimated. The values to which the European Convention gives effect may be shared by all Western democracies, but for a country which has a long tradition of regarding the sovereignty of the democratic parliament as being the cornerstone of its constitution, the fact that the Human Rights Act was to make the Convention enforceable, in its own courts, did create a tension. Administrators, ministers and politicians were used to our judges reviewing their actions, but not to their second-guessing their decisions.

However, in practice, the situations in which the courts have had to resort to making a declaration of incompatibility can be comfortably accommodated by the fingers on one hand. The reason the number of cases has been so small is partly due to section 3 of the Human Rights Act, which is one of the most important provisions of the legislation. Section 3 requires the courts, "so far as it is possible to do so", to read and give effect to legislation "in a way which is compatible with the Convention rights". In addition, the courts are required to take into account, though not necessarily follow, the decisions of this

Court. A happy consequence of this is that, while previously a few experts in the United Kingdom were aware of the rich jurisprudence of this Court, now that jurisprudence is familiar to every judge and competent lawyer in the country. In the cases that I hear it is rare for a decision from Strasbourg not to be cited at some stage of the hearing. The remarkable thing is that although the Strasbourg cases are persuasive, and not binding, authority, I cannot recall it being suggested that my court should not follow a Strasbourg precedent because it did not accurately reflect the law. Without exception, practitioners regard the Strasbourg decisions as being of the highest authority.

A reason for this acceptance of the Strasbourg jurisprudence is the fact that this Court has wisely developed the practice of allowing the Signatory States a margin of appreciation as to how they give effect to the Convention rights. This practice is not directly transposable to the domestic situation. This is because domestic courts do not have to determine the relationship between an international body and a national body. Domestic courts are concerned with a different relationship, the relationship between the national court and the national authorities.

Fortunately, although this is controversial, the British courts have developed a parallel doctrine to the margin of appreciation to deal with the relations between the domestic courts and our Parliament and our executive.

The parallel doctrine that has been developed is the doctrine of deference or, as I prefer to say, the doctrine of respect. This requires the United Kingdom courts to recognise that there are situations where the national legislature and executive are better placed to make the difficult choices between competing considerations than the national courts.

The court should respect an area of judgment “within which the judiciary defer on democratic grounds to the considered opinion of the elected body or person whose actual decision is said to be incompatible with the Convention”. Such an area of judgment is more readily found where the Convention requires a balance to be struck, or where the case raises issues of social and economic policy. It is less likely to be applied in situations where the Convention right is unqualified or where the rights are of a nature which the domestic courts are well placed to assess.

It is, however, of the greatest importance to make clear that by recognising the need for respect the British judges are not slipping backward and recreating their pre-Human Rights Act approach, the *Wednesbury* approach. Our courts are not approaching the issue of respect by merely asking whether a decision reached was one to which the decision maker could reasonably come. The courts instead apply the doctrine of respect in the context of considering the proportionality of the balance struck by the decision-maker. As Lord Steyn pointed out in *Daly* [2001] 2 Weekly Law Reports 1622, this requires the reviewing national court to assess the balance struck by the decision-maker from the point of view of proportionality, to assess the relative weight accorded to the relevant interests and to enquire whether a limitation on a Convention right was necessary in a democratic society. In other words the court has to ask itself whether there is a pressing social need justifying the decision and whether the response was proportionate to the legitimate aim that was being pursued. The doctrine of deference can only come into play by extending a degree of respect, and no more, to the national authorities when considering the issue of proportionality.

From what I have said so far, it will be apparent that the manner of application of the doctrine of respect by the courts varies according to the context. None of the English authorities suggest that it would have any scope where what is alleged is in contravention of an unqualified Convention right, such as that contained in Article 3. It is primarily, if not exclusively, in relation to an individual's qualified Convention rights that the doctrine comes into its own. It applies in those situations where the executive or the legislature has choices to make, particularly if the choices are ones which it is difficult to make.

As to these difficult decisions, none are more challenging than those that involve national security. It is the first duty of the government to protect its citizens. Acts of terrorism directed at the civil population are totally inconsistent with the values for which the European Convention stands. However, it is when issues of national security are dictating the actions of the executive and the legislature that the protection of individual rights needs particular attention.

Before September 11 the United Kingdom already had legislation which allowed it to deport those who had no right to remain in the United Kingdom if their presence in the United Kingdom was considered, in the interests of national security, not to be conducive to the public good. On an appeal from the Special Immigration Appeal Commission, which was heard by the House of Lords before September 11, but in relation to which the judgment was given after September 11, Lord Hoffmann added a postscript to his judgment referring specifically to the events of September 11. What he said was:

“They are a reminder that in matters of national security, the costs of failure can be high. This seems to me to underline the need for the judicial arm of government to respect the decisions of ministers of the Crown on the question of whether support for terrorist activities in a foreign country constitutes a threat to national security. It is not only that the executive has access to special information and expertise in these matters. It is also that such decisions with serious potential results for the community acquire a legitimacy which can be acquired only by entrusting them to persons responsible to the community through the democratic process. If the people are to accept the consequences of such decisions they must be made by persons whom the people have elected and whom they can remove.”

The good sense and force of the comments of Lord Hoffman cannot be denied but this does not mean that the courts, while bearing those remarks in mind, do not have to scrutinise carefully the action which the executive and the legislature has taken, to see whether those actions accord with the fundamental rights of the individual under the European Convention.

After September 11 the United Kingdom passed the Anti-Terrorism, Crime and Security Act 2001. In order to bring the legislation into force, the United Kingdom government felt compelled to enter into a formal derogation from Article 5 § 1 of the Convention. It has been pointed out that despite the international nature of the present war on terrorism, the United Kingdom stands alone in deeming it necessary to derogate from the terms of the Convention. Already I have had to hear an appeal under that Act. I do not intend to detain you by referring to my judgment. It is sufficient if I indicate that, while I did not uphold the challenge and did recognise the situation was one where respect was required to be appropriately extended to the government, I also made it clear that the manner in which the issues were being considered by the courts was wholly different in consequence of the European Convention being part of our domestic law. We did not apply the *Wednesbury* test.

Having only in the past argued a case before this Court and never having sat as a judge, as some of my colleagues have, I cannot speak other than as an onlooker. However, as an onlooker who has to apply your decisions regularly in the cases that come before me, I have no hesitation in bringing these comments to a close by saying that 2003 will be a good year for European Convention jurisprudence if, as I am sure will happen, you maintain the standards that over the years we have come to expect from the decisions of the European Court of Human Rights. It is in times of stress, such as those with which we are now threatened, that the courage and independence of this Court are so critical – critical not only in Europe but throughout the world in those countries which purport to adhere to the rule of law.

VI. VISITS

VISITS

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|-------------------|--|
| 28 January 2002 | Supreme Court, Netherlands |
| 21 February 2002 | Court of Cassation, France |
| 22 February 2002 | <i>Conseil supérieur de la magistrature</i> , France |
| 25 February 2002 | Supreme Court, Andorra |
| 4 March 2002 | Supreme Court, Czech Republic |
| 25 March 2002 | Court of Cassation, Turkey |
| 9 April 2002 | Delegation of senior officials from the <i>Sénat</i> , France |
| 17 April 2002 | Supreme People's Prosecution Service, People's Republic of China |
| 18 April 2002 | Constitutional Court, Slovakia |
| 25 April 2002 | Constitutional Court, Mongolia |
| 21 May 2002 | Constitutional Court, Russia |
| 30 May 2002 | Public Prosecutor's Office, Gothenburg, Sweden |
| 30 May 2002 | Constitutional Court, Slovenia |
| 30 May 2002 | Constitutional Court, Thailand |
| 14 June 2002 | Administrative Tribunal, Strasbourg, France |
| 24 June 2002 | Asylum Appeals Commission, Switzerland |
| 22 July 2002 | Chairmen of Bar Associations Board, Turkey |
| 3 September 2002 | Constitutional Court, Hungary |
| 13 September 2002 | Court of First Instance, Linköping, Sweden |
| 10 October 2002 | Constitutional Court, Bulgaria |
| 23 October 2002 | European Parliament's Committee on Legal Affairs and the Internal Market |

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

ACTIVITIES OF THE GRAND CHAMBER AND SECTIONS

1. Grand Chamber

In 2002, the number of cases pending before the Grand Chamber remained stable. There were 18 cases (concerning 23 applications) pending at the beginning of the year, and 17 cases (also concerning 23 applications) plus a request for an advisory opinion pending at the end of the year.

13 new cases were referred to the Grand Chamber, 5 by relinquishment of jurisdiction by a Chamber in favour of the Grand Chamber pursuant to Article 30 of the Convention, and 8 by a decision of the panel of the Grand Chamber to accept a request for re-examination under Article 43 of the Convention.

The Grand Chamber held 35 sessions and 12 oral hearings.

The Grand Chamber ruled on the admissibility of 5 applications, 2 of which were declared admissible and 3 inadmissible.

The Grand Chamber adopted 12 judgments, of which 10 concerned the merits (5 in relinquishment cases and 5 in rehearing cases) and 2 concerned just satisfaction.

2. First Section

In 2002, the Section held 40 Chamber sessions. Oral hearings were held in 6 cases and delegates took evidence in 2 cases. The Section delivered 324 judgments, of which 254 concerned the merits and 62 concerned friendly settlements. The Section applied Article 29 § 3 of the Convention (combined examination of admissibility and merits) in 26 cases, in respect of which no judgments have yet been delivered.

Of the applications examined by a Chamber

- (a) 233 were declared admissible;
- (b) 330 were declared inadmissible;
- (c) 105 were struck out of the list; and
- (d) 413 were communicated to the State concerned for observations.

In addition, the Section held 64 Committee sessions. 3,987 applications were declared inadmissible and 76 applications were struck out of the list. The total number of applications rejected by a Committee represented 90% of the inadmissibility and striking-out decisions taken by the Section during the year.

At the end of the year, 8,025 applications were pending before the Section.

3. Second Section

In 2002, the Section held 40 Chamber sessions. Oral hearings were held in 5 cases and delegates took evidence in 2 cases. The Section delivered 159 judgments, of which 137 concerned the merits. The Section applied Article 29 § 3 of the Convention (combined

examination of admissibility and merits) in 101 cases and 26 judgments were delivered under this procedure.

Of the applications examined by a Chamber

- (a) 125 were declared admissible;
- (b) 135 were declared inadmissible;
- (c) 24 were struck out of the list; and
- (d) 284 were communicated to the State concerned for observations.

In addition, the Section held 78 Committee sessions. 4,705 applications were declared inadmissible and 52 applications were struck out of the list. The total number of applications rejected by a Committee represented 96% of the inadmissibility and striking-out decisions taken by the Section during the year.

At the end of the year, 7,785 applications were pending before the Section.

4. Third Section

In 2002, the Section held 37 Chamber sessions. Oral hearings were held in 3 cases. The Section delivered 169 judgments, of which 117 concerned the merits, 50 concerned friendly settlements and 2 the striking out of the cases. The Section applied Article 29 § 3 of the Convention (combined examination of admissibility and merits) in 291 cases, in 13 of which a judgment has been delivered.

Of the applications examined by a Chamber

- (a) 116 were declared admissible;
- (b) 89 were declared inadmissible;
- (c) 178 were struck out of the list; and
- (d) 443 were communicated to the State concerned for observations.

In addition, the Section held 40 Committee sessions. 2,969 applications were declared inadmissible and 29 applications were struck out of the list. The total number of applications rejected by a Committee represented 91.82% of the inadmissibility and striking-out decisions taken by the Section during the year.

At the end of the year, 6,780 applications were pending before the Section.

5. Fourth Section

In 2002, the Section held 40 Chamber sessions. 7 oral hearings were held. The Section delivered 141 judgments, of which 119 concerned the merits, 18 concerned friendly settlements, 2 concerned the striking out of the cases and 2 concerned revision. The Section applied Article 29 § 3 of the Convention (combined examination of admissibility and merits) in 16 cases, in one of which a judgment (*Halka and Others v. Poland*, no. 71891/01, 2 July 2002) has been delivered.

Of the applications examined by a Chamber

- (a) 101 were declared admissible;
- (b) 516 were declared inadmissible;
- (c) 30 were struck out of the list; and
- (d) 524 were communicated to the State concerned for observations.

In addition, the Section held 59 Committee sessions. 3,880 applications were declared inadmissible and 36 applications were struck out of the list. The total number of applications rejected by a Committee represented 88% of the inadmissibility and striking-out decisions taken by the Section during the year.

At the end of the year, 7,507 applications were pending before the Section.

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

PUBLICATION OF THE COURT'S CASE-LAW

A. Reports of Judgments and Decisions

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

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

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

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

The published texts are accompanied by headnotes and summaries and a separate volume containing indexes is issued for each year. The following judgments and decisions delivered in 2002 have been accepted for publication. Grand Chamber cases are indicated by [GC]. Where a Chamber judgment is not final or a request for referral to the Grand Chamber is pending, the decision to publish the Chamber judgment is provisional.

ECHR 2002-I

Judgments

Calvelli and Ciglio v. Italy [GC], no. 32967/96

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Zehnalová and Zehnal v. the Czech Republic (dec.), no. 38621/97
Segi and Others and Gestoras Pro-Amnistia and Others v. Germany, Austria, Belgium, Denmark, Spain, Finland, France, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, the United Kingdom and Sweden (dec.), nos. 6422/02 and 9916/02
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P., C. and S. v. the United Kingdom, no. 56547/00

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Federation of Offshore Workers' Trade Unions and Others v. Norway (dec.), no. 38190/97
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Gayduk and Others v. Ukraine (dec.), nos. 45526/99 et seq.

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Janosevic v. Sweden, no. 34619/97
Sovtransavto Holding v. Ukraine, no. 48553/99
Papon v. France, no. 54210/00
Meftah and Others v. France [GC], nos. 32911/96, 35237/97 and 34595/97
Posti and Rahko v. Finland, no. 27824/95

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Slaviček v. Croatia (dec.), no. 20862/02
Gratziner and Gratzingerova v. the Czech Republic (dec.) [GC], no. 39794/98
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Boso v. Italy (dec.), no. 50490/99

ECHR 2002-VIII

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Nerva and Others v. the United Kingdom, no. 42295/98
Czekalla v. Portugal, no. 38830/97
Cañete de Goñi v. Spain, no. 55782/00
Mastromatteo v. Italy [GC], no. 37703/97
Wynen v. Belgium, no. 32576/96
Yousef v. the Netherlands, no. 33711/96
Pincová and Pinc v. the Czech Republic, no. 36548/97

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Nogolica v. Croatia (dec.), no. 77784/01
Allen v. the United Kingdom (dec.), no. 76574/01
Mifsud v. France (dec.) [GC], no. 57220/00
Tamosius v. the United Kingdom (dec.), no. 62002/00
Duchez v. France (dec.), no. 44792/98
Karahalios v. Greece (dec.), no. 62503/00

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Judgments

Demuth v. Switzerland, no. 38743/97
Allan v. the United Kingdom, no. 48539/99
Běleš and Others v. the Czech Republic, no. 47273/99
Zvolský and Zvolská v. the Czech Republic, no. 46129/99
Mouisel v. France, no. 67263/01
Boca v. Belgium, no. 50615/99

Decisions

Ostojić v. Croatia (dec.), no. 16837/02
Zigarella v. Italy (dec.), no. 48154/99

Fernández-Molina González and Others v. Spain (dec.), nos. 64359/01 et seq.
Andrášik and Others v. Slovakia (dec.), nos. 57984/00, 60226/00, 60237/00, 60242/00,
60679/00, 60680/00 and 68563/01

ECHR 2002-X

Judgments

Berger v. France, no. 48221/99
Wittek v. Germany, no. 37290/97
Venema v. the Netherlands, no. 35731/97
A. v. the United Kingdom, no. 35373/97
N.C. v. Italy [GC], no. 24952/94

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Olczak v. Poland (dec.), no. 30417/96
Wirtschafts-Trend Zeitschriften Verlagsgesellschaft mbH v. Austria (no. 2) (dec.),
no. 62746/00
Arslan v. Turkey (dec.), no. 36747/02
Bilasi-Ashri v. Austria (dec.), no. 3314/02
Mieg de Boofzheim v. France (dec.), no. 52938/99
Islamische Religionsgemeinschaft in Berlin E.V. v. Germany (dec.), no. 53871/00
Kalogeropoulou and Others v. Greece and Germany (dec.), no. 59021/00
Sofianopoulos and Others v. Greece (dec.), nos. 1988/02, 1997/02 and 1977/02
Prystavka v. Ukraine (dec.), no. 21287/02
Kozak v. Ukraine (dec.), no. 21291/02
Broniowski v. Poland (dec.) [GC], no. 31443/96

B. The Court's Internet site

The Court's website (<http://www.echr.coe.int>) provides general information about the Court, including its composition, organisation and procedure, details of pending cases and oral hearings, as well as the text of press releases. In addition, the site gives access to the Court's case-law database, containing the full text of all judgments and of admissibility decisions, other than those taken by committees of three judges, since 1986 (plus certain earlier ones), as well as resolutions of the Committee of Ministers in so far as they relate to the European Convention on Human Rights. The database is accessible via simple or advanced search screens and a powerful search engine enables the user to carry out searches in the text and/or in separate data fields. A user manual and a help function are provided.

**IX. DEVELOPMENTS
IN THE USE OF INFORMATION TECHNOLOGY
BY THE COURT**

DEVELOPMENTS IN THE USE OF INFORMATION TECHNOLOGY BY THE COURT

A. Background

In November 1996 the Registry of the former Court, like the Secretariat of the Commission, worked on Digital computers running DOS and WordPerfect 5.1. By January 1997, these computers had been replaced and the Registry had migrated to Windows NT, using Microsoft Office (Word).

One of the main objectives during 1997 was to ensure that the former Court had an Internet presence so that external users could have access to basic information and to recent judgments. Its Internet site was officially launched in May 1997¹. In order to ensure rapid publication of the judgments, in the same year the Registry introduced style sheets automatically ensuring the use of standard fonts and layout by the Registry members when creating documents. As a result, the format styles of the html, Word and published (printed) versions of the judgments became uniform.

The Secretariat of the Commission for its part had established a tailor-made computerised information system (SISC), facilitating the registration of cases with detailed information about each of them and which could also be exploited for statistical and research purposes. It was originally intended to link SISC to a fast, automated, document-creation system, but the estimated time for development and lack of funds prevented this. As user demand increased, SISC proved to be somewhat slow and cumbersome, with the added problem of the maximum number of possible users being limited. The cost of effecting changes being unacceptably high, and in view of the foreseeable need for more powerful, faster and more autonomous tools when the Commission and the former Court merged, no further development of SISC was undertaken by the Commission.

In November 1998 the Commission merged with the former Court to form a 280-user decentralised network (this number has since risen to 480) managed by an IT team of eight staff members. The first task of this team was to migrate the (more numerous) users from the Commission's Secretariat to Windows NT.

B. HUDOC

The HUDOC project, developed (as a joint project between the Commission, the former Court and the Council of Europe's Human Rights Directorate (now DG II)) during 1998, was launched in November 1998 to create an Internet-accessible database of the Human Rights Convention case-law. This project took six months to develop and cost a total of 250,000 euros. In November 1999 HUDOC won an international Microsoft Industry Solutions award for the "Best Search and Publish Solution". One effect of HUDOC has been to reduce significantly the amount of money previously spent mailing the judgments to interested parties.

C. CMIS

The new Court took over the management of SISC and became responsible for its future development and deployment. It was decided that SISC, which was slow to use, ran

1. In 2002, the Court's site (<http://www.echr.coe.int>) had 27 million hits.

on VMS, DOS and WordPerfect and could not accommodate more than 200 users, should be replaced by CMIS (Court Management Information System). Development began in April 1999, with a budgeted cost of 400,000 euros.

CMIS, implemented in September 2000, is now being used by the Registry to run the Court's case-processing activity. CMIS provides a case-file management database coupled with a document-management module¹. The system enables users to produce management reports and statistics, and stocks all the metadata and documents relating to a case. CMIS is also linked to over 2,000 model letters to produce standard forms of correspondence to applicants, legal representatives and Governments. The introduction of this system has resulted in the following gains of productivity.

The process of entering data into the system has been made much easier and faster (as compared with its predecessor SISC). For example, entering new cases into CMIS is 60% faster than previously; and allocating one event to a multitude of cases is possible with CMIS, whereas with SISC the events had to be added to each case one after another.

Users are given easy and rapid access to all details pertaining to a case, including all documents related to the case file.

The CMIS generic search screen gives multiple possibilities for finding cases according to set criteria – for example, all cases being dealt with by the Third Division where Judge X is rapporteur and which were communicated between certain dates.

The CMIS system is linked to thousands of model letters into which are automatically inserted details such as the applicant's address, details of the parties' representatives, application number, etc., thus improving the speed with which correspondence is processed.

Reporting facilities are extremely powerful and provide the Court with a tool to produce statistical analyses and lists relating to its workload.

The Court's timetables are managed by the system.

The document-management system enables users to find documents easily and allows them to link documents to case files. For example, users can search for all documents – in general or of a specified category – related to a case. The system also automatically indexes all documents, enabling users to perform full-text searches and thereby reducing the time previously spent looking for documents in a conventional filing structure.

CMIS incorporates a computerised fax solution (RightFax 8.0) centralising all faxes that arrive at the Registry. These faxes can then be sent electronically to the divisions concerned and registered into the document-management system.

D. Developments – 2001 to 2002

During 2001 and 2002 the Court integrated HUDOC into CMIS to create a single system managing the internal and external access to judgments and case files. Scanning

1. The module includes archive capabilities.

technology is used to transform hard-copy files into electronic versions that can be entered into the CMIS system.

The Court introduced “agent technology” into the HUDOC system, making it possible for new judgments or decisions to be automatically e-mailed to interested parties. A CD-ROM publications platform has been implemented allowing publication of HUDOC for external purchase and publishing complete case files. These services, which will become available during 2003, will be billable.

Following discussions with DG II, the Court has opened restricted access to the CMIS database in order to facilitate DG II’s work in connection with supervision of the execution of judgments by the Committee of Ministers. At the same time, Court users will be enabled to track data concerning the execution of judgments. This module will go live in the summer of 2003.

A number of improvements were carried out on the CMIS database, such as the implementation of triggers relating to case-processing events. Each week an e-mail is sent to the divisions concerned informing them of case events that are imminent or require steps to be taken – for example, a warning informing a division that a party has not filed its observations within the time-limit fixed.

Other developments included opening a restricted and secure form of external access to CMIS – for the public as well as applicants and Governments – so that they can obtain up-to-date information on the state of proceedings in cases. “Portal technology” will be used to make CMIS standard reports (statistics, case lists and so on) and reports on the execution of judgments available to the public via the Internet. The new CMIS Knowledge Portal will be available via the Court’s website in May 2003 (see screenshot below¹).



1. Please note that this is not the final version.

A PDF¹ version of the application form is available to potential applicants via the Internet site. The PDF version can be printed out, and then filled in by hand and posted to the Registry.

The Court's language divisions acquired TRADOS, a translation memory technology helping them to enhance the linguistic coherence of the case-law.

Towards the end of 2002 all of the Court servers were migrated to Windows 2000 Advanced Server (active directory).

E. Developments – 2003

During 2003 the following developments are foreseen.

Commence CMIS Phase III by the end of the year, having drafted a full specification and the functionality requirements with the aim of implementing the following functionalities:

- (i) introduction of bar coding;
- (ii) introduction of a records-management module (archiving);
- (iii) migration of the Court's databases to SQL 2000;
- (iv) implementation of a database to manage subscriptions;
- (v) development of a database for the language divisions;
- (vi) enhancement of CMIS;
- (vii) enhancement of the reporting module of CMIS;
- (viii) enhancement of the Knowledge Portal.

F. Savings achieved²

The Court has achieved substantial cost savings through document and knowledge management. In 1997, the first year it operated its document and knowledge management system, estimated savings of one million euros were made in terms of document reproduction and dispatch. It continues to make substantial cost savings, particularly in view of increased business. If the number of documents downloaded from the website had to be mailed, the cost would be estimated at 7.9 million euros. Further savings are made through productivity gains from improved efficiency.

The CMIS system has 480 internal users and supported 27 million visits to the website in 2002. At any time, HUDOC has 60 simultaneous connections and can support up to 500 simultaneous connections, for example, when a judgment in a controversial case is published.

G. Conclusion

The Court sees IT as a key element in being able to cope with its rising caseload. The objective will continue to be to provide the judges and Registry staff with effective

1. Portable Document Format that can be printed easily.
2. Source: Gartner Group 2003.

computer tools that not only meet the needs of today but, more importantly, the foreseeable needs of tomorrow.

**X. SHORT SURVEY OF CASES
EXAMINED BY THE COURT
IN 2002**

SHORT SURVEY OF CASES EXAMINED BY THE COURT IN 2002

In 2002 the Court delivered 844 judgments¹, a decrease of 44 compared to the previous year². This was the first time a decrease in the number of judgments had been registered since the permanent Court took up its functions in November 1998. A fall also occurred in the number of applications declared admissible (from 739 in 2001 to 577 in 2002). This was in fact the third consecutive drop. In contrast, the overall number of admissibility decisions taken in 2002 was almost double that in 2001³. Furthermore, over 30,000 new applications were lodged in 2002.

The Grand Chamber delivered nine judgments dealing with the merits of complaints⁴. Of the 656 judgments on the merits delivered by Chambers, seven were final judgments by virtue of the transitional provisions of Protocol No. 11. For the first time, the Court delivered judgments in respect of Russia. It also delivered its first judgments on the merits in respect of Latvia and Ukraine.

Repetitive or “clone” cases

Much of the discussion on the reform of the Convention system has focused on the appropriate manner of dealing with cases which raise issues identical or very similar to ones already examined by the Court, in particular where these concern the same Contracting State⁵. It remained the case in 2002 that a very high proportion of the judgments delivered by the Court related to situations which could be regarded as falling within the category of “repetitive”. As in 2001, more than half of the judgments concerned exclusively or primarily complaints about the excessive length of court proceedings⁶. Of the judgments in which the merits were addressed, violations were found in all but seven. Once again, a high percentage of these cases related to the chronic situation in Italy, although the figure of 299 judgments represented a slight drop in comparison with the previous two years⁷. The majority of these cases, as before, concerned civil proceedings and, as in 2001, the number of friendly settlements remained low⁸. It should be noted, however, that virtually all of the length of proceedings judgments concerning Italy were delivered in the first half of the year and that the dramatic fall in numbers experienced since then is expected to be indicative of the position for the foreseeable future. This is largely due to the Court’s acceptance of the Pinto Law⁹ as an effective remedy¹⁰, enabling it to declare a considerable number of applications (pending as well as newly introduced) inadmissible for non-exhaustion of domestic remedies, even where the application had been introduced before the law came into force¹¹.

This departure from the established approach to the assessment of the relevant date for determining the availability of effective domestic remedies (normally the date on which the application was lodged with the Court) was justified by the Court with reference, *inter alia*, to the large number of similar cases against Italy¹². The Court pointed out that, in the absence of effective domestic remedies, individuals would systematically be forced to refer to it complaints which should be addressed in the first place within the national legal system, with the result that the protection of human rights would be endangered in the long term.

Since the Court's judgment in *Kudla v. Poland*¹³, in which it emphasised the importance of effective remedies at the domestic level in respect of complaints about the excessive length of court proceedings given the subsidiary nature of the Convention system, several States have introduced new remedies to address this specific point. Thus, while the Court had found in 2001 in *Horvat v. Croatia*¹⁴ that a complaint under section 59(4) of the Constitutional Court Act of 1999 could not be regarded with a sufficient degree of certainty as an effective remedy, it accepted in subsequent decisions that the changes introduced in 2002 by the Act on Changes to the Constitutional Court Act, later embodied in section 63 of the 2002 Act on the Constitutional Court, had rendered the remedy sufficiently effective to require applicants to attempt it¹⁵. Although no decision had been taken by the Constitutional Court in application of the new provision, the Court found that the wording of the provision was clear and indicated that it was specifically designed to address the issue of the excessive length of proceedings before the domestic authorities. Anyone who deems that the proceedings concerning the determination of his civil rights and obligations or a criminal charge against him have not been concluded within a reasonable time may file a constitutional complaint, which the Constitutional Court must examine; if it finds the complaint to be well-founded, the Constitutional Court must set a time-limit for deciding the case on the merits and it shall also award compensation.

As in the case of Italy, the Court was conscious of the fact that the excessive length of proceedings is a widespread problem in the Croatian legal system and it observed that hundreds of applications had been lodged with it in that respect. The Court similarly found that in these exceptional circumstances and taking into account the fact that most of the proceedings were still pending at the domestic level, the obligation to attempt the new remedy extended also to applicants who had lodged their applications with the Court prior to the entry into force of the legislative amendments¹⁶.

A similar approach was taken to the situation in Slovakia. While the Court had previously held that the State Liability Act 1969 did not offer reasonable prospects of success and did not have to be used in order to exhaust domestic remedies¹⁷, it has now accepted that the possibility, available since 1 January 2002, for individuals to complain to the Constitutional Court of a violation of their fundamental rights under Article 127 of the Constitution may be regarded as an effective remedy, since the Constitutional Court can order the relevant authority to take the necessary action and, if appropriate, to refrain from further violation and it may also award financial compensation for non-pecuniary damage¹⁸.

With regard to France, the Court had held in the past that the remedy provided by Article L.781-1 of the Judicature Code, whereby the State is under an obligation to compensate for damage in respect of gross negligence or a denial of justice caused by a malfunctioning of the system of justice, was not a remedy which applicants were obliged to attempt. However, in the light of developments in the case-law of the French courts, which held that failure to decide cases within a reasonable time constituted a "denial of justice", the Court had accepted in subsequent decisions that the remedy had acquired the requisite degree of legal certainty by 20 September 1999, where the domestic proceedings had ended by the time an application was lodged with the Court¹⁹. In 2002 this principle was extended to proceedings still pending at the domestic level at the time of lodging an application with the Court, in the Grand Chamber case of *Mifsud*²⁰, in which the Court found that any complaint about the length of court proceedings lodged after 20 September 1999 without

first having been submitted to the domestic courts under Article L.781-1 was inadmissible, regardless of the stage reached in the proceedings at the domestic level.

In *Mifsud*, the Court further observed that the purely compensatory nature of the remedy in question did not deprive it of its effectiveness. The Court reiterated its finding in *Kudla* that a remedy in respect of the length of court proceedings is effective if it *either* prevents a violation or its continuation *or* provides adequate redress for any violation that has already occurred. Consequently, the fact that the remedy under French law cannot be used to expedite proceedings was not decisive.

It may also be noted in this connection that in its admissibility decision in *Fernández-Molina González and Others v. Spain*²¹, the Court confirmed previous case-law in which it had accepted that the remedies provided under Spanish law in respect of excessive length of court proceedings can be regarded as sufficiently accessible and effective for the purposes of Article 35 § 1 of the Convention²².

Not all cases concerning the length of court proceedings can necessarily be regarded as “repetitive” cases in the strict sense, since this term applies only to cases concerning the same State, whereas in many instances there were only one or two judgments relating to a particular State. Nevertheless, continuing problems may be identified in relation to France, Portugal (primarily civil proceedings), Poland and Turkey (primarily criminal proceedings). As noted above, in only seven judgments concerning the length of court proceedings was no violation found, representing 1.68% of those cases in which the merits were addressed.

Three other groups of cases accounted for a relatively high number of judgments in 2002, each concerning issues which had been addressed by the Court in a “leading” judgment. Firstly, 72 judgments dealt with the difficulties faced by landlords in Italy in recovering possession of their property, on account of the system of staggering the granting of police assistance for enforcing evictions²³. More than half of these involved friendly settlements. Secondly, 34 judgments related to delays in the payment of compensation for expropriation in Turkey, occasioning financial loss for the individuals concerned because of the high rate of inflation²⁴. 13 of these were friendly settlements. Thirdly, 27 judgments concerned the exclusion of the jurisdiction of the courts in Romania to examine issues relating to the restitution of nationalised property and/or the annulment of final and binding court decisions by virtue of Article 330 of the Code of Civil Procedure, which empowered the Procurator General to make an application for a judicial decision to be quashed at any time (*recurs în anulare*)²⁵.

These three groups of cases, together with the length of proceedings cases, accounted for 70% of the judgments delivered by the Court in 2002. In the light of the Court’s clear and established case-law in relation to the issues raised in these groups of cases, the outcome of the vast majority of them was entirely foreseeable, making them suitable for friendly settlement, yet many of them were contested by the respondent Governments concerned and only the Portuguese Government in length of proceedings cases and the Italian Government in eviction of tenants cases seem to have a consistent policy of pursuing friendly settlements. Regrettably, the administrative arrangements in certain States create a barrier to the settlement of cases, since it is not possible to release funds in the absence of a binding judgment of the Court finding a violation. Nevertheless, it is clear that the negotiation of friendly settlements can contribute greatly to alleviating the workload of the Court and there is no reason why, in appropriate situations, such settlements should not

be reached at an earlier stage in the proceedings, even before a decision has been taken on admissibility²⁶. Indeed, as has been emphasised in the discussions about reform of the system, it is primarily at the national level, through effective implementation of the Court's judgments in pilot cases, that such matters ought to be resolved. In that respect, it is important for the national authorities and courts to be familiar with the Court's case-law and to apply clear principles in a proper and positive manner.

Friendly settlements were concluded by the Turkish Government in twelve judgments concerning the ill-treatment and/or death of detainees²⁷, as well as in a further seven concerning deaths resulting from the actions of the security forces, confirming a trend which began with *Denmark v. Turkey* in 2000²⁸ and continued through 2001, when nineteen such settlements were reached. Further development also took place in relation to the striking out of cases on the basis of unilateral declarations made by the Turkish Government, a course first taken in 2001 in *Akman v. Turkey*²⁹. In 2002, several cases were struck out on the strength of unilateral declarations of this kind. In the first, which concerned the alleged burning of the applicant's house by security forces in 1994³⁰, the Court considered that, notwithstanding the refusal of the applicant to accept a friendly settlement, it was no longer justified to continue the examination of the application, having regard to the nature of the admissions contained in the declaration as well as the scope and extent of the various undertakings referred to therein, together with the amount of compensation proposed. Two further cases concerned the disappearance of the applicant's brother/son in 1994 following their alleged abduction by police officers³¹. The Court also struck these applications out, notwithstanding the applicants' requests that it continue its examination of the cases, since in their view the terms of the respective declarations were unsatisfactory in that they contained no admission of any violation of the Convention. These two cases are currently pending before the Grand Chamber.

Friendly settlements were concluded in several other groups of cases involving Turkey, concerning the failure to bring detainees promptly before a judge, the lack of independence and impartiality of national security courts³² and convictions for making separatist propaganda or inciting to hatred and hostility³³, although judgments on the merits were also delivered in respect of each of these issues. Finally, in the context of friendly settlements, several cases against the United Kingdom concerning the unavailability of widows' benefits to widowers were settled. Although similar settlements had already been reached in 1999 and 2000 without any judgment in a pilot case having been delivered, a judgment on the merits of this issue was delivered in 2002, as no settlement had been agreed³⁴.

There are a number of other large groups of cases pending before the Court. Some of these are "follow-up" cases raising issues which the Court has already examined in one or more judgments, while others relate to matters which have not yet been the subject of a "pilot" judgment. Among the first, may be mentioned in particular applications concerning the denial of access to property in northern Cyprus³⁵, the procedure followed by courts martial in the United Kingdom³⁶, "poll tax" cases in the United Kingdom³⁷ and the role of independent members of the legal service in submitting advisory opinions to courts in France³⁸. In the second category may be included the alleged failure of the Polish authorities to respect the obligation to provide compensation for land abandoned in the "territories beyond the Bug River" after the Second World War³⁹ and the non-compliance with court judgments in Russia⁴⁰ and Ukraine. A number of these matters are dealt with in more detail below.

Core rights (Articles 2 and 3)

A number of novel issues under Articles 2 and 3 of the Convention were brought before the Court in 2002. For the first time, the Court was required to address the difficult matter of euthanasia, in *Pretty v. the United Kingdom*⁴¹. The case concerned the wish of a woman suffering from motor neurone disease to be able to determine the time of her death. To that end, her husband had unsuccessfully sought an undertaking from the Director of Public Prosecutions that he would not be prosecuted if he assisted the applicant to commit suicide. As the applicant was in the final stages of the illness, the Court accorded priority to the case, which was introduced in December 2001. A hearing was held in March 2002 and judgment was delivered at the end of April, the Court having opted to deal with admissibility and merits together (Article 29 § 3 of the Convention). The Court concluded that no right to die could be derived from either Article 2 or Article 3 of the Convention and that a blanket prohibition on assisted suicide was not a disproportionate interference with the right to respect for private life under Article 8 of the Convention.

Mention may also be made of a case concerning the unsuccessful attempts by a husband to stop his wife having an abortion⁴². The applicant's complaints under Articles 2, 8 and 12 of the Convention were declared inadmissible. Under Article 2, the Court considered, without taking a stand on the question whether a foetus could have rights under that provision, that the terms of the applicable law, which permitted abortion in order to protect the health of the woman, secured a fair balance between the protection of the foetus and the interests of the mother. It concluded that the State had not, in the circumstances of the case, exceeded its margin of appreciation.

The extent of the State's obligation to protect individuals from the violent acts of third parties came before the Grand Chamber in *Mastromatteo v. Italy*⁴³, which concerned the murder of the applicant's son by convicted prisoners who had either been allowed out of prison on leave or had been released under a semi-custodial regime. The Court found that there had been no violation of Article 2, since the Italian system relating to provisional release provided sufficient protective measures for society and there was nothing in the material before the national authorities to alert them to the fact that the release of the convicts would pose a real and immediate threat to life. In *Paul and Audrey Edwards v. the United Kingdom*⁴⁴, on the other hand, concerning the killing of a detainee by a mentally ill cell-mate, the Court considered that information had been available to the authorities which demonstrated that the cell-mate was a real and serious risk to others and that there was a series of shortcomings, in particular in the transmission of information, which disclosed a breach of the State's obligation to protect the individual concerned. In a further Grand Chamber case, the Court found that the prescription, as a result of procedural delays, of charges of involuntary manslaughter against a doctor did not entail a violation of Article 2⁴⁵. A somewhat different situation arose in the case of *Öneriyıldız v. Turkey*⁴⁶, which related to the effects of an explosion at a rubbish dump on which a shanty town had been erected. The Court found violations in relation to both the right to life and the right of property. The case has been referred to the Grand Chamber.

Violations were found in relation to deaths in custody in two judgments, *Anguelova v. Bulgaria*⁴⁷ and *Abdurrahman Orak v. Turkey*⁴⁸, while in a further case the Court was satisfied that the applicant's brothers and son had to be presumed dead following unacknowledged detention by the Turkish security forces in 1994⁴⁹, constituting a violation

of Article 2. In each of these cases, the Court further concluded that Article 2 had been violated on account of the failure of the authorities to carry out an effective investigation into the deaths or disappearances. Similar violations had been found in a number of cases concerning both Bulgaria and Turkey in the past and in two further judgments relating to Turkey, concerning the commission of murders by unidentified assailants in 1993 and 1994, the Court found that there had been a breach of the State's procedural obligations under Article 2, although it had not found a substantive violation⁵⁰. A "procedural" violation was also found in the most recent of a series of cases against the United Kingdom relating to events in Northern Ireland in 1996⁵¹. Finally, it may be noted that a number of applications concerning civilian casualties of the conflict in Chechnya were declared admissible⁵².

Violations of Article 3 on account of ill-treatment of detainees were found in *Anguelova* and *Abdurrahman Orak* mentioned above, and also in *Algür v. Turkey*⁵³. Otherwise, complaints under Article 3 were addressed on the merits in only a few cases, several of which concerned conditions of detention. The Court found in its second judgment in a case concerning Russia that the conditions of detention which the applicant had had to endure, in particular the severely overcrowded and unsanitary environment, combined with the length of the period involved, amounted to degrading treatment⁵⁴. A rather more specific issue arose in *Mouisel v. France*⁵⁵, which concerned the refusal of the authorities to release a prisoner suffering from a terminal illness and the conditions of his detention, in particular the use of handcuffs. The Court found that, in the circumstances, keeping the applicant in prison had violated Article 3.

Finally under this heading, reference may be made to two cases concerning the role of welfare services in relation to the care of children. In both cases, the applicants complained that the social services had failed to protect them from abuse when they were children. In one, the Court concluded that there had been no violation of either Article 3 or Article 8 of the Convention, considering that it had not been shown that the local authority should have been aware of the abuse and that the authorities could not, therefore, be regarded as having failed in any positive obligation to take effective steps⁵⁶. In the other case, however, it found that there had been a violation of Article 3, referring to "the pattern of lack of investigation, communication and cooperation by the relevant authorities"⁵⁷. Similar issues had previously been dealt with by the Grand Chamber⁵⁸. The pivotal question in all these cases was the extent to which the authorities were or should have been aware of the risks and the appropriateness of their actions in the light of that knowledge. In that respect, the principles are very similar to those applied in certain of the cases referred to above in relation to Article 2, where the foreseeability of the loss of life was the crucial point.

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

As always, a very high percentage of the complaints examined by the Court related to Articles 5 and 6 of the Convention. In the Grand Chamber judgment in *Stafford v. the United Kingdom*⁵⁹ the Court departed from its previous case-law⁶⁰ and, on the basis of an analysis of the developments which had taken place within domestic law, applied to mandatory life sentences the principles which it had established with regard to discretionary life sentences⁶¹ and detention "at Her Majesty's pleasure"⁶². It considered that its earlier finding that a mandatory life sentence constituted punishment for life could "no

longer be regarded as reflecting the real position in the domestic criminal justice system". Consequently, the continued detention of the applicant after he had served a prison sentence for forgery, on the basis of an earlier mandatory life sentence from which he had been released on life licence, constituted a violation of Article 5 § 1 of the Convention, in the absence of a sufficient causal connection between the original sentence and the possible commission of other non-violent offences⁶³. Following its approach in the line of cases dealing with indeterminate sentences, the Court further found that there had been a violation of Article 5 § 4, since after the expiry of the sentence imposed for forgery, there had been no review of the lawfulness of the applicant's detention by a court with power to order his release.

An unusual question arose in an Irish case concerning the detention of a minor⁶⁴. Although the authorities considered that the applicant's needs would best be met by a high-support therapeutic unit for 16 to 18 year-olds, no such unit existed in Ireland, as a result of which his detention in a penal institution was ordered. The Court considered that the applicant's detention there could not be considered to have been for the purpose of "educational supervision" under Article 5 § 1 (d) of the Convention, and that the detention was not an "interim custody measure" followed speedily by an educational supervisory regime. As there was no other legal basis for the detention, there had been a violation of Article 5 § 1.

Another novel issue which came up was the compatibility with Article 5 § 1 of the placement of an elderly lady in a foster home in Switzerland, on the ground of "neglect"⁶⁵. The applicant, who maintained that she was placed in the foster home against her will, submitted that this ground was not covered by Article 5 § 1 (e) and, in particular, the notion of "vagrancy". However, the Court concluded that there had been no violation, in view of the fact that the decision to place the applicant in a foster home was "a responsible measure taken by the competent authorities" in her interests and did not, therefore, amount to a deprivation of liberty. Article 5 § 1 (e) was also relied on in a Swedish case concerning the detention of an HIV-positive homosexual for the purpose of "prevention of the spreading of infectious diseases"⁶⁶. The applicant, who had already transmitted the virus to someone else, has since absconded. The application was nevertheless declared admissible.

Issues which had previously been examined by the Court in relation to the absence of a proper legal basis for detention came up again in relation to the role of prosecutors in Poland⁶⁷ and the prolongation of detention on remand in Lithuania⁶⁸. A number of isolated cases concerned the length of pre-trial detention in several different countries, while a variety of issues arose with regard to the absence of a proper review of the lawfulness of detention, including failure to ensure appropriate procedural guarantees. The excessive length of time taken to review the lawfulness of psychiatric detention resulted in violations of Article 5 § 4 being found in three French cases⁶⁹ as well as a Portuguese case⁷⁰.

The "right to a court", implicit in Article 6 of the Convention⁷¹, regularly gives rise to complaints. It includes the right of "access to a court" but also the right to have civil rights and obligations and criminal charges determined by a court without interference by the executive, and the right to have final court decisions enforced.

In the past, the compatibility of different types of immunity with the right of access to a court was examined in a number of judgments. In the case of *A. v. the United Kingdom*⁷², the Court was faced with a situation in which the applicant was unable to pursue an action

for defamation against a member of Parliament because the allegedly defamatory statements, made in the course of a parliamentary debate, were covered by absolute privilege. This issue had important ramifications for many other States, a number of which availed themselves of the possibility of third-party intervention provided for by Article 36 § 2 of the Convention⁷³. The Court referred to the fact that most Contracting States have some form of parliamentary immunity in reaching the conclusion that such a rule could not in principle be regarded as imposing a disproportionate restriction on the right of access to a court. Stressing the importance of freedom of expression for elected representatives and the fact that in the United Kingdom there did in fact exist limited means of redress, the Court found that the application of a rule of absolute privilege in the particular case had not exceeded the State's margin of appreciation.

In the same judgment, the Court found that the unavailability of legal aid for defamation actions in the United Kingdom did not constitute a violation of Article 6 § 1. It had reached a similar conclusion in the earlier case of *McVicar v. the United Kingdom*⁷⁴, which related to the unavailability of legal aid to *defend* a defamation action. In *A. v. the United Kingdom*, the Court took into account the fact that the applicant was entitled to two hours' free legal advice and, after July 1998, could have engaged a solicitor under a conditional fee arrangement, which would have enabled her to evaluate the risks in an informed manner. Refusal of legal aid was also the complaint in two French cases⁷⁵. The refusal, which related to appeals on points of law to the Court of Cassation, was based on the finding that no serious grounds of appeal had been submitted. In reaching the conclusion that the essence of the applicants' right of access to a court had not been impaired, the Court referred to the substantive guarantees offered by the French system, through both the composition of the legal aid office and the possibility of appeal to the President of the Court of Cassation, which provided protection against arbitrariness, as well as to the fact that the applicants had been able to have their cases heard at first instance and on appeal. On that basis, it distinguished the cases from *Aerts v. Belgium*⁷⁶.

"Access to a court" issues also arose in two Czech cases which raised rather different aspects of a related point. In *Zvolský and Zvolská*⁷⁷, a constitutional complaint had been dismissed as out of time, on the ground that a decision of the Supreme Court to declare an appeal on points of law inadmissible as raising no issue of crucial legal importance⁷⁸ should not be taken into account in calculating the time-limit for lodging a constitutional complaint; in *Běleš and Others*⁷⁹, the applicant's constitutional complaint had been dismissed on the ground of failure to lodge an appeal on points of law. In finding in both cases that there had been a violation of Article 6 § 1, the Court noted that the admissibility of an appeal on points of law was entirely dependent on the opinion of the Supreme Court as to whether there was an issue of crucial legal importance, making it impossible to assess the prospects of success. Consequently, prospective appellants were faced with a dilemma: if they failed to lodge an appeal on points of law a constitutional complaint would be dismissed on account of failure to exhaust the remedies provided for by law, while if they did lodge an appeal they risked it being declared inadmissible, with the result that a constitutional complaint would be dismissed as out of time. The Court considered that the option of simultaneous introduction of an appeal on points of law and a constitutional complaint, suggested by the Government, was aleatory and did not provide an appropriate solution ensuring legal certainty. A number of follow-up cases, as well as a further group concerning the scope of the Constitutional Court's capacity to provide redress in respect of excessive length of court proceedings, are pending before the Court.

A different kind of impediment to access to a court was at issue in *Kutić v. Croatia*⁸⁰, which is a pilot case for around fifty similar applications. The cases concern an amendment to the Civil Obligations Act in 1996, which had the effect of staying all civil proceedings concerning damage resulting from terrorist acts pending enactment of new legislation (which has not yet taken place). While accepting that the simultaneous lodging of a significant number of claims to large sums of money against a State may call for further regulation by the State, which enjoys a certain margin of appreciation in that respect, the Court concluded, with reference in particular to the lengthy period during which the applicants had had no possibility of having their claim determined, that there had been a violation of Article 6⁸¹.

The right to a court also requires that the courts should be able to carry out their judicial role free of any pressure from or interference by the executive. In this respect, the Court found in *Sovtransavto Holding v. Ukraine*⁸² that the intervention in the court proceedings on a number of occasions by the Ukrainian authorities at the highest level was incompatible with the notion of an “independent and impartial tribunal”. It further concluded that the *protest* procedure⁸³ whereby at the material time the President of the Supreme Arbitration Tribunal, State Counsel and their deputies had a discretionary power to challenge final judgments, which were therefore indefinitely liable to review, was not compatible with the principle of legal certainty, one of the fundamental aspects of the rule of law. A similar problem arose in a Russian case which was declared admissible⁸⁴.

Finally with regard to the right to a court, there has been an increase in recent years in the number of cases in which applicants complain that State authorities have failed to comply or at least have delayed in complying with final and binding judgments given by the domestic courts. This problem was initially identified in a judgment of 1997 concerning Greece⁸⁵, in which the Court pointed out that the right to a court “would be illusory if a Contracting State’s domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. It would be inconceivable that Article 6 § 1 should describe in detail procedural guarantees afforded to litigants – proceedings that are fair, public and expeditious – without protecting the implementation of judicial decisions; to construe Article 6 as being concerned exclusively with access to a court and the conduct of proceedings would be likely to lead to situations incompatible with the principle of the rule of law ...”. There were several further judgments on this issue in respect of Greece in 2001 and again in 2002⁸⁶. An important distinction was, however, drawn in *Ouzounis and Others v. Greece*⁸⁷, which concerned the failure of the authorities to comply with a *first-instance* judgment while an appeal was pending. In that case, the Court found no violation of either Article 6 of the Convention or Article 1 of Protocol No. 1. Finally in this connection, the prolonged non-enforcement of court decisions was found to constitute a violation of both these provisions in the first judgment concerning Russia⁸⁸, which again is the first in a series of cases raising similar issues⁸⁹. Moreover, complaints of this nature have also been made in a significant number of applications against Ukraine⁹⁰.

Turning to the fairness of court proceedings, frequently at the origin of complaints in applications to the Court, there were again a number of judgments in which the importance of an adversarial procedure and equality of arms was reiterated. Many of these featured the recurrent question of the role of independent members of the national legal service in providing advisory opinions for appellate jurisdictions⁹¹. They included two Grand Chamber judgments. In *Göç v. Turkey*⁹², the Court found that there had been a violation of Article 6 § 1 on account of the failure, in appeal proceedings before the Court of Cassation,

to disclose to the applicant the opinion of the Principal Public Prosecutor on his claim for compensation in respect of a period spent in detention on remand⁹³. As the opinion was intended to influence the outcome of the proceedings and having regard to the nature of the submissions, the failure to provide the applicant with an opportunity to respond to them had infringed his right to an adversarial procedure. The safeguards which the Court had identified in the earlier case of *Kress v. France*⁹⁴ were absent. In that case, the Court had found no violation on the basis that the applicant could not derive from the principle of equality of arms a right to disclosure, prior to the hearing of an administrative appeal by the *Conseil d'Etat*, of the submissions made to that court by the Government Commissioner when those submissions, made for the first time orally at the hearing, had not been disclosed to the other party, to the reporting judge or to the court itself. Furthermore, the Court had found that the possibility of asking the Government Commissioner to indicate the general tenor of his submissions prior to the hearing and of replying to them by means of a memorandum for the deliberations ensured respect for the principle of adversarial procedure. This was a "vital" distinction from earlier cases, which had related to the period before this practice had been instituted⁹⁵. This approach has been followed in subsequent judgments⁹⁶.

The Court found that there had been a violation in the other Grand Chamber judgment, *Meftah and Others v. France*⁹⁷, which related to the non-disclosure of the submissions of the advocate-general to the Court of Cassation in the context of a criminal appeal. The crucial element in that case was the fact that the applicants had elected not to have legal representation and consequently had not benefited from the practice of making the tenor of the advocate-general's submissions known to the legal representatives prior to the hearing⁹⁸. Violations were also found in two judgments concerning Austria⁹⁹, regarding submissions by the Procurator General and the Senior Public Prosecutor to the Supreme Court, and in a judgment concerning Belgium¹⁰⁰, regarding the submissions of the public prosecutor to the Court of Cassation. These cases all concerned criminal proceedings.

A variant of this issue was addressed in a further case involving the French system¹⁰¹, concerning an appeal by a civil party to criminal proceedings against a decision to discontinue the proceedings. The report of the *conseiller rapporteur* to the Court of Cassation was not disclosed to the civil party's representative, although it was disclosed to the advocate-general. The Court concluded that there had been a violation¹⁰². Furthermore, it should be noted that the Court has consistently found that the actual participation of an "independent" legal officer in the deliberations of the court to which he submits his opinion cannot be regarded as compatible with Article 6¹⁰³.

There were relatively few judgments in which novel issues arose in the context of the fairness of criminal proceedings. In one judgment, the important question of the applicability of Article 6 to prison disciplinary proceedings was raised in the context of the denial of legal representation¹⁰⁴. The Court concluded, with reference in particular to the "appreciably detrimental" effect of the penalties imposed (additional days' deprivation of liberty), that Article 6 was applicable. However, the case has been referred to the Grand Chamber.

In two Swedish cases¹⁰⁵, the Court found that the enforcement of tax surcharges imposed by the tax authorities prior to a determination of criminal liability by a court constituted a denial of access to a court. However, while critical of a system which permitted the enforcement of measures involving considerable amounts of money prior to a

final determination, the Court accepted in the circumstances of the cases that the possibility of securing reimbursement constituted a sufficient safeguard, so that there had been no violation of the presumption of innocence. Requests for referral of the cases to the Grand Chamber are currently pending. The question of implementing measures prior to final determination of criminal charges also came up in *Böhmer v. Germany*¹⁰⁶, in which the Court considered that the revocation of a prison sentence on the basis of new charges which had not been determined by a court constituted a violation of Article 6 §§ 1 and 2.

Violations of the presumption of innocence were also found in two judgments raising the problem of prejudicial statements being made by judges or high-ranking public officials in relation to criminal proceedings. In *Lavents v. Latvia*¹⁰⁷, the presiding judge of a trial court gave two public interviews in which she made statements which the Court found to be incompatible with both the presumption of innocence and the principle of impartiality. In *Butkevičius v. Lithuania*¹⁰⁸, the offending statements had been made by the Speaker of Parliament¹⁰⁹. Finally, mention may be made of the first admissible case against Georgia¹¹⁰, concerning statements made by various public authorities, including the President of the Republic and the Speaker of Parliament, prior to the applicant's conviction.

A number of cases dealt with the right to effective legal representation. In *Karatas and Sari v. France*¹¹¹, the Court was faced with an issue which it had already addressed in a number of judgments concerning various different States¹¹², namely the refusal to allow a legal representative to submit a defence on behalf of an accused who has failed to attend in person. In accordance with its case-law, the Court found that such a refusal violated Article 6 §§ 1 and 3 (c). In the particular case, the accused had absconded and failed to comply with international arrest warrants, as a result of which they were precluded from lodging an objection to their convictions. The Court further held that, in the circumstances of the case, that there had been no violation of the right of access to a court, although in three other French cases, in line with the principles set out in a series of earlier judgments, it found that the dismissal or non-examination of an appeal on points of law on the ground that the appellant had not surrendered to custody did constitute a violation¹¹³. Moreover, in one of these cases, *Papon v. France*, the Court confirmed that the French system was not incompatible with the right of appeal provided for in Article 2 of Protocol No. 7¹¹⁴.

In *Berliński v. Poland*¹¹⁵, the lengthy delay in the appointment of a legal-aid lawyer was held to have violated Article 6, while in *Czekalla v. Portugal*¹¹⁶ a violation was also found in circumstances where an appeal had been dismissed as a result of the failure of a court-appointed lawyer to comply with a procedural formality. The adequacy of legal assistance was also in question in *Morris v. the United Kingdom*¹¹⁷, which concerned representation by an army officer at a court martial. The Court found no merit in the applicant's complaints about the independence of the defending officer or his handling of the case¹¹⁸.

Still in the context of defence rights, the absence of a proper opportunity to examine witnesses was examined in several cases. In particular, the use of statements made by anonymous witnesses, which has been addressed in numerous judgments in the past, led to the finding of violations of Article 6 § 3 (d) in two cases¹¹⁹, while in *Craxi v. Italy*¹²⁰ the violation related to the use of pre-trial statements made firstly by a witness who had since died and secondly by several co-accused who had subsequently relied on the right to remain silent. However, no violation was found in a case in which a person accused of sexual abuse had been unable to question the victim during the trial and appeal

proceedings¹²¹. The Court recognised the special nature of such proceedings and accepted that, in the circumstances, the measures taken – in particular, the playing of recordings of interviews at which questions requested by the accused’s lawyer had been put – were sufficient to enable the accused to challenge the statements and the credibility of the witness.

Finally, the principle of *non bis in idem* was found to have been violated in two Austrian cases concerning parallel criminal and administrative sanctions¹²², a problem which had already been examined in several earlier judgments¹²³.

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

Pretty, already referred to in the context of the right to life, was also examined in the light of the right to respect for private life under Article 8 and freedom of thought and belief under Article 9. The Court, while accepting that the notion of personal autonomy is an important principle underlying the interpretation of the guarantees of Article 8 and that it is under that provision that “notions of the quality of life take on significance”, concluded that the interference could be regarded as necessary in a democratic society for the protection of the rights of others. It also found no violation of Article 9.

One of the most significant developments in the case-law related to the rights of transsexuals. Two judgments of the Grand Chamber dealt with the absence of legal recognition of post-operative transsexuals in the United Kingdom¹²⁴, which in a series of previous cases had been held not to violate the right to respect for private life¹²⁵. Referring to evolving attitudes and in particular to the “uncontested evidence of a continuing international trend in favour not only of increased social acceptance of transsexuals but of legal recognition of the new sexual identity of post-operative transsexuals”, the Court reached the conclusion that the matter no longer fell within the State’s margin of appreciation and concluded that there had been a violation of both Article 8 and Article 12 (right to marry).

Violations of Article 8 were also found in the latest cases in a series of applications concerning the dismissal of homosexuals from the British armed forces¹²⁶. Moreover, a number of such cases remain pending before the Court. However, in another case brought by a homosexual raising the rather different matter of the refusal of the French authorities to approve him as a prospective adoptive parent, the Court held that there had been no violation of Article 8¹²⁷.

Areas in which familiar issues arose under Article 8 included the taking of children into care, the rights of natural fathers¹²⁸, the separation of families as a result of expulsion¹²⁹ and restrictions on prisoners’ rights to receive visits and to correspond. As far as child care is concerned, a rather novel point was raised in *Kutzner v. Germany*¹³⁰, in that the taking into care was based on the parents’ intellectual weakness rather than on any specific abuse or neglect. The Court found a violation of Article 8 in that respect, as well as with regard to the placement of the children in separate foster homes and the restrictions which were imposed on the parents’ access to them. Violations were also found in two cases concerning the taking into care of children on an emergency basis where it was suspected that the mother was suffering from Munchausen syndrome by proxy and thus

presented a risk to the children. In *P., C. and S. v. the United Kingdom*¹³¹, the child had been taken into care immediately after birth¹³² and a violation was found both in that respect and in relation to the subsequent procedures leading to the granting of care and freeing for adoption orders. In the case of *Venema v. the Netherlands*¹³³, a violation was found on the ground that a provisional care order had been made without providing the parents with any opportunity to contest it.

Control of prisoners' correspondence – and in particular the absence of a sufficient legal basis – has in the past been problematic in a number of Contracting States, including Italy, in respect of which a further violation was found in 2002¹³⁴. Other States in respect of which violations were found in this connection were Latvia¹³⁵, Lithuania¹³⁶, the Netherlands¹³⁷, Poland¹³⁸ and the United Kingdom¹³⁹. Prohibitions on family visits to detainees were also held to constitute violations of Article 8 in two judgments, concerning Latvia¹⁴⁰ and Poland¹⁴¹, while in a further Polish case the refusal of the authorities to allow a prisoner to attend his parents' funerals was found to constitute a violation of Article 8¹⁴².

Surveillance and searches of premises were at issue in several judgments. The lack of an adequate legal basis for a variety of forms of surveillance and interception of communications in the United Kingdom led the Court to find violations in three separate judgments¹⁴³, while in a French case concerning the seizure of documents on the premises of a limited company, the Court for the first time expressed the view that such premises were covered by the concept of "home" within the meaning of Article 8 of the Convention¹⁴⁴.

Among the judgments dealing with freedom of expression under Article 10 of the Convention were several relating to injunctions granted in Austria to prevent repetition of statements about or publication of photographs of politicians¹⁴⁵. A violation was found in each of these cases, as well as in cases concerning defamation proceedings brought by a prosecutor against a defence lawyer in Finland¹⁴⁶ and a conviction in France for the offence of insulting a foreign head of State¹⁴⁷.

There were few judgments of note dealing with issues under Article 11 of the Convention. Freedom of peaceful assembly was the subject matter in *Cisse v. France*¹⁴⁸, which concerned the forcible removal of a large group of illegal immigrants from a church in Paris. The Court concluded unanimously that the interference with freedom of peaceful assembly was not disproportionate. One application against the United Kingdom involving freedom of assembly was declared admissible¹⁴⁹, while a couple of others were declared inadmissible¹⁵⁰. Freedom of association was at issue in two more cases concerning the dissolution of political parties by the Turkish Constitutional Court¹⁵¹, in both of which the Court concluded, in line with its findings in earlier judgments, that there had been a violation of Article 11. It should be noted, however, that a further case in this series, in which no violation had been found by the Chamber, went before the Grand Chamber¹⁵². Freedom of association, and in particular the right to form and join trade unions, was also at issue in a judgment concerning the United Kingdom¹⁵³, in which the Court found that the State, by allowing employers to offer financial incentives to induce employees to surrender important trade-union rights, had failed in its positive obligation to secure the enjoyment of the rights under Article 11, as regards both the applicant union and the individual applicants. In contrast, two applications concerning the prohibition of strike action were declared inadmissible¹⁵⁴.

Mention may finally be made in this section of three novel matters which arose under Article 3 of Protocol No. 1 and Articles 2 and 4 of Protocol No. 4 respectively. Firstly, the Court held in *Podkolzina v. Latvia*¹⁵⁵ that the removal of the applicant's name from a list of candidates in parliamentary elections, on the ground of insufficient mastery of the national language, was a disproportionate measure which violated Article 3 of Protocol No. 1. Secondly, in two cases against the Netherlands the Court concluded that orders issued by the Burgomaster of Amsterdam prohibiting the applicants from entering specified areas of the city centre for limited periods as a measure to combat drug-related activity constituted a proportionate restriction on freedom of movement¹⁵⁶. A request by the applicant in one of the cases for a rehearing by the Grand Chamber was refused by the panel of the Grand Chamber in November 2002. Thirdly, in two cases Gypsies complained, *inter alia*, about collective expulsion. In *Čonka v. Belgium*¹⁵⁷, the Court concluded by four votes to three that there had been a violation of Article 4 of Protocol No. 4, while in *Sulejmanovic and Others v. Italy*¹⁵⁸ a friendly settlement was reached on the basis of permission being granted for the family to return to Italy from Bosnia and Herzegovina.

Property rights (Article 1 of Protocol No. 1)

The problem of refusal or delay by national authorities in complying with binding judgments of domestic courts has already been alluded to in the context of the right to a court and reference has also been made to the continuing issue of delays in payment of compensation for expropriation in Turkey. Similar delays in Greece were also found to be in violation of Article 1 of Protocol No. 1¹⁵⁹, while in one case concerning Italy the uncertainty resulting from a prolonged prohibition on building due to the inertia of the local authority was also held to constitute a violation of that provision¹⁶⁰. Expropriation was at the root of violations in several other cases: in *Motais de Narbonne v. France*¹⁶¹, property had not been used for the purposes for which it had been expropriated, in *Jokela v. Finland*¹⁶² there was a significant discrepancy between the valuation of property for the purposes of expropriation and its valuation for the purposes of inheritance tax, and in two judgments, *Lallement v. France*¹⁶³ and *Azas v. Greece*¹⁶⁴ the applicants challenged the adequacy of the compensation they had received. It may be noted that in the latter case the application of an irrebuttable presumption of benefit accruing from the expropriation, previously examined by the Court in a number of other Greek cases¹⁶⁵, was also taken into account in reaching the conclusion that there had been a violation.

A number of judgments in the last few years have dealt with the question of the refusal of restitution of property previously nationalised or confiscated by communist regimes in central and eastern Europe¹⁶⁶. In 2002, two judgments concerning the Czech Republic, *Pincová and Pinc*¹⁶⁷ and *Zvolský and Zvolská*¹⁶⁸ raised the complementary issue of the effect of restitution on the rights of third parties who had acquired the property in good faith from the State. In both cases the Court, emphasising the importance of the law ensuring the possibility of examining the particular circumstances of each situation, found that the deprivation of property was disproportionate.

Finally, other judgments of note relating to property rights include a French case in which the authorities refused, on the basis of legislation which was incompatible with a European Union directive, to reimburse value-added tax payments¹⁶⁹, a Cypriot case concerning the automatic loss of pension rights on dismissal from the civil service¹⁷⁰, a Ukrainian case concerning the loss of control of a company and its assets as a result of an

increase in the share capital¹⁷¹ and a case concerning the United Kingdom in which waiters complained that the tips that were included in cheque and credit card payments were taken into account by their employers in the calculation of the minimum wage¹⁷².

The foregoing survey of case-law is not intended to be exhaustive. A number of other judgments of interest were delivered in 2002 and in that connection reference is made to the following section, in which the most important issues addressed in judgments are classified according to Convention Article.

Notes

1. The judgments dealt with 886 applications. However, several judgments concerned the revision of judgments delivered earlier in the year and two judgments were delivered in respect of the same application (*Radoš and Others v. Croatia*, no. 45435/99, 4 July 2002 (friendly settlement) and 7 November 2002).
2. 888 judgments were delivered in 2001, 695 in 2000 and 177 in 1999.
3. The figure rose from 9,728 to 18,497. However, it should be noted that this was to a considerable extent due to a change in the manner of registering cases.
4. The Grand Chamber also delivered three further judgments, two concerning just satisfaction and one striking the case out of the list.
5. See, for example, the Report of the Evaluation Group to the Committee of Ministers on the European Court of Human Rights, in particular at paragraph 51, and the Interim Report of the Steering Committee for Human Rights “Guaranteeing the long-term effectiveness of the European Court of Human Rights”, at II(d)(iii).
6. Length of proceedings was at issue in a total of 471 judgments, in all but 10 of which it was either the only issue or the only additional question concerned the availability of an effective remedy.
7. 359 in 2001 and 378 in 2000.
8. 7 in 2002 and 11 in 2001, compared to 159 in 2000.
9. Law no. 89 of 24 March 2001.
10. See *Brusco v. Italy* (dec.), no. 69789/01, ECHR 2001-IX.
11. See *Giacometti and Others v. Italy* (dec.), no. 34939/97, ECHR 2001-XII.
12. See *Bottazzi v. Italy* [GC], no. 34884/97, ECHR 1999-V.
13. *Kudła v. Poland* [GC], no. 30210/96, ECHR 2000-XI.
14. *Horvat v. Croatia*, no. 51585/99, ECHR 2001-VIII.
15. See *Slaviček v. Croatia* (dec.), no. 20862/02, to be reported in ECHR 2002-VII.
16. See *Nogolica v. Croatia* (dec.), no. 77784/01, to be reported in ECHR 2002-VIII.
17. See *J.K. v. Slovakia* (dec.), no. 38794/97, 13 September 2001, and *Havala v. Slovakia* (dec.), no. 47804/99, 13 September 2001.
18. See *Andrášik and Others v. Slovakia* (dec.), nos. 57984/00, 60226/00, 60237/00, 60242/00, 60679/00, 60680/00 and 68563/01, to be reported in ECHR 2002-IX.
19. See *Van der Kar and Lissaur van West v. France* (dec.), nos. 44952/98 and 44953/98, 7 November 2000, and *Giummarra and Others v. France* (dec.), no. 61166/00, 12 June 2001. Cf. *Louerat v. France* (dec.), no. 44964/98, 7 March 2002, where the application had been introduced before the date on which the remedy became “effective”.
20. *Mifsud v. France* (dec.) [GC], no. 57220/00, to be published in ECHR 2002-VIII.
21. *Fernández-Molina González and Others v. Spain*, nos. 64359/01 et seq., to be reported in ECHR 2002-IX.
22. Article 24 § 2 of the Constitution, which includes the right to a hearing within a reasonable time, may be relied on in an *amparo* appeal to the Constitutional Court and sections 292 et seq. of the Judicature Act provide for a claim for compensation for a malfunctioning of the judicial system to be submitted to the Minister of Justice, with the possibility of further appeal to the administrative courts. See also *Prieto Rodriguez v. Spain*, no. 17553/90, Commission decision of 6 July 1993, Decisions and Reports 75, p. 128, and *Gonzalez Marin v. Spain* (dec.), no. 39521/98, ECHR 1999-VII.
23. See *Immobiliare Saffi v. Italy* [GC], no. 22774/93, ECHR 1999-V. A number of such cases are still pending before the Court.
24. See *Akkus v. Turkey*, judgment of 9 July 1997, *Reports of Judgments and Decisions* 1997-IV. The law has now been modified and the rate of interest increased. A number of cases are, however, still pending before the Court.

25. See *Brumărescu v. Romania* [GC], no. 28342/95, ECHR 1999-VII. The provision was amended by Law no. 17 of 17 February 1997 to the effect that an application must be made within six months of the judicial decision in question becoming final. Some 30-40 further cases of this kind are still pending before the Court. Moreover, a number of new applications concerning legislation adopted in 1996 and 2000 with a view to remedying the situation have been lodged.
26. This course is now increasingly being adopted in the Turkish expropriation cases. Moreover, a number of cases have been declared inadmissible on account of the small amount of loss involved: see, for example, *Arabaci v. Turkey* (dec.), no. 65714/01, 7 March 2002.
27. Friendly settlements were reached in these cases on the basis of statements of regret by the Government and undertakings “to issue appropriate instructions and adopt all necessary measures to ensure that the right to life and the prohibition of ill-treatment – including the obligation to carry out effective investigations ... – are respected in the future”. Reference was also made to new legal and administrative measures which had been adopted, resulting in a reduction in the occurrence of deaths and ill-treatment of detainees and in more effective investigations being carried out. See, for example, *Erdoğan v. Turkey* (friendly settlement), no. 26337/95, 20 June 2002, concerning Article 2, and *Erat and Sağlam v. Turkey* (friendly settlement), no. 30492/96, 26 March 2002, concerning Article 3.
28. *Denmark v. Turkey* (friendly settlement), no. 34382/97, ECHR 2000-IV.
29. *Akman v. Turkey* (striking out), no. 37453/97, ECHR 2001-VI.
30. See *Haran v. Turkey* (striking out), no. 25754/94, 26 March 2002.
31. *T.A. v. Turkey* (striking out), no. 26307/95, 9 April 2002, and *Toğcu v. Turkey* (striking out), no. 27601/95, 9 April 2002.
32. The legislation was changed in 1999 by Laws nos. 4388 and 4390, which excluded military judges from the composition of national security courts. It may be noted that in a decision of 28 January 2003 (*İmrek v. Turkey* (dec.), no. 57175/00) the Court accepted that these changes were sufficient to ensure the independence and impartiality of national security courts. However, some 250 further cases relating to proceedings which took place prior to the legislative amendments are still pending before the Court.
33. In these settlements, the Government recognised that Turkish law and practice urgently needed to be brought into line with the requirements of Article 10 of the Convention and undertook to implement “all necessary reform of domestic law and practice in this area, as already outlined in the National Programme of 24 March 2001”. Furthermore, reference was made to the individual measures set out in the Interim Resolution adopted by the Committee of Ministers of the Council of Europe on 23 July 2001 (ResDH(2001)106), which the Government stated would be applied to the circumstances of the cases in question. See *Altan v. Turkey* (friendly settlement), no. 32985/96, to be reported in ECHR 2002-III.
34. See *Willis v. the United Kingdom*, no. 36042/97, to be reported in ECHR 2002-IV. The law was amended by the Welfare Reform and Pensions Act 1999, but the amendment did not deal with certain types of complaint, in particular relating to tax reductions and pensions. Several hundred applications concerning the situation both before and after the amendment are still pending before the Court.
35. See *Loizidou v. Turkey* (merits), judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI.
36. See *Findlay v. the United Kingdom*, judgment of 25 February 1997, *Reports of Judgments and Decisions* 1997-I. The law was amended by the Armed Forces Act 1996 but in *Morris v. the United Kingdom*, no. 38784/97, to be reported in ECHR 2002-I, the Court found that there remained deficiencies which cast doubt on the independence and impartiality of the members of the court martial. However, in the light of a subsequent judgment of the House of Lords, which found that there were safeguards of which the Court was unaware when deciding *Morris*, the Fourth Section in February 2003 relinquished jurisdiction in favour of the Grand Chamber in a further case of this kind, *Grievies v. the United Kingdom*, no. 57067/00. Over 30 court martial cases are still pending, the majority of which concern the post-amendment rules.
37. See *Benham v. the United Kingdom*, judgment of 10 June 1996, *Reports of Judgments and Decisions* 1996-III. The law was amended with regard to the issue in respect of which a violation was found, namely the right to legal representation. It may be noted that 74 applications were struck out of the list on the basis of friendly settlements in January and February 2003. A further 56 remain pending. Strictly speaking, these cases are not “clone” cases, as they deal with different types of poll tax, community charge and council tax, and each has to be examined on the facts.
38. See the discussion in the section on procedural safeguards, below.
39. See *Broniowski v. Poland* (dec.) [GC], no. 31443/96, to be reported in ECHR 2002-X. A further 120 applications of this kind are still pending.
40. One judgment addressing this issue has in fact already been delivered: *Burdov v. Russia*, no. 59498/00, to be reported in ECHR 2002-III.
41. *Pretty v. the United Kingdom*, no. 2346/02, to be reported in ECHR 2002-III.

42. *Boso v. Italy* (dec.), no. 50490/99, to be reported in ECHR 2002-VII.
43. *Mastromatteo v. Italy* [GC], no. 37703/97, to be reported in ECHR 2002-VIII.
44. *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, to be reported in ECHR 2002-II.
45. *Calvelli and Ciglio v. Italy* [GC], no. 32967/96, to be reported in ECHR 2002-I.
46. *Öneryıldız v. Turkey*, no. 48939/99, 18 June 2002.
47. *Anguelova v. Bulgaria*, no. 38361/97, to be reported in ECHR 2002-IV. The death occurred in 1996.
48. *Abdurrahman Orak v. Turkey*, no. 31889/96, 14 February 2002. The death occurred in 1993.
49. See *Orhan v. Turkey*, no. 25656/94, 18 June 2002.
50. See *Önen v. Turkey*, no. 22876/93, 14 May 2002, and *Ülkü Ekinci v. Turkey*, no. 27602/95, 16 July 2002. In *Sabuktekin v. Turkey*, no. 27243/95, to be reported in ECHR 2002-II, which also concerned a murder by unidentified perpetrators, the Court found no violation of Article 2 on both the substantive and procedural aspects.
51. See *McShane v. the United Kingdom*, no. 43290/98, 28 May 2002.
52. *Khashiyev and Akayeva v. Russia* (dec.), nos. 57942/00 and 57945/00, *Isayeva, Yusupova and Basayeva v. Russia* (dec.), nos. 57947/00, 57948/00 and 57949/00, and *Isayeva v. Russia* (dec.), no. 57950/00, 19 December 2002.
53. *Algür v. Turkey*, no. 32574/96, 22 October 2002.
54. See *Kalashnikov v. Russia*, no. 47095/99, to be reported in ECHR 2002-VI.
55. *Mouisel v. France*, no. 67263/01, to be reported in ECHR 2002-IX. See also the admissible case of *Matencio v. France* (dec.), no. 58749/00, 7 November 2002.
56. See *D.P. and J.C. v. the United Kingdom*, no. 38719/97, 10 October 2002.
57. See *E. and Others v. the United Kingdom*, no. 33218/96, 26 November 2002.
58. See *Z and Others v. the United Kingdom* [GC], no. 29392/95, ECHR 2001-V, and *T.P. and K.M. v. the United Kingdom* [GC], no. 28945/95, ECHR 2001-V (extracts).
59. *Stafford v. the United Kingdom* [GC], no. 46295/99, to be reported in ECHR 2002-IV.
60. See *Wynne v. the United Kingdom*, judgment of 18 July 1994, Series A no. 294-A.
61. See *Weeks v. the United Kingdom*, judgment of 2 March 1987, Series A no. 114, and *Thynne, Wilson and Gunnell v. the United Kingdom*, judgment of 25 October 1990, Series A no. 190-A.
62. See *Hussain v. the United Kingdom* and *Singh v. the United Kingdom*, judgments of 21 February 1996, *Reports of Judgments and Decisions* 1996-I.
63. By way of contrast, see *Waite v. the United Kingdom*, no. 53236/99, 10 December 2002, in which the actual recall of the applicant to prison following revocation of his life licence was held not to have violated Article 5 § 1.
64. *D.G. v. Ireland*, no. 39474/98, to be reported in ECHR 2002-III.
65. See *H.M. v. Switzerland*, no. 39187/98, to be reported in ECHR 2002-II.
66. *Enhorn v. Sweden* (dec.), no. 56529/00, 10 December 2002.
67. See *Eryk Kawka v. Poland*, no. 33885/96, 27 June 2002, *Dacewicz v. Poland*, no. 34611/97, 2 July 2002, and *Salapa v. Poland*, no. 35489/97, 19 December 2002. The leading case in this connection was *Niedbala v. Poland*, no. 27915/95, 4 July 2000. The law was changed in 1996 with regard to the ordering of detention and in 1998 (New Code of Criminal Procedure) with regard to procedural guarantees in proceedings for review of the lawfulness of detention.
68. See *Stašaitis v. Lithuania*, no. 47679/99, 21 March 2002, and *Butkevičius v. Lithuania*, no. 48297/99, to be reported in ECHR 2002-II (extracts). The leading case in this connection was *Jėčius v. Lithuania*, no. 34578/97, ECHR 2000-IX. The law was changed in 1998.
69. *Delbec v. France*, no. 43125/98, 18 June 2002, *D.M. v. France*, no. 41376/98, 27 June 2002, and *Laidin v. France* (no. 1), no. 43191/98, 5 November 2002.
70. *Magalhães Pereira v. Portugal*, no. 44872/98, to be reported in ECHR 2002-I.
71. See, in particular, *Golder v. the United Kingdom*, judgment of 21 February 1975, Series A no. 18, and *Hornsby v. Greece*, judgment of 19 March 1997, *Reports of Judgments and Decisions* 1997-II.
72. *A. v. the United Kingdom*, no. 35373/97, to be reported in ECHR 2002-X.
73. Austria, Belgium, France, Finland, Ireland, Italy, the Netherlands and Norway. It may be noted that two cases concerning a similar issue in Italy were declared admissible on 13 June 2002 and judgments have now been delivered: *Cordova v. Italy* (no. 1), no. 40877/98, and *Cordova v. Italy* (no. 2), no. 45649/99, both to be reported in ECHR 2003.
74. *McVicar v. the United Kingdom*, no. 46311/99, to be reported in ECHR 2002-III.
75. *Del Sol v. France*, no. 46800/99, to be reported in ECHR 2002-II, and *Essaadi v. France*, no. 49384/99, 26 February 2002.
76. *Aerts v. Belgium*, judgment of 30 July 1998, *Reports of Judgments and Decisions* 1998-V.
77. *Zvolský and Zvolská v. the Czech Republic*, no. 46129/99, to be reported in ECHR 2002-IX.

78. Article 239 § 2 of the Code of Civil Procedure.
79. *Běleš and Others v. the Czech Republic*, no. 47273/99, to be reported in ECHR 2002-IX.
80. *Kutić v. Croatia*, no. 48778/99, to be reported in ECHR 2002-II.
81. By way of contrast, see *Ostojić v. Croatia* (dec.), no. 16837/02, to be reported in ECHR 2002-IX.
82. *Sovtransavto Holding v. Ukraine*, no. 48553/99, to be reported in ECHR 2002-VII.
83. Article 97 of the Code of Arbitration Procedure.
84. *Ryabykh v. Russia* (dec.), no. 52854/99, 21 February 2002.
85. See *Hornsby v. Greece*, cited above, note 71.
86. *Adamogiannis v. Greece*, no. 47734/99, 14 March 2002, *Vasilopoulou v. Greece*, no. 47541/99, 21 March 2002, *Katsaros v. Greece*, no. 51473/99, 6 June 2002 (concerning delay). In *Vasilopoulou* and *Katsaros*, the Court also found a violation of Article 1 of Protocol No. 1 on account of the effect of the refusal/delay on property rights. See also *Karahalios v. Greece* (dec.), no. 62503/00, to be reported in ECHR 2002-VIII (extracts).
87. *Ouzounis and Others v. Greece*, no. 49144/99, 18 April 2002.
88. *Burdov v. Russia*, cited above, note 40.
89. See, for example, the admissible case of *Timofeyev v. Russia* (dec.), no. 58263/00, 5 September 2002.
90. The first case in this series ended in a friendly settlement: *Kaysin v. Ukraine*, no. 46144/99, 3 May 2001. There are over 100 cases pending.
91. See *Borgers v. Belgium*, judgment of 30 October 1991, Series A no. 214-B; *Vermeulen v. Belgium*, judgment of 20 February 1996, *Reports of Judgments and Decisions* 1996-I; *Lobo Machado v. Portugal*, judgment of 20 February 1996, *Reports* 1996-I; *Van Orshoven v. Belgium*, judgment of 25 June 1997, *Reports* 1997-III; *J.J. v. the Netherlands*, judgment of 27 March 1998, *Reports* 1998-II; and *K.D.B. v. the Netherlands*, judgment of 27 March 1998, *Reports* 1998-II.
92. *Göç v. Turkey* [GC], no. 36590/97, to be reported in ECHR 2002-V.
93. The Court also found, by nine votes to eight, that there had been a violation of Article 6 § 1 on account of the failure to hold an oral hearing. This issue had not been addressed in the Chamber judgment.
94. *Kress v. France* [GC], no. 39594/98, ECHR 2001-VI.
95. See *Reinhardt and Slimane-Kaïd v. France*, judgment of 31 March 1998, *Reports of Judgments and Decisions* 1998-II, which concerned submissions by the advocate-general to the Criminal Division of the Court of Cassation. In a decision of 25 April 2002 in *Pascolini v. France* (dec.), no. 45019/98, to be reported in ECHR 2002-V, the Court specified that the practice could be regarded as in place from 18 December 1996.
96. See *APBP v. France*, no. 38436/97, 21 March 2002, and *Immeubles Groupe Kosser v. France*, no. 38748/97, 21 March 2002. See also *Fretté v. France*, no. 36515/97, to be reported in ECHR 2002-I, in which the failure to notify an unrepresented appellant of the date of the hearing, thus depriving him of an opportunity to reply to the submissions of the Government Commissioner, was also held to constitute a violation of Article 6.
97. *Meftah and Others v. France* [GC], nos. 32911/96, 35237/97 and 34595/97, to be reported in ECHR 2002-VII.
98. See also *Voisine v. France*, no. 27362/95, 8 February 2000.
99. *Josef Fischer v. Austria*, no. 33382/96, 17 January 2002, and *Lanz v. Austria*, no. 24430/94, 31 January 2002.
100. *Wynen v. Belgium*, no. 32576/96, to be reported in ECHR 2002-VIII.
101. *Berger v. France*, no. 48221/99, to be reported in ECHR 2002-X.
102. Cf. *Reinhardt and Slimane-Kaïd v. France*, cited above, note 95.
103. See *Kress v. France*, *APBP v. France* and *Immeubles Groupe Kosser v. France*, cited above (notes 94 and 96 respectively), and also *Theraube v. France*, no. 44565/98, 10 October 2002.
104. *Ezeh and Connors v. the United Kingdom*, nos. 39665/98 and 40086/98, 15 July 2002.
105. *Janosevic v. Sweden*, no. 34619/97, to be reported in ECHR 2002-VII, and *Västberga Taxi Aktiebolag and Vulic v. Sweden*, no. 36985/97, 23 July 2002.
106. *Böhmer v. Germany*, no. 37568/97, 3 October 2002.
107. *Lavents v. Latvia*, no. 58442/00, 28 November 2002.
108. *Butkevičius v. Lithuania*, cited above, note 68.
109. Statements made by the Prosecutor General were also criticised, although no violation was found in that respect. In a further case, *Marziano v. Italy*, no. 45313/99, 28 November 2002, concerning statements made by an investigating judge in his decision to discontinue criminal proceedings, the Court found that there been no violation of Article 6 § 2.
110. *Absandzė v. Georgia* (dec.), no. 57861/00, 15 October 2002.
111. *Karatas and Sari v. France*, no. 38396/97, 16 May 2002.

112. See, in particular, *Poitrimol v. France*, judgment of 23 November 1993, Series A no. 277-A; *Lala v. the Netherlands* and *Pelladoah v. the Netherlands*, judgments of 22 September 1994, Series A no. 297-A and B; *Van Geyseghe v. Belgium* [GC], no. 26103/95, ECHR 1999-I; *Van Pelt v. France*, no. 31070/96, 23 May 2000; and *Krombach v. France*, no. 29731/96, ECHR 2001-II.
113. *Goth v. France*, no. 53613/99, 16 May 2002; *Papon v. France*, no. 54210/00, to be reported in ECHR 2002-VII; and *Coste v. France*, no. 50528/99, 17 December 2002. See also *Omar v. France* and *Guérin v. France*, judgments of 29 July 1998, *Reports of Judgments and Decisions* 1998-V, and *Khalfaoui v. France*, no. 34791/97, ECHR 1999-IX.
114. See also *Krombach v. France*, cited above, note 112.
115. *Berliński v. Poland*, nos. 27715/95 and 30209/96, 20 June 2002.
116. *Czekalla v. Portugal*, no. 38830/97, to be reported in ECHR 2002-VIII.
117. Cited above, note 36.
118. Cf. *Magalhães Pereira v. Portugal*, cited above, note 70, in which the lack of effective legal assistance for a psychiatric detainee in proceedings concerning review of continuation of his confinement was held to constitute a violation of Article 5 § 4 of the Convention.
119. *Visser v. the Netherlands*, no. 26668/95, 14 February 2002, and *Birutis and Others v. Lithuania*, nos. 47698/99 and 48115/99, 28 March 2002.
120. *Craxi v. Italy*, no. 34896/97, 5 December 2002.
121. *S.N. v. Sweden*, no. 34209/96, to be reported in ECHR 2002-V. Cf. the similar case of *P.S. v. Germany*, no. 33900/96, 20 December 2001, in which a violation was found.
122. *W.F. v. Austria*, no. 38275/97, 30 May 2002, and *Sailer v. Austria*, no. 38237/97, 6 June 2002.
123. See, for example, *Gradinger v. Austria*, 23 October 1995, Series A no. 328-C, and *Franz Fischer v. Austria*, no. 37950/97, 29 May 2001.
124. *Christine Goodwin v. the United Kingdom* [GC], no. 28957/95, to be reported in ECHR 2002-VI, and *I. v. the United Kingdom* [GC], no. 25680/94, 11 July 2002.
125. *Rees v. the United Kingdom*, judgment of 17 October 1986, Series A no. 106; *Cossey v. the United Kingdom*, judgment of 27 September 1990, Series A no. 184; *X, Y and Z v. the United Kingdom*, judgment of 22 April 1997, *Reports of Judgments and Decisions* 1997-II; and *Sheffield and Horsham v. the United Kingdom*, judgment of 30 July 1998, *Reports* 1998-V.
126. *Perkins and R. v. the United Kingdom*, nos. 43208/98 and 44875/98, and *Beck and Others v. the United Kingdom*, nos. 48535/99, 48536/99 and 48537/99, 22 October 2002.
127. *Fretté v. France*, cited above, note 96.
128. *Mikulić v. Croatia*, no. 53176/99, to be reported in ECHR 2002-I (concerning the adequacy of measures taken by the courts to establish paternity); *Yousef v. the Netherlands*, no. 33711/96, to be reported in ECHR 2002-VIII; and *Hoppe v. Germany*, no. 28422/95, 5 December 2002.
129. *Al-Nashif v. Bulgaria*, no. 50963/99, 20 June 2002; *Amrollahi v. Denmark*, no. 56811/00, 11 July 2002; and *Yildiz v. Austria*, no. 37295/97, 31 October 2002. Violations were found in all three cases. See also the admissible cases of *Shevanova v. Latvia* (dec.), no. 58822/00, and *Sisojeva and Others v. Latvia* (dec.), no. 60654/00, 28 February 2002.
130. *Kutzner v. Germany*, no. 46544/99, to be reported in ECHR 2002-I.
131. *P., C. and S. v. the United Kingdom*, no. 56547/00, to be reported in ECHR 2002-VI.
132. Cf. *K. and T. v. Finland* [GC], no. 25702/94, ECHR 2001-VII.
133. *Venema v. the Netherlands*, no. 35731/97, to be reported in ECHR 2002-X.
134. *Messina v. Italy* (no. 3), no. 33993/96, 24 October 2002. See also *Calogero Diana v. Italy* and *Domenichini v. Italy*, judgments of 15 November 1996, *Reports of Judgments and Decisions* 1996-V. A number of further applications are pending before the Court.
135. *Lavents v. Latvia*, cited above, note 107.
136. *Puzinas v. Lithuania*, no. 44800/98, 14 March 2002.
137. *A.B. v. the Netherlands*, no. 37328/97, 29 January 2002.
138. *Radaj v. Poland*, nos. 29537/95 and 35453/97, 28 November 2002, and *Salapa v. Poland*, no. 35489/97, 19 December 2002.
139. *William Faulkner v. the United Kingdom*, no. 37471/97, 4 June 2002.
140. *Lavents v. Latvia*, cited above, note 107.
141. *Nowicka v. Poland*, no. 30218/96, 3 December 2002. See also *Niedbala v. Poland*, cited above, note 67. The automatic opening and reading of prisoners' correspondence was replaced by "discretionary" opening when the New Code of Execution of Criminal Sentences came into force in 1998.
142. *Płoski v. Poland*, no. 26761/95, 12 November 2002.
143. *Armstrong v. the United Kingdom*, no. 48521/99, 16 July 2002; *Taylor-Sabori v. the United Kingdom*, no. 47114/99, 22 October 2002; and *Allan v. the United Kingdom*, no. 48539/99, to be reported in ECHR

2002-IX. See also the admissible cases of *Perry v. the United Kingdom* (dec.), no. 63737/00, and *Chalkley v. the United Kingdom* (dec.), no. 63831/00, 26 September 2002.

144. *Société Colas Est and Others v. France*, no. 37971/97, to be reported in ECHR 2002-III. A search of company premises was also at issue in *Veeber v. Estonia (no. 1)*, no. 37571/97, 7 November 2002. However, the Court declined jurisdiction *ratione temporis*. The Court had previously accepted that a lawyer's business premises fell within the scope of Article 8: see *Niemietz v. Germany*, judgment of 16 December 1992, Series A no. 251-B. See also *Tamosius v. the United Kingdom* (dec.), no. 62002/00, to be reported in ECHR 2002-VIII, in which the safeguards surrounding the search of a lawyer's premises were found to be sufficient, and the admissible cases of *Buck v. Germany* (dec.), no. 41604/98, 7 May 2002, and *Roemen and Schmit v. Luxembourg* (dec.), no. 51772/99, 12 March 2002. A judgment has now been delivered in the latter case: *Roemen and Schmit v. Luxembourg*, no. 51772/99, to be reported in ECHR 2003.

145. *Unabhängige Initiative Informationsvielfalt v. Austria*, no. 28525/95, to be reported in ECHR 2002-I; *Dichand and Others v. Austria*, no. 29271/95; and *Krone Verlag GmbH & Co KG v. Austria*, no. 34315/96, 26 February 2002.

146. *Nikula v. Finland*, no. 31611/96, to be reported in ECHR 2002-II.

147. *Colombani and Others v. France*, no. 51279/99, to be reported in ECHR 2002-V.

148. *Cisse v. France*, no. 51346/99, to be reported in ECHR 2002-III.

149. *Appleby and Others v. the United Kingdom* (dec.), no. 44306/98, 15 October 2002.

150. *The Gypsy Council and Others v. the United Kingdom* (dec.), no. 66336/01, 14 May 2002, and *Selvanayagam v. the United Kingdom* (dec.), no. 57981/00, 12 December 2002.

151. *Yazar and Others v. Turkey*, nos. 22723/93, 22724/93 and 22725/93, to be reported in ECHR 2002-II, and *Dicle for the Democracy Party v. Turkey*, no. 25141/94, 10 December 2002. See also *United Communist Party of Turkey and Others v. Turkey*, judgment of 30 January 1998, *Reports of Judgments and Decisions* 1998-I; *Socialist Party and Others v. Turkey*, judgment of 25 May 1998, *Reports* 1998-III; and *Freedom and Democracy Party (ÖZDEP) v. Turkey* [GC], no. 23885/94, ECHR 1999-VIII. Mention should also be made of *Sadak and Others v. Turkey (no. 2)*, nos. 25144/94, 26149 to 26154/95, 27100/95 and 27101/95, to be reported in ECHR 2002-IV, in which the Court found that the termination of the mandate of members of Parliament as an automatic consequence of the dissolution of their party (the Democracy Party) violated Article 3 of Protocol No. 1.

152. *Refah Partisi (The Welfare Party) and Others v. Turkey*, nos. 41340/98, 41342/98, 41343/98 and 41344/98, 31 July 2001. The Grand Chamber, in a judgment of 13 February 2003 (to be reported in ECHR 2003), confirmed unanimously that there had been no violation of Article 11.

153. *Wilson, National Union of Journalists and Others v. the United Kingdom*, nos. 30668/96, 30671/96 and 30678/96, to be reported in ECHR 2002-V.

154. *Unison v. the United Kingdom* (dec.), no. 53574/99, to be reported in ECHR 2002-I, and *Federation of Offshore Workers' Trade Unions and Others v. Norway* (dec.), no. 38190/97, to be reported in ECHR 2002-VI.

155. *Podkolzina v. Latvia*, no. 46726/99, to be reported in ECHR 2002-II.

156. *Olivieira v. the Netherlands*, no. 33129/96, to be reported in ECHR 2002-IV, and *Landvreugd v. the Netherlands*, no. 37331/97, 4 June 2002.

157. *Čonka v. Belgium*, no. 51564/99, to be reported in ECHR 2002-I.

158. *Sulejmanovic and Others v. Italy*, nos. 57574/00 and 57575/00, 8 November 2002.

159. See *Tsiridakis v. Greece*, no. 46355/99, 17 January 2002, and *Hatzidakis v. Greece*, no. 48392/99, 11 April 2002. In the first case, the State had also attempted to claim property which was not covered by the expropriation, while in the second the delay was due to the protracted procedure for checking title to the property.

160. *Terazzi S.a.s. v. Italy*, no. 27265/95, 17 October 2002.

161. *Motais de Narbonne v. France*, no. 48161/99, 2 July 2002.

162. *Jokela v. Finland*, no. 28856/95, to be reported in ECHR 2002-IV.

163. *Lallement v. France*, no. 46044/99, 11 April 2002. In that case, the expropriation of part of a dairy farm had affected the viability of the remainder.

164. *Azas v. Greece*, no. 50824/99, 19 September 2002.

165. See *Katikaridis and Others v. Greece* and *Tsomsos and Others v. Greece*, judgments of 15 November 1996, *Reports of Judgments and Decisions* 1996-V; *Papachelas v. Greece* [GC], no. 31423/96, ECHR 1999-II; and *Savidou v. Greece*, no. 38704/97, 1 August 2000.

166. See, in particular, the series of cases concerning Romania referred to above, and also *Mayer and Others v. Germany*, nos. 18890/91, 19048/91, 19049/91, 19342/92 and 19549/92, and *Brezny v. Slovakia*, no. 23131/93, Commission decisions of 4 March 1996, *Decisions and Reports* 85-A and 85-B respectively; *Malhous v. the Czech Republic* (dec.) [GC], no. 33071/96, ECHR 2000-XII; *Polacek and Polackova v. the*

Czech Republic (dec.) [GC], no. 38645/97, 10 July 2002; and *Gratzinger and Gratzingerova v. the Czech Republic* (dec.) [GC], no. 39794/98, to be reported in ECHR 2002-VII. See also *Wittek v. Germany*, no. 37290/97, to be reported in ECHR 2002-X.

167. *Pincová and Pinc v. the Czech Republic*, no. 36548/97, to be reported in ECHR 2002-VIII.

168. *Zvolský and Zvolská v. the Czech Republic*, cited above, note 77.

169. *S.A. Dangeville v. France*, no. 36677/97, to be reported in ECHR 2002-III.

170. *Azinas v. Cyprus*, no. 56679/00, 20 June 2002. The case is now pending before the Grand Chamber.

171. *Sovtransavto Holding v. Ukraine*, cited above, note 82.

172. *Nerva and Others v. the United Kingdom*, no. 42295/98, to be reported in ECHR 2002-VIII.

**XI. SUBJECT MATTER
OF JUDGMENTS DELIVERED BY THE COURT
IN 2002**

**SUBJECT MATTER OF JUDGMENTS DELIVERED
BY THE COURT IN 2002**

A. Subject matter of selected judgments, by Convention Article

Article 2

Cases concerning principally the right to life

Shooting by unidentified assailants in Turkey (*Sabuktekin*, no. 27243/95; *Önen*, no. 22876/93; *Ülkü Ekinci*, no. 27602/95)

Effectiveness of the investigation into a death resulting from the actions of the security forces during a riot in Northern Ireland (*McShane*, no. 43290/98)

Disappearance of persons taken into custody in Turkey (*Orhan*, no. 25656/94)

Death in custody in Bulgaria (*Anguelova*, no. 38361/97) and in Turkey (*Abdurrahman Orak*, no. 31889/96)

Killing of detainee by mentally ill cell-mate in the United Kingdom (*Paul and Audrey Edwards*, no. 46477/99)

Commission of a murder by convicts on prison leave or under a semi-custodial regime in Italy (*Mastromatteo*, no. 37703/97)

Time-bar on the prosecution of a doctor for involuntary manslaughter in Italy, as a result of procedural delays (*Calvelli and Ciglio*, no. 32967/96)

Deaths resulting from an explosion at a rubbish tip beside which a shanty town had been built in Turkey (*Öneryıldız*, no. 48939/99)

Refusal to give advance undertaking not to prosecute a husband for assisting his wife to commit suicide in the United Kingdom (*Pretty*, no. 2346/02)

Article 3

Cases concerning principally physical integrity

Ill-treatment of detainees in Bulgaria (*Anguelova*, no. 38361/97) and in Turkey (*Abdurrahman Orak*, no. 31889/96; *Algür*, no. 32574/96)

Ill-treatment by the police in Poland (*Berliński*, nos. 27715/95 and 30209/96)

Conditions of detention in Russia (*Kalashnikov*, no. 47095/99)

Refusal to release a prisoner with a terminal illness, and conditions of his detention, including handcuffing, in France (*Mouisel*, no. 67263/01)

Detention in a penal institution in Ireland of a minor requiring secure educational facilities, the effect thereof, and his handcuffing during court appearances (*D.G.*, no. 39474/98)

Failure of the social services to protect children from sexual or physical abuse in the United Kingdom (*D.P. and J.C.*, no. 38719/97; *E. and Others*, no. 33218/96)

Article 5

Cases concerning principally the right to liberty and security

Unlawful detention in Bulgaria (*Anguelova*, no. 38361/97)

Lawfulness of detention following the revocation of a life licence in the United Kingdom (*Waite*, no. 53236/99)

Detention for the purpose of psychiatric examination in the context of a private prosecution for defamation in Poland (*Nowicka*, no. 30218/96)

Absence of a legal basis for prolongation of detention on remand in Lithuania (*Stasaitis*, no. 47679/99; *Butkevičius*, no. 48297/99)

Detention in a penal institution in Ireland of a minor requiring secure educational facilities (*D.G.*, no. 39474/98)

Placement of an elderly person in a foster home in Switzerland on the ground of serious neglect (*H.M.*, no. 39187/98)

Continued detention in the United Kingdom, following the expiry of a prison sentence, on the basis of an earlier mandatory life sentence in respect of which a life licence had been revoked (*Stafford*, no. 46295/99)

Detention in Belgium, with a view to deportation, of Slovak Gypsies summoned by the police to complete formalities, failure to provide adequate reasons for the detention and availability of effective court review of the lawfulness of the detention (*Čonka*, no. 51564/99)

Ordering of detention on remand by prosecutors in Poland (*Eryk Kawka*, no. 33885/96; *Dacewicz*, no. 34611/97; *Salapa*, no. 35489/97)

Length of detention on remand in Belgium (*Grisez*, no. 35776/97), in Latvia (*Lavents*, no. 58442/00), in Lithuania (*Stasaitis*, no. 47679/99), in Poland (*Klamecki*, no. 25415/94) and in Russia (*Kalashnikov*, no. 47095/99)

Absence of a proper review of the lawfulness of detention in Latvia (*Lavents*, no. 58442/00), and in Lithuania (*Stasaitis*, no. 47679/99; *Butkevičius*, no. 48297/99)

Absence of a right in the United Kingdom to review of the lawfulness of continuing detention on the basis of a mandatory life sentence (*Stafford*, no. 46295/99) and to review by a body with power to order release (*Benjamin and Wilson*, no. 28212/95)

Absence of any possibility to challenge the lawfulness of detention with a view to expulsion from Bulgaria (*Al-Nashif*, no. 50963/99)

Lack of an oral hearing in proceedings in the United Kingdom for review of the lawfulness of detention following recall to prison on revocation of a life licence (*Waite*, no. 53236/99)

Absence of a right for detainees in Poland to attend or be represented at hearings on detention on remand, and refusal of access to the prosecution file (*Migoń*, no. 24244/94; *Salapa*, no. 35489/97)

Non-disclosure of the prosecution's submissions in relation to an appeal against the refusal of a request for release from detention on remand in Austria (*Lanz*, no. 24430/94)

Length of time taken to review the lawfulness of psychiatric detention and absence of legal representation at a hearing in Portugal (*Magalhães Pereira*, no. 44872/98)

Length of time taken to decide on requests for release from psychiatric detention in France (*Delbec*, no. 43125/98; *L.R.*, no. 33395/96; *D.M.*, no. 41376/98; *Laidin (no. 1)*, no. 43191/98)

Absence of a right to compensation in respect of unlawful detention in Ireland (*D.G.*, no. 39474/98) and in Italy (*N.C.*, no. 24952/94)

Article 6

Cases concerning principally the right to a fair trial

Access to a court to contest restrictions on fishing rights in Finland (*Posti and Rahko*, no. 27824/95)

Access to a court to contest a search of company premises and seizure of files in Estonia (*Veeber (no. 1)*, no. 37571/97)

Refusal of courts in the Czech Republic to examine the merits of a claim (*Běleš and Others*, no. 47273/99)

Scope of judicial review of dismissal from employment in Greece (*Koskinas*, no. 47760/99)

Unavailability of legal aid for defamation actions in the United Kingdom (*McVicar*, no. 46311/99; *A.*, no. 35373/97)

Refusal of legal aid in France due to the absence of serious grounds of appeal (*Del Sol*, no. 46800/99; *Essaadi*, no. 49384/99)

Limitations on the right of a civil party to criminal proceedings in France to lodge an appeal on points of law in the absence of such an appeal by the prosecution (*Berger*, no. 48221/99)

Dismissal of an appeal on points of law in Greece as out of time, the time-limit running from the date of delivery rather than the date on which the written judgment became available (*Aepi S.A.*, no. 48679/99)

Rejection of constitutional complaints in the Czech Republic as out of time, on account of failure to lodge an appeal on points of law (*Běleš and Others*, no. 47273/99) or because a decision to declare an appeal on points of law inadmissible was not taken into account in the calculation of the time-limit (*Zvolský and Zvolská*, no. 46129/99)

Parliamentary immunity attaching to statements made by a member of Parliament during a parliamentary debate in the United Kingdom (*A.*, no. 35373/97)

Issuing of a national security certificate precluding the operation of legislation on non-discrimination in employment in the United Kingdom (*Devenney*, no. 24265/94)

Striking out of claims against a local authority in the United Kingdom on the ground that there existed no duty of care in exercising statutory powers in relation to child care (*D.P. and J.C.*, no. 38719/97)

Annulment of final judgments, interference by the executive in pending court proceedings, and fairness of proceedings before the courts of arbitration in Ukraine (*Sovtransavto Holding*, no. 48553/99)

Passing of legislation affecting the outcome of pending court proceedings in Greece (*Smokovitis and Others*, no. 46356/99)

Legislation in Croatia staying all proceedings relating to claims for damages in respect of terrorist acts (*Kutić*, no. 48778/99)

Failure of the authorities in Greece to comply with binding court judgments (*Adamogiannis*, no. 47734/99; *Vasilopoulou*, no. 47541/99) and with a first-instance judgment (*Ouzounis and Others*, no. 49144/99)

Delays by the authorities in complying with court judgments in Greece (*Katsaros*, no. 51473/99) and in Russia (*Burdov*, no. 59498/00)

Absence of proper notification of expropriation in Cyprus and dismissal of a civil action on account of purported lack of *locus standi* (*Serghides and Christoforou*, no. 44730/98)

Absence of personal notification of a third party directly affected by court proceedings in Spain (*Cañete de Goñi*, no. 55782/00)

Refusal of the Swiss Federal Court to allow appellants to reply to observations submitted by the lower court and by the opposing party (*Ziegler*, no. 33499/96)

Taking of court decisions in Slovakia in the absence of a party, despite a legitimate excuse for that absence (*Komanický*, no. 32106/96)

Refusal of compensation for detention on remand in Greece, without hearing the person concerned (*Sajtos*, no. 53478/99)

Non-disclosure of the Principal Public Prosecutor's submissions to the Turkish Court of Cassation in proceedings concerning compensation for detention (*Göç*, no. 36590/97)

Non-disclosure to a civil party to criminal proceedings in France of the report of the judge rapporteur in proceedings before the Court of Cassation (*Berger*, no. 48221/99)

Failure to notify an unrepresented party to proceedings before the French *Conseil d'Etat* of the date of the hearing, thus depriving him of an opportunity to respond to the submissions of the Government Commissioner (*Fretté*, no. 36515/97)

Absence of any opportunity to reply to the submissions of the Government Commissioner in proceedings before the French *Conseil d'Etat* (*APBP*, no. 38436/97; *Immeubles Groupe Kossier*, no. 38748/97) and participation of the Government Commissioner in the deliberations of the *Conseil d'Etat* (*APBP*, no. 38436/97; *Immeubles Groupe Kossier*, no. 38748/97; *Theraube*, no. 44565/98)

Absence of legal representation in proceedings concerning child care in the United Kingdom (*P., C. and S.*, no. 56547/00)

Failure to hear witnesses and adequacy of the reasons given by a court in Finland (*Jokela*, no. 28856/95)

Refusal of a court in Poland to hear witnesses, and unavailability of evidence covered by official secrecy (*Wierzbicki*, no. 24541/94)

Decision by the French *Conseil d'Etat* on the merits of a case, without remitting to the lower court (*APBP*, no. 38436/97)

Lack of a public hearing before the Turkish Constitutional Court (*Yazar and Others*, nos. 22723/93, 22724/93 and 22725/93; *Dicle for the Democracy Party*, no. 25141/94) and in proceedings relating to the restitution of property in Slovakia (*Baková*, no. 47227/99)

Lack of an oral hearing in proceedings under the Media Act in Austria (*A.T.*, no. 32636/96), in proceedings concerning a claim for compensation for detention on remand in Turkey (*Göç*, no. 36590/97), in administrative proceedings in Sweden (*Döry*, no. 28394/95; *Lundevall*, no. 38629/97; *Salomonsson*, no. 38978/97) and in appeal proceedings in Germany (*Hoppe*, no. 28422/95)

Impartiality of the Gaming Board in the United Kingdom, and the scope of judicial review (*Kingsley*, no. 35605/97)

Access to a court in France to contest the imposition of a fine for speeding (*Peltier*, no. 32872/96)

Enforcement of tax surcharges in Sweden prior to determination of liability by a court (*Janosevic*, no. 34619/97; *Västberga Taxi Aktiebolag and Vulic*, no. 36985/97)

Dismissal of an appeal against conviction *in absentia* in Italy, on account of failure to comply with the time-limit (*Osu*, no. 36534/97)

Dismissal of appeals on points of law in France as a result of the appellants' failure to surrender into custody (*Goth*, no. 53613/99; *Papon*, no. 54210/00; *Coste*, no. 50528/99) and obligation of a person convicted *in absentia* to comply with an arrest warrant as a prerequisite to lodging an objection (*Karatas and Sari*, no. 38396/97)

Absence of personal notification of a hearing before the Belgian Court of Cassation, non-disclosure of the public prosecutor's submissions and rejection of a supplementary memorial as out of time, depriving the party of an opportunity to respond to the submissions of the other party (*Wynen*, no. 32576/96)

Refusal of a Belgian court to refer a preliminary question to the Court of Arbitration (*Wynen*, no. 32576/96)

Use in criminal proceedings in the United Kingdom of evidence obtained by a police informer placed in the suspect's cell (*Allan*, no. 48539/99)

Effect in Italy of a media campaign on the impartiality of a criminal court (*Craxi*, no. 34896/97)

Drawing of adverse inferences by a jury in the United Kingdom from the accused's failure to answer police questions (*Beckles*, no. 44652/98)

Absence of any opportunity for unrepresented appellants to make oral submissions to the French Court of Cassation and non-disclosure to them of the observations of the advocate-general (*Meftah and Others*, nos. 32911/96, 35237/97 and 34595/97)

Failure to ensure the presence of the appellant at the hearing of an appeal against sentence in Austria (*Kucera*, no. 40072/98)

Non-disclosure of the Procurator General's submissions to the Supreme Court (*Josef Fischer*, no. 33382/96) and of both the Procurator General's submissions on a plea of nullity and the Senior Public Prosecutor's submissions on an appeal in Austria (*Lanz*, no. 24430/94)

Failure to respect the rules on the composition of a court to which a case was remitted by the Latvian Supreme Court, and lack of impartiality of a judge on account of statements made by him to the press (*Lavents*, no. 58442/00)

Impartiality of trial judges who had previously participated in decisions rejecting an appeal against indictment and prolonging detention on remand in Spain (*Perote Pellon*, no. 45238/99)

Impartiality of judges who had previously ordered detention on remand in Turkey (*Karakoç and Others*, nos. 27692/95, 28138/95 and 28498/95)

Independence and impartiality of a court martial in the United Kingdom and fairness of the proceedings (*Morris*, no. 38784/97)

Revocation of the suspension of a prison sentence in Germany prior to final determination of subsequent criminal charges (*Böhmer*, no. 37568/97)

Refusal of compensation for detention on remand in Austria, on the ground of continuing suspicion (*Vostic*, no. 38549/97; *Demir*, no. 35437/97)

Imposition of the burden of proof on a taxpayer in Sweden to show that a tax surcharge should not be applied (*Janosevic*, no. 34619/97; *Västberga Taxi Aktiebolag and Vulic*, no. 36985/97)

Making of public statements of guilt by high-ranking State officials in Lithuania (*Butkevičius*, no. 48297/99)

Effect on the presumption of innocence of statements made by a judge to the press in Latvia (*Lavents*, no. 58442/00) and of statements made by an investigating judge in Italy in a decision to discontinue criminal proceedings (*Marziano*, no. 45313/99)

Reclassification of a charge by a trial court in Lithuania (*Sipavičius*, no. 49093/99)

Adequacy of time given to prepare a defence, in view of the large number of hearings held in several parallel sets of proceedings in Italy (*Craxi*, no. 34896/97)

Delay in the appointment of a legal-aid lawyer in Poland (*Berliński*, nos. 27715/95 and 30209/96)

Refusal of a court in France to allow lawyers to represent an absent accused (*Karatas and Sari*, no. 38396/97)

Legal representation of the accused at a court martial in the United Kingdom (*Morris*, no. 38784/97)

Refusal to allow legal representation in prison disciplinary proceedings in the United Kingdom (*Ezeh and Connors*, nos. 39665/98 and 40086/98)

Dismissal of an appeal in Portugal as a result of the failure of a court-appointed lawyer to comply with a procedural formality (*Czekalla*, no. 38830/97)

Police supervision of a detainee's consultation with his lawyer in Austria (*Lanz*, no. 24430/94)

Use at a trial of statements made by anonymous witnesses in Lithuania (*Birutis and Others*, nos. 47698/99 and 48115/99) and in the Netherlands (*Visser*, no. 26668/95) and of pre-trial statements made by a witness who had died in the meantime and by co-accused relying on the right to remain silent in Italy (*Craxi*, no. 34896/97)

Absence of any opportunity to question a victim of child sexual abuse in Sweden (*S.N.*, no. 34209/96)

Failure to provide an interpreter for a hearing on sentencing in the United Kingdom (*Cusciani*, no. 32771/96)

Article 7

Case concerning principally non-retroactivity of criminal offences and penalties

Absence of a clear legal basis for imposing a sentence of imprisonment in Turkey (*E.K.*, no. 28496/95)

Article 8

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

Refusal to give an advance undertaking not to prosecute a husband for assisting his wife to commit suicide in the United Kingdom (*Pretty*, no. 2346/02)

Refusal of access to records of time spent as a child in public care in the United Kingdom (*M.G.*, no. 39393/98)

Lack of legal recognition of transsexuals in the United Kingdom (*Christine Goodwin*, no. 28957/95; *I.*, no. 25680/94)

Dismissal of homosexuals from the armed forces in the United Kingdom following investigation into their private lives (*Perkins and R.*, nos. 43208/98 and 44875/98; *Beck and Others*, nos. 48535/99, 48536/99 and 48537/99)

Absence of a legal basis in the United Kingdom for covert audio surveillance by the police (*Armstrong*, no. 48521/99), interception of pager messages sent via a private communications system (*Taylor-Sabori*, no. 47114/99) and covert recording of a remand prisoner at a police station (*Allan*, no. 48539/99)

Refusal to allow a remand prisoner in Poland to attend his parents' funerals (*Płoski*, no. 26761/95)

Refusal to allow a natural father to recognise his child in the Netherlands (*Yousef*, no. 33711/96)

Adequacy of the measures taken by the courts in Croatia to establish paternity (*Mikulić*, no. 53176/99)

Refusal to grant joint parental authority over a child in Germany, and restrictions on the father's right of access (*Hoppe*, no. 28422/95)

Taking into care of children in Germany on the ground of their parents' intellectual weakness, placement in separate foster homes and restrictions on access (*Kutzner*, no. 46544/99)

Taking into care of a child at birth on an emergency basis in the United Kingdom, and the procedures concerning care and freeing for adoption orders (*P., C. and S.*, no. 56547/00)

Making of a provisional care order in the Netherlands without providing the parents with an opportunity to contest it (*Venema*, no. 35731/97)

Separation of families as a result of expulsion from Austria (*Yildiz*, no. 37295/97) and from Bulgaria (*Al-Nashif*, no. 50963/99)

Threatened separation of a foreigner from his wife and children on account of an expulsion order issued following his conviction in Denmark (*Amrollahi*, no. 56811/00)

Destruction of homes and property in Turkey by village guards (*Matyar*, no. 23423/94) and by the security forces (*Orhan*, no. 25656/94)

Searches of company premises in Estonia (*Veeber (no. 1)*, no. 37571/97) and in France (*Société Colas Est and Others*, no. 37971/97)

Control of prisoners' correspondence in Italy (*Messina (no. 3)*, no. 33993/96), in Latvia (*Lavents*, no. 58442/00), in Lithuania (*Puzinas*, no. 44800/98), in the Netherlands (*A.B.*, no. 37328/97), in Poland (*Radaj*, nos. 29537/95 and 35453/97; *Salapa*, no. 35489/97) and in the United Kingdom (*William Faulkner*, no. 37471/97)

Prohibition of family visits to detainees in Latvia (*Lavents*, no. 58442/00) and in Poland (*Nowicka*, no. 30218/96)

Article 9

Case concerning principally freedom of religion and belief

Conviction of a Muslim religious leader for usurping the functions of a minister of a "known religion" in Greece (*Agga (no. 2)*, nos. 50776/99 and 52912/99)

Article 10

Cases concerning principally freedom of expression

Injunctions issued in Austria, prohibiting repetition of statements about a politician (*Dichand and Others*, no. 29271/95), repetition of statements about racist agitation by a politician (*Unabhängige Initiative Informationsvielfalt*, no. 28525/95) and publication of a photograph of a politician (*Krone Verlag GmbH & Co KG*, no. 34315/96)

Dismissal of an employee by the Bank of Spain for making offensive remarks about senior officials in a letter (*De Diego Nafria*, no. 46833/99)

Defamation proceedings brought by a prosecutor against a defence lawyer in Finland (*Nikula*, no. 31611/96)

Conviction of a publishing director and journalist in France for insulting a foreign head of State (*Colombani and Others*, no. 51279/99)

Unavailability of legal aid to defend a defamation action in the United Kingdom, exclusion of evidence and the requirement that the defendant prove his allegations (*McVicar*, no. 46311/99)

Imposition of a fine in Germany as a disciplinary penalty for breaching a prohibition on advertising by medical practitioners (*Stambuk*, no. 37928/97)

Refusal to register titles of periodicals in Poland (*Gawęda*, no. 26229/95)

Refusal of a licence to broadcast a programme about cars via cable television in Switzerland (*Demuth*, no. 38743/97)

Article 11

Cases concerning principally freedom of association

Forcible removal of illegal immigrants occupying a church in France (*Cisse*, no. 51346/99)

Dissolution of political parties in Turkey (*Yazar and Others*, nos. 22723/93, 22724/93 and 22725/93; *Dicle for the Democracy Party*, no. 25141/94)

Offering of incentives to employees to renounce the right to representation by a trade union in the United Kingdom (*Wilson, National Union of Journalists and Others*, nos. 30668/96, 30671/96 and 30678/96)

Article 12

Cases concerning principally the right to marry and found a family

Impossibility for transsexuals to marry in the United Kingdom (*Christine Goodwin*, no. 28957/95; *I.*, no. 25680/94)

Article 13

Cases concerning the availability of effective remedies

In connection with shootings by unidentified assailants in Turkey (*Sabuktekin*, no. 27243/95; *Önen*, no. 22876/93; *Ülkü Ekinci*, no. 27602/95)

In connection with a death resulting from the actions of the security forces during a riot in Northern Ireland (*McShane*, no. 43290/98)

In connection with the killing of a detainee by his mentally ill cell-mate in the United Kingdom (*Paul and Audrey Edwards*, no. 46477/99)

In connection with the disappearance of persons taken into custody in Turkey (*Orhan*, no. 25656/94)

In connection with the ill-treatment and death of detainees in Bulgaria (*Anguelova*, no. 38361/97) and in Turkey (*Abdurrahman Orak*, no. 31889/96)

In connection with the alleged failure of the social services in the United Kingdom to protect children from sexual abuse (*D.P. and J.C.*, no. 38719/97; *E. and Others*, no. 33218/96)

In connection with the length of court proceedings in Belgium (*Stratégies et Communications and Dumoulin*, no. 37370/97), in Croatia (*Mikulić*, no. 53176/99; *Delić*, no. 48771/99; *Radoš and Others*, no. 45435/99), in France (*Lutz*, no. 48215/99; *Nouhaud and Others*, no. 33424/96), in Italy (*Colonnello and Others*, no. 56206/00; *Nuvoli*, no. 41424/98), in Luxembourg (*Matthies-Lenzen* (friendly settlement), no. 45165/99) and in Slovakia (*Varga* (friendly settlement), no. 41384/98)

In connection with various forms of covert surveillance by the police in the United Kingdom (*Armstrong*, no. 48521/99; *Taylor-Sabori*, no. 47114/99; *Allan*, no. 48539/99)

In connection with expulsion from Bulgaria (*Al-Nashif*, no. 50963/99)

In connection with control of a prisoner's correspondence in the Netherlands (*A.B.*, no. 37328/97)

In connection with collective expulsion from Belgium (*Čonka*, no. 51564/99)

Article 14

Cases concerning principally the prohibition of discrimination

Different treatment of married women under pensions legislation in the Netherlands (*Wessels-Bergervoet*, no. 34462/97)

Refusal to approve a homosexual for prospective adoption of a child in France (*Fretté*, no. 36515/97)

Article 1 of Protocol No. 1

Cases concerning principally the right of property

Destruction of home and property by village guards in Turkey (*Matyar*, no. 23423/94)

Destruction of home and possessions in an explosion at a rubbish tip in Turkey (*Öneryıldız*, no. 48939/99)

Imposition of restrictions on fishing in Finland (*Posti and Rahko*, no. 27824/95)

Prolonged building prohibition in Italy, due to the inactivity of the local authority (*Terazzi S.a.s.*, no. 27265/95)

Inclusion by employer of waiters' tips in the minimum wage in the United Kingdom (*Nerva and Others*, no. 42295/98)

Quashing of court awards on the basis of legislation passed while the proceedings were pending in Greece (*Smokovitis and Others*, no. 46356/99)

Refusal to reimburse value-added tax payments made on the basis of French legislation incompatible with a directive of the European Communities (*S.A. Dangeville*, no. 36677/97)

Loss of pension rights as an automatic consequence of dismissal from the civil service in Cyprus (*Azinas*, no. 56679/00)

Loss of control of a company and its property in Ukraine as a result of an increase in the share capital (*Sovtransavto Holding*, no. 48553/99)

Non-payment by the State of sums due to the applicants in Greece (*Vasilopoulou*, no. 47541/99)

Refusal of the authorities in Greece to comply with a first-instance judgment ordering pension adjustment (*Ouzounis and Others*, no. 49144/99)

Delay by the authorities in complying with court judgments in Greece (*Katsaros*, no. 51473/99) and in Russia (*Burdov*, no. 59498/00)

Discrepancy between the valuation of property for the purposes of expropriation and its valuation for the purposes of inheritance tax in Finland (*Jokela*, no. 28856/95)

Failure to use property for the purposes for which it was expropriated in France (*Motais de Narbonne*, no. 48161/99)

Inclusion of a plot of land in Cyprus in a road-widening scheme by operation of law and without compensation (*Serghides and Christoforou*, no. 44730/98)

Restitution to the original owner of property in the Czech Republic confiscated by the State and acquired in good faith by a third party (*Pincová and Pinc*, no. 36548/97)

Restitution of land in the Czech Republic to the original owner, without any compensation (*Zvolský and Zvolská*, no. 46129/99)

Refusal to order the return of property ceded by the owners when leaving the German Democratic Republic (*Wittek*, no. 37290/97)

Adequacy of compensation for expropriation of part of a dairy farm in France, affecting the viability of the remainder (*Lallement*, no. 46044/99)

Adequacy of compensation for an expropriation in Greece, irrebuttable presumption of benefit accruing from expropriation and limits on the State's liability to cover legal fees (*Azas*, no. 50824/99)

Lengthy delay in payment of compensation for expropriation in Greece, and a claim by the State to property not included in the expropriation (*Tsirikakis*, no. 46355/99)

Lengthy delay in payment of compensation for expropriation in Greece, as a result of the procedure for checking the title to property (*Hatzitakis*, no. 48392/99)

Article 3 of Protocol No. 1

Cases concerning principally the right to free elections

Striking of a candidate from a list in parliamentary elections in Latvia, on the ground of insufficient knowledge of the national language (*Podkolzina*, no. 46726/99)

Termination of the mandate of members of Parliament in Turkey as an automatic consequence of the dissolution of their party by the Constitutional Court (*Sadak and Others* (no. 2), nos. 25144/94, 26149/95 to 26154/95, 27100/95 and 27101/95)

Article 2 of Protocol No. 4

Cases concerning principally freedom of movement

Issuing of orders by the Burgomaster, prohibiting entry into specified areas of Amsterdam for a limited period (*Olivieira*, no. 33129/96; *Landvreugd*, no. 37331/97)

Article 4 of Protocol No. 4

Case concerning principally the prohibition of collective expulsion

Collective expulsion of Slovak Gypsies from Belgium (*Čonka*, no. 51564/99)

Article 2 of Protocol No. 7

Case concerning principally the right of appeal in criminal matters

Dismissal of an appeal on points of law in France on the ground of failure to surrender to custody (*Papon*, no. 54210/00)

Article 4 of Protocol No. 7

Cases concerning principally the right not to be tried or punished twice

Conviction in criminal proceedings in Austria following imposition of fines in administrative proceedings arising out of the same facts (*W.F.*, no. 38275/97; *Sailer*, no. 38237/97)

Imprisonment in default of payment of customs fines in France, following conviction for a criminal offence concerning the same facts (*Göktan*, no. 33402/96)

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

419 cases concerned the length of civil or administrative proceedings in Italy (281 judgments, including 7 friendly settlements), France (43 judgments, including 5 friendly settlements), Portugal (29 judgments, including 17 friendly settlements and 1 striking out), Poland (11 judgments, including 1 friendly settlement), Belgium (10 judgments, including 1 striking out), Greece (8 judgments, including 2 friendly settlements), Croatia (7 judgments, including 2 friendly settlements), Austria (4 judgments, including 2 friendly settlements), the United Kingdom (4 judgments), Cyprus (3 judgments), Germany (3 judgments), Hungary (3 judgments, including 2 friendly settlements), Slovakia (3 judgments, including 1 friendly settlement), the Netherlands (2 judgments), Turkey (2 judgments, both friendly settlements), Finland, Switzerland and Ukraine (1 judgment each), the former Yugoslav Republic of Macedonia, Slovenia and Sweden (1 friendly-settlement judgment each)

52 cases concerned the length of criminal proceedings in Italy (18 judgments), Turkey (9 judgments), France (6 judgments, including 1 striking out), Poland (3 judgments), Portugal (2 judgments, including 1 friendly settlement), Slovakia (2 judgments, both friendly settlements), Sweden (2 judgments), Austria, Belgium, Cyprus, Finland and the United Kingdom (1 judgment each), and Denmark, Greece, Latvia, Luxembourg and Russia (1 friendly-settlement judgment each)

72 cases (including 40 friendly settlements) concerned the impossibility for landlords in Italy to recover possession of their properties, on account of the system of staggering police assistance to enforce evictions (see the leading case of *Immobiliare Saffi v. Italy* [GC], no. 22774/93, ECHR 1999-V)

34 cases (including 13 friendly settlements) concerned delays in payment of compensation for expropriations in Turkey (see the leading case of *Akkuş v. Turkey*, judgment of 9 July 1997, *Reports of Judgments and Decisions* 1997-IV)

27 cases (including 1 striking out) concerned the annulment of final decisions ordering the restitution of property in Romania and/or the exclusion of the jurisdiction of the courts in the matter (see the leading case of *Brumărescu v. Romania* [GC], no. 28342/95, ECHR 1999-VII)

12 friendly-settlement judgments and 1 striking-out judgment concerned the ill-treatment of detainees (9 cases) and/or deaths in custody (3 cases) in Turkey

13 cases (including 6 friendly settlements) concerned convictions in Turkey for making separatist propaganda or inciting to hatred and hostility

11 cases (including 5 friendly settlements and 1 striking out) concerned the failure to bring detainees promptly before a judge in Turkey and, in some of the cases, the absence of a right to review and of a right to compensation

9 cases (including 3 friendly settlements) concerned the lack of independence and impartiality of national security courts in Turkey

6 cases (including 5 friendly settlements) concerned the unavailability of certain widows' benefits to widowers in the United Kingdom

C. Friendly-settlement judgments

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

Death occurring during a police operation in Turkey (*Oral and Others*, no. 27735/95)

Killing of the applicant's wife and son and destruction of their home by the security forces in Turkey (*Sıddık Yaşa*, no. 22281/93)

Death of the applicant's nieces and serious injury of his father when grenades were thrown into his house by security forces during an operation in Turkey (*Mahmut Demir*, no. 22280/93)

Fatal shootings during attempted arrests in Turkey (*Adalı*, no. 31137/96; *Yalçın*, no. 31152/96; *Soğukpınar*, no. 31153/96; *Şen*, no. 31154/96)

Destruction of home and possessions by the security forces and village guards in Turkey (*Kınay*, no. 31890/96)

Ill-treatment on arrest and at a sobering-up centre in Poland (*H.D.*, no. 33310/96)

Prison conditions in Croatia (*Benzan*, no. 62912/00)

Lawfulness of detention for examination in a psychiatric hospital in Bulgaria (*M.S.*, no. 40061/98)

Lawfulness of detention pending extradition and alleged interference with a detainee's correspondence in France (*Meier*, no. 33023/96)

Length of detention on remand and absence of a right for detainees to attend hearings in Poland (*Z.R.*, no. 32499/96)

Length of time taken to decide on a request for release from detention with a view to expulsion from the Netherlands (*Samy*, no. 36499/97)

Failure to comply with a court time-limit in Austria as a result of delay by the prison administration in forwarding a letter (*Walter*, no. 34994/97)

Fairness of proceedings concerning a claim for compensation for detention on remand in Italy (*Mercuri*, no. 47247/99)

Fairness of proceedings relating to the withdrawal of a driving licence in Slovakia (*Konček*, no. 41263/98)

Expulsion of Gypsy families from Italy to Bosnia and Herzegovina (*Sulejmanovic and Others*, nos. 57574/00 and 57575/00)

Award of damages in respect of the publication of a caricature in a periodical in Austria (*Freiheitliche Landesgruppe Burgenland*, no. 34320/96)

Refusal of a licence to broadcast via a cable network in Austria (*Informationsverein Lentia (no. 2)*, no. 37093/97)

Impossibility for a Muslim Turkish Cypriot to contract a civil marriage in Cyprus (*Selim*, no. 47293/99)

Difference in age requirements for men and women in relation to entitlement to an elderly person's travel pass in the United Kingdom (*Michael Matthews*, no. 40302/98)

D. Judgments striking applications out of the list

In addition to the striking-out judgments mentioned above, cases concerning the following issues were struck out of the list:

Killing by the security forces in Turkey (*Haran*, no. 25754/94)

Disappearances in Turkey (*T.A.*, no. 26307/95; *Toğcu*, no. 27601/95)

Length of detention on remand in France (*Denoncin*, no. 43689/98)

Length of detention on remand and access to a lawyer during police custody in France (*Pinson*, no. 39668/98)

Refusal to summon a defence witness in Italy (*Pisano*, no. 36732/97)

Threatened separation of a foreigner from his family due to expulsion from Germany (*Taskin*, no. 56132/00)

Refusal of the authorities in Italy to issue a completion certificate for property (*Agatone*, no. 36255/97)

E. Other judgments

8 judgments concerning just satisfaction (5 against Greece and 1 each against Italy, the Netherlands and Poland) and 8 judgments concerning revision (all against Italy) were delivered.

*
* *

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

2. The length of court proceedings was at issue in a total of 471 judgments, that is more than half of all judgments delivered. In all but 19 of these, it was the sole issue, while in a further 9 the only additional issue was the availability of an effective remedy under Article 13. Violations were found in all but 7 of the cases in which the merits were addressed (3 against Italy, 2 against France and 2 against Poland).

3. 594 out of the 844 judgments delivered (70%) concerned four groups of complaints – the length of court proceedings (including the question of effective remedies), *Immobiliare Saffi*-type cases, *Akkuş*-type cases and *Brumărescu*-type cases. The judgments referred to under B, C, D and E above, totalling 673, account for almost 80% of those delivered in 2002.

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

| | |
|----------------|--------------|
| Italy | 391 (46.33%) |
| Turkey | 105 (12.44%) |
| France | 75 (8.89%) |
| United Kingdom | 40 (4.74%) |
| Portugal | 33 (3.91%) |
| Romania | 28 (3.32%) |
| Poland | 26 (3.08%) |
| Greece | 25 (2.96%) |

The figures in brackets indicate the percentage of the total number of judgments delivered in 2002. Judgments concerning Italy, Turkey and Portugal included a high proportion of friendly settlements.

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

**XII. CASES ACCEPTED FOR REFERRAL
TO THE GRAND CHAMBER
AND CASES IN WHICH JURISDICTION
WAS RELINQUISHED BY A CHAMBER
IN FAVOUR OF THE GRAND CHAMBER
IN 2002**

**CASES ACCEPTED FOR REFERRAL
TO THE GRAND CHAMBER
AND CASES IN WHICH JURISDICTION WAS RELINQUISHED
BY A CHAMBER IN FAVOUR OF THE GRAND CHAMBER
IN 2002**

A. Cases accepted for referral to the Grand Chamber

Sahin v. Germany, no. 30943/96, judgment of 11 October 2001 [Fourth Section (former composition)]

Sommerfeld v. Germany, no. 31871/96, judgment of 11 October 2001 [Fourth Section (former composition)]

These two cases concern access rights of fathers of children born out of wedlock. At the relevant time, German law provided that access was to be granted to a non-custodial parent only if this was in the best interest of the child whereas a divorced parent would have had a right of access unless the contact was susceptible of endangering the child's well-being. In one case (*Sahin*) the courts did not hear the child, following the advice of an expert in this respect. In the other case, the child was heard, but the applicant's request to consult an expert was refused. In both cases, the Chamber found a violation of Article 8 of the Convention, holding that the respective applicants had not been sufficiently involved in the courts' decision-making process, and also a violation of Article 14 taken in conjunction with Article 8, considering that the law discriminated against fathers of children born out of wedlock as regards their access rights. In *Sommerfeld* the Chamber further found a violation of Article 6 § 1 of the Convention (interference with access to a court by the absence of a further right of appeal).

The cases were referred to the Grand Chamber at the Government's request.

Hatton and Others v. the United Kingdom, no. 36022/97, judgment of 2 October 2001 [Third Section (former composition)]

Rehearing case. A hearing on the merits was held on 13 November 2002.

The case was brought by eight applicants who live or lived in properties in the area surrounding Heathrow Airport, London. Before October 1993 the noise caused by night flying at Heathrow had been controlled through restrictions on the total number of take-offs and landings. After that date, noise was regulated through a system of noise quotas, which assigned each aircraft type a "Quota Count" (QC): the noisier the aircraft the higher the QC. This allowed aircraft operators to select a greater number of quieter aeroplanes or fewer noisier aeroplanes, provided the noise quota was not exceeded.

Following an application for judicial review brought by a number of local authorities affected, the scheme was found to be contrary to section 78(3) of the Civil Aviation Act 1982, which required that a precise number of aircraft be specified, as opposed to a noise quota. The government therefore included a limit on the number of aircraft movements

allowed at night. A second judicial review found that the government's consultation exercise concerning the scheme had been conducted unlawfully, and in March and June 1995 the government issued further consultation papers. On 16 August 1995 the Secretary of State for Transport announced that the details of the new scheme would be as previously announced. The decision was challenged unsuccessfully by the local authorities.

The applicants complained, among other things, that, following the introduction of the 1993 scheme, night-time noise had increased, especially in the early morning, which interfered with their right to respect for their private and family lives and their homes, guaranteed by Article 8 of the European Convention on Human Rights. They also claimed that judicial review was not an effective remedy within the meaning of Article 13, as it had failed to examine the merits of decisions by public authorities and was prohibitively expensive for individuals.

A Chamber of the Court declared the application admissible on 16 May 2000. In its judgment of 2 October 2001 the Chamber held, by five votes to two, that there had been a violation of Article 8 (right to respect for private and family life and home) of the Convention, and, by six votes to one, that there had been a violation of Article 13 (right to an effective remedy).

The Government requested that the case be referred to the Grand Chamber under Article 43 of the Convention, and on 23 March 2002 a panel of the Grand Chamber accepted that request.

Judgment will be delivered at a later date.

Gorzelik and Others v. Poland, no. 44158/98, judgment of 20 December 2001 [Fourth Section (former composition)]

The case concerns the refusal of the Polish authorities to register the applicants' association under the name "Union of People of Silesian Nationality", essentially on the ground that a Silesian national minority was not recognised in Poland and the registration of the proposed association would imply such recognition, giving the minority concerned special rights under the electoral laws. The Chamber unanimously held that in these circumstances the interference with the applicants' right to freedom of association (Article 11 of the Convention) could be justified as being necessary in a democratic society.

The case was referred to the Grand Chamber at the applicants' request.

T.A. v. Turkey, no. 26307/95, judgment of 9 April 2002 [Second Section]

The case concerns the disappearance of the applicant's brother in south-east Turkey, allegedly after his abduction by State officials (complaints under Articles 2, 3, 5, 6, 8, 13, 14, 18, 34 and 38 of the Convention). The Chamber decided to strike the case out of the list on the basis of a unilateral declaration by the Turkish Government in which they offered to pay compensation to the applicant (70,000 pounds sterling), expressed regret for the disappearance and accepted that unrecorded deprivations of liberty and insufficient investigations into allegations of disappearance constitute violations of Articles 2, 5 and 13 of the Convention, and undertook to take certain general measures to prevent repetition of such violations. The applicant did not agree to the striking out of the case, considering that

the conditions of Article 37 of the Convention were not met. It was at his request that the case was referred to the Grand Chamber. Two similar requests by applicants whose cases were struck out on the basis of unilateral declarations of the Government (*Toğcu v. Turkey*, no. 27601/95, judgment of 9 April 2002, and *Haran v. Turkey*, no. 25754/94, judgment of 26 March 2002) have been adjourned by the panel.

Ezeh and Connors v. the United Kingdom, nos. 39665/98 and 40086/98, judgment of 15 July 2002 [Third Section (former composition)]

This case concerns two joint applications in which the applicants, both convicted prisoners, complain of prison disciplinary proceedings in which they were involved and as a consequence of which additional days of custody were imposed on them. The applicants complain in particular that in the adjudication proceedings before the prison governor they were denied the opportunity to be legally represented. The Chamber which dealt with the case unanimously found Article 6 of the Convention to be applicable to the disciplinary proceedings in question and concluded that there had been a violation of its paragraph 3 (c).

The case was referred to the Grand Chamber at the Government's request.

Öneryıldız v. Turkey, no. 48939/99, judgment of 18 June 2002 [First Section (former composition)]

The applicant and his family lived in a shanty home illegally erected on land belonging to the Treasury near a rubbish tip in Istanbul. In 1993 a methane gas explosion in the tip destroyed the applicant's home and killed nine members of his family. The accident was subsequently investigated and the criminal responsibility of two mayors for negligence was eventually established. The applicant was awarded some compensation which, however, was never paid. The Chamber which dealt with the case accepted the applicant's complaint that there had been a violation of Article 2 of the Convention (right to life) in that insufficient protective measures had been taken to deal with the apparent deficiencies of the tip which had been known before the accident, and because the proceedings taken after the accident had not been sufficient to redress this violation. It also found a breach of Article 1 of Protocol No. 1, recognising the applicant's shanty house as a "possession" within the meaning of this provision and considering the compensation awarded to the applicant on account of the authorities' negligence insufficient.

The case was referred to the Grand Chamber at the Government's request.

Azinas v. Cyprus, no. 56679/00, judgment of 20 June 2002 [Third Section]

The case concerns the forfeiture of the applicant's retirement benefits following his disciplinary dismissal from the public service after he had been convicted of a serious criminal offence. The Chamber which dealt with the case accepted that there had been an interference with a "possession" of the applicant (his entitlement to a pension). It held that there had been a violation of Article 1 of Protocol No. 1 in that the interference in question, although justified in principle, had not been proportionate.

The case was referred to the Grand Chamber at the Government's request.

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

Maestri v. Italy, no. 39748/98 [First Section]

The applicant, a judge and former member of a masonic lodge, complains about the disciplinary proceedings brought against him in connection with his masonic links (Articles 9, 10 and 11 of the Convention).

Kleyn and Others v. the Netherlands, no. 39343/98, *Mettler Toledo B.V. v. the Netherlands*, no. 39651/98, *Berndsen v. the Netherlands*, no. 46664/99, *Raymakers v. the Netherlands*, no. 43147/98 [Second Section]

All applications concern the *Raad van State*'s decision to reject the applicants' opposition to a decision approving the routing of a railway line running from Rotterdam to the border with Germany. The applicants complained that the *Raad van State* had previously acted in an advisory capacity as regards the relevant legislation and then subsequently acted in a judicial capacity, in breach of the Convention's Article 6 requirement that a tribunal must be independent and impartial.

Senator Lines GmbH v. Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden and the United Kingdom, no. 56672/00 [Third Section]

The case concerns competition proceedings before the Court of First Instance and the Court of Justice of the European Communities in which the applicant company was heavily fined. The applicant company contends that the proceedings were criminal in nature, and that the way in which it was required to pay the amount of the fine before it could have a determination of the "criminal charge" was in breach of Article 6 of the Convention.

Broniowski v. Poland, no. 31443/96 [Fourth Section]

The case concerns a claim for compensation for property abandoned by the applicant's ancestors, citizens of pre-war Poland, in the so-called "territories beyond the Bug River". Following the Yalta and Potsdam Conferences, the Polish State assumed an obligation to compensate persons who were repatriated from territories beyond a fixed boundary line and had had to abandon property there. Under Polish law it has been recognised that repatriated persons have an entitlement to obtain compensation in kind, that is, to purchase land from the State Treasury and have the value of the abandoned property deducted from the cost. The applicant complains that she did not receive full compensation for the property abandoned by her ancestors, but only a small building plot the value of which amounts to a small fraction of the compensation due (Article 1 of Protocol No. 1).

The Chamber decided to relinquish jurisdiction in favour of the Grand Chamber and to adjourn its consideration of other similar cases.

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

The case concerns the independence and impartiality of a court martial and the fairness of the proceedings (Article 6 § 1 of the Convention).

XIII. STATISTICAL INFORMATION

STATISTICAL INFORMATION

| Judgments delivered in 2002¹ | |
|--|-----------------|
| Grand Chamber | 12(14) |
| Section I | 324(329) |
| Section II | 159(168) |
| Section III | 169(176) |
| Section IV | 141(159) |
| Sections in former compositions | 39(40) |
| Total | 844(886) |

| Type of judgment | | | | | |
|-------------------------|-----------------|---------------------|---------------|----------------|-----------------|
| | Merits | Friendly settlement | Striking out | Other | Total |
| Grand Chamber | 9(11) | 0 | 1 | 2 ² | 12(14) |
| Former Section I | 10 | 1 | 0 | 1 ² | 12 |
| Former Section II | 0 | 0 | 0 | 4 ⁴ | 4 |
| Former Section III | 11 | 1 | 0 | 1 ³ | 13 |
| Former Section IV | 8(9) | 1 | 1 | 0 | 10(11) |
| Section I | 254(258) | 62(63) | 3 | 5 ⁵ | 324(329) |
| Section II | 137(143) | 18(21) | 3 | 1 ² | 159(168) |
| Section III | 117(119) | 50(52) | 2(5) | 0 | 169(176) |
| Section IV | 119(137) | 18 | 2 | 2 ³ | 141(159) |
| Total | 665(698) | 151(158) | 12(15) | 16 | 844(886) |

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

2. Just satisfaction.
3. Revision.
4. Three just-satisfaction judgments and one revision judgment.
5. Four revision judgments and one just-satisfaction judgment.

| Decisions adopted in 2002 | | |
|--|-----------|-----------------------|
| I. Applications declared admissible | | |
| Grand Chamber | | 2 |
| Section I | | 217(233) |
| Section II | | 118(124) |
| Section III | | 113(117) |
| Section IV | | 100(101) |
| Total | | 550(577) |
| II. Applications declared inadmissible | | |
| Grand Chamber | | 3 |
| Section I | Chamber | 302(330) |
| | Committee | 3 987 |
| Section II | Chamber | 103(135) |
| | Committee | 4 705 |
| Section III | Chamber | 83(89) |
| | Committee | 2 968(2969) |
| Section IV | Chamber | 134(516) |
| | Committee | 4 615 |
| Total | | 16 900(17 349) |
| III. Applications struck out | | |
| Section I | Chamber | 81(105) |
| | Committee | 76 |
| Section II | Chamber | 23(24) |
| | Committee | 52 |
| Section III | Chamber | 163(178) |
| | Committee | 29 |
| Section IV | Chamber | 27(30) |
| | Committee | 36 |
| Total | | 487(530) |
| Total number of decisions (excluding partial decisions) | | 17 937(18 456) |

| Applications communicated in 2002 | | |
|--|--|--------------------|
| Grand Chamber | | 1 |
| Section I | | 398(413) |
| Section II | | 273(284) |
| Section III | | 435(443) |
| Section IV | | 384(524) |
| Total number of applications communicated | | 1 491(1665) |

Development in the number of individual applications lodged with the Court (formerly the Commission)¹

| | 1955-1987 | 1988 | 1989 | 1990 | 1991 | 1992 | 1993 | 1994 | 1995 | 1996 | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 | TOTAL |
|--|-----------|-------|-------|-------|-------|-------|-------|--------|--------|--------|--------|--------|--------|--------|--------|----------------|---------|
| Applications lodged | 39 953 | 4 246 | 4 923 | 5 279 | 6 104 | 6 456 | 9 759 | 10 335 | 11 236 | 12 704 | 14 166 | 18 164 | 22 617 | 30 069 | 33 052 | 30 828 (prov.) | 259 891 |
| Applications allocated to a decision body | 13 457 | 1 009 | 1 445 | 1 657 | 1 648 | 1 861 | 2 037 | 2 944 | 3 481 | 4 758 | 4 750 | 5 981 | 8 400 | 10 482 | 13 858 | 28 255 | 106 023 |
| Decisions taken | 12 257 | 654 | 1 338 | 1 216 | 1 659 | 1 704 | 1 765 | 2 372 | 2 990 | 3 400 | 3 777 | 4 420 | 4 251 | 7 862 | 9 728 | 18 450 | 77 843 |
| Applications declared inadmissible or struck out of the list | 11 726 | 602 | 1 243 | 1 065 | 1 441 | 1 515 | 1 547 | 1 789 | 2 182 | 2 776 | 3 073 | 3 658 | 3 520 | 6 776 | 8 989 | 17 868 | 69 770 |
| Applications declared admissible | 523 | 52 | 95 | 151 | 217 | 189 | 218 | 582 | 807 | 624 | 703 | 762 | 731 | 1 086 | 739 | 577 | 8 056 |
| Applications terminated by a decision to reject in the course of the examination of the merits | 8 | 0 | 0 | 0 | 1 | 0 | 1 | 1 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 5 | 17 |
| Judgments delivered by the Court | 154 | 26 | 25 | 30 | 72 | 81 | 60 | 50 | 56 | 72 | 106 | 105 | 177 | 695 | 889 | 844 | 3 442 |

1. As a result of changes to the procedure for registering applications from 2002, "provisional files" are no longer opened. All new applications now appear under the heading "Applications lodged".

XIV. STATISTICAL TABLES BY STATE

STATISTICAL TABLES BY STATE

Evolution of cases – Applications

| State | Applications lodged (provisional statistics) | | | Applications allocated to a decision body | | | Applications declared inadmissible or struck out | | | Applications referred to Government | | | Applications declared admissible | | |
|------------------------|---|-------|-------|--|-------|-------|--|------|-------|--|------|------|-------------------------------------|------|------|
| | 2000 | 2001 | 2002 | 2000 | 2001 | 2002 | 2000 | 2001 | 2002 | 2000 | 2001 | 2002 | 2000 | 2001 | 2002 |
| Albania | 13 | 21 | 19 | 4 | 3 | 15 | 1 | 1 | 3 | - | - | 1 | - | - | - |
| Andorra | 5 | 1 | - | 3 | 3 | - | 1 | 4 | - | - | - | 2 | - | - | - |
| Armenia | 4 | 7 | 21 | - | - | 7 | - | - | - | - | - | - | - | - | - |
| Austria | 403 | 386 | 400 | 241 | 229 | 308 | 227 | 208 | 371 | 39 | 13 | 51 | 20 | 24 | 14 |
| Azerbaijan | 17 | 43 | 123 | - | - | - | - | - | - | - | - | - | - | - | - |
| Belgium | 274 | 239 | 247 | 74 | 108 | 139 | 30 | 79 | 124 | 10 | 8 | 31 | 1 | 25 | 3 |
| Bosnia and Herzegovina | 9 | 11 | 32 | - | - | 2 | - | - | - | - | - | - | - | - | - |
| Bulgaria | 531 | 469 | 588 | 302 | 406 | 465 | 93 | 232 | 394 | 17 | 13 | 43 | 3 | 1 | 15 |
| Croatia | 156 | 186 | 757 | 87 | 116 | 665 | 81 | 75 | 338 | 28 | 14 | 49 | 5 | 6 | 8 |
| Cyprus | 30 | 52 | 37 | 16 | 20 | 48 | 13 | 14 | 44 | 9 | 6 | 7 | 1 | 7 | 2 |
| Czech Republic | 570 | 437 | 465 | 199 | 367 | 329 | 74 | 267 | 437 | 3 | 16 | 54 | 4 | 3 | 2 |
| Denmark | 119 | 115 | 120 | 56 | 52 | 86 | 47 | 50 | 40 | 8 | 10 | 3 | 3 | 3 | 2 |
| Estonia | 77 | 128 | 104 | 46 | 89 | 89 | 19 | 24 | 57 | 4 | 1 | 1 | 1 | 1 | 2 |
| Finland | 172 | 194 | 222 | 109 | 105 | 183 | 125 | 123 | 151 | 16 | 28 | 22 | 10 | 2 | 8 |
| France | 2 937 | 2 827 | 2 789 | 1 032 | 1 117 | 1 610 | 626 | 891 | 1 254 | 104 | 89 | 124 | 80 | 51 | 66 |
| Georgia | 26 | 29 | 37 | 7 | 22 | 29 | 2 | 3 | 13 | - | 4 | 4 | - | - | 2 |
| Germany | 1 685 | 1 613 | 1 668 | 595 | 714 | 1 018 | 642 | 527 | 748 | 38 | 11 | 58 | 15 | 8 | 13 |
| Greece | 265 | 274 | 351 | 123 | 193 | 310 | 99 | 96 | 134 | 42 | 49 | 74 | 18 | 32 | 29 |
| Hungary | 378 | 371 | 263 | 162 | 173 | 307 | 67 | 86 | 198 | 12 | 12 | 31 | 1 | 2 | 10 |
| Iceland | 6 | 7 | 5 | 4 | 3 | 5 | 3 | 6 | 2 | 1 | 2 | - | - | 1 | 2 |
| Ireland | 59 | 56 | 85 | 18 | 16 | 45 | 18 | 24 | 43 | 4 | 2 | 1 | 2 | 1 | 3 |
| Italy | 7 339 | 3 776 | 1 304 | 868 | 590 | 1 303 | 277 | 265 | 1 126 | 342 | 251 | 89 | 486 | 341 | 132 |
| Latvia | 109 | 227 | 256 | 79 | 126 | 206 | 24 | 58 | 102 | 9 | 11 | 15 | - | 3 | 3 |

Evolution of cases – Applications (continued)

| State | Applications lodged (provisional statistics) | | | Applications allocated to a decision body | | | Applications declared inadmissible or struck out | | | Applications referred to Government | | | Applications declared admissible | | |
|---------------------------------------|---|---------------|---------------|--|---------------|---------------|--|--------------|---------------|--|--------------|--------------|-------------------------------------|------------|------------|
| | 2000 | 2001 | 2002 | 2000 | 2001 | 2002 | 2000 | 2001 | 2002 | 2000 | 2001 | 2002 | 2000 | 2001 | 2002 |
| Liechtenstein | 3 | 2 | 3 | 3 | - | 3 | 3 | 1 | 1 | - | - | 2 | - | - | - |
| Lithuania | 288 | 325 | 422 | 184 | 152 | 528 | 72 | 150 | 166 | 4 | 2 | 6 | 10 | - | 3 |
| Luxembourg | 35 | 55 | 44 | 15 | 11 | 25 | 25 | 10 | 11 | 5 | 1 | 1 | 2 | 2 | 2 |
| Malta | 4 | 9 | 9 | 3 | 2 | 4 | 7 | 1 | 2 | 2 | - | 2 | - | 1 | - |
| Moldova | 125 | 212 | 221 | 63 | 44 | 245 | 48 | 23 | 31 | 1 | 7 | 4 | - | 3 | 1 |
| Netherlands | 310 | 333 | 562 | 175 | 200 | 316 | 170 | 218 | 278 | 14 | 17 | 14 | 11 | 5 | 9 |
| Norway | 64 | 61 | 76 | 30 | 49 | 48 | 33 | 54 | 20 | 2 | 1 | - | - | 3 | - |
| Poland | 3 157 | 3 428 | 4 173 | 775 | 1 763 | 4 055 | 741 | 1 411 | 2 469 | 43 | 94 | 84 | 17 | 26 | 46 |
| Portugal | 221 | 222 | 245 | 98 | 141 | 143 | 72 | 72 | 108 | 41 | 56 | 27 | 26 | 39 | 22 |
| Romania | 2 158 | 1 795 | 1 927 | 639 | 542 | 1 965 | 217 | 537 | 508 | 8 | 35 | 28 | 31 | 1 | 13 |
| Russia | 2 312 | 6 368 | 4 006 | 1 323 | 2 108 | 4 004 | 915 | 1 253 | 2 223 | 28 | 21 | 58 | - | 2 | 12 |
| San Marino | 4 | 2 | 5 | 1 | 3 | 5 | 3 | 2 | 1 | 3 | - | 3 | - | - | 3 |
| Slovakia | 479 | 545 | 418 | 284 | 343 | 406 | 102 | 159 | 366 | 42 | 12 | 39 | 7 | 8 | 11 |
| Slovenia | 197 | 249 | 256 | 55 | 206 | 268 | 37 | 78 | 72 | 3 | 8 | 7 | - | 1 | - |
| Spain | 546 | 1 100 | 797 | 284 | 806 | 799 | 228 | 231 | 1 345 | 18 | 386 | 9 | 2 | 2 | 7 |
| Sweden | 395 | 400 | 357 | 233 | 247 | 297 | 137 | 110 | 350 | 14 | 7 | 13 | 8 | 4 | 1 |
| Switzerland | 318 | 327 | 275 | 187 | 162 | 215 | 191 | 210 | 182 | 8 | 9 | 3 | 10 | 2 | 1 |
| Former Yugoslav Republic of Macedonia | 38 | 57 | 86 | 18 | 32 | 88 | 16 | 13 | 16 | 4 | 7 | 6 | - | 4 | - |
| Turkey | 1 117 | 2 499 | 3 036 | 735 | 1 059 | 3 871 | 394 | 384 | 1 639 | 330 | 251 | 375 | 279 | 90 | 102 |
| Ukraine | 1 520 | 2 104 | 2 549 | 727 | 1 062 | 2 816 | 431 | 510 | 1 764 | 26 | 13 | 18 | 1 | 1 | 3 |
| United Kingdom | 1 594 | 1 490 | 1 468 | 625 | 474 | 985 | 465 | 529 | 737 | 163 | 99 | 312 | 32 | 34 | 25 |
| Total | 30 069 | 33 052 | 30 828 | 10 482 | 13 858 | 28 255 | 6 776 | 8 989 | 17 868 | 1 445 | 1 566 | 1 671 | 1 086 | 739 | 577 |

Evolution of cases – Judgments

| State | Judgments (Chamber and Grand Chamber) | | | Judgments (final – after referral to Grand Chamber) | | | Judgments (friendly settlements) | | | Judgments (striking out) | | |
|------------------------|---------------------------------------|------|------|---|------|------|----------------------------------|------|------|--------------------------|------|------|
| | 2000 | 2001 | 2002 | 2000 | 2001 | 2002 | 2000 | 2001 | 2002 | 2000 | 2001 | 2002 |
| Albania | - | - | - | - | - | - | - | - | - | - | - | - |
| Andorra | - | - | - | - | - | - | - | - | - | - | - | - |
| Armenia | | | - | | | - | | | - | | | - |
| Austria | 15 | 17 | 15 | - | - | - | 6 | 1 | 5 | - | - | - |
| Azerbaijan | | | - | | | - | | | - | | | - |
| Belgium | 1 | 4 | 13 | - | - | - | 1 | 1 | - | - | - | 1 |
| Bosnia and Herzegovina | | | - | | | - | | | - | | | - |
| Bulgaria | 3 | 2 | 2 | - | - | - | - | 1 | 1 | - | - | - |
| Croatia | - | 5 | 6 | - | - | - | - | - | 3 | - | - | - |
| Cyprus | 3 | 1 | 5 | - | - | - | 1 | 1 | 1 | - | - | - |
| Czech Republic | 4 | 1 | 4 | - | - | - | - | 1 | - | - | - | - |
| Denmark | 1 | 1 | 1 | - | - | - | 5 | 1 | 1 | - | - | - |
| Estonia | - | 1 | 1 | - | - | - | 1 | - | - | - | - | - |
| Finland | 5 | 3 | 5 | - | 1 | - | 2 | - | - | 1 | - | - |
| France | 60 | 35 | 67 | - | - | - | 11 | 8 | 6 | 2 | 2 | 2 |
| Georgia | - | - | - | - | - | - | - | - | - | - | - | - |
| Germany | 3 | 16 | 8 | - | - | - | - | - | - | - | 1 | 1 |
| Greece | 15 | 16 | 17 | - | - | - | 3 | 5 | 3 | 1 | - | - |
| Hungary | 1 | 2 | 1 | - | - | - | - | - | 2 | - | 1 | - |
| Iceland | - | - | - | - | - | - | 2 | - | - | - | - | - |
| Ireland | 2 | 1 | 1 | - | - | - | 1 | - | - | - | - | - |
| Italy | 236 | 365 | 331 | - | - | 1 | 160 | 45 | 49 | - | - | 1 |
| Latvia | - | - | 2 | - | - | - | - | 1 | - | - | - | - |

Evolution of cases – Judgments (continued)

| State | Judgments (Chamber and Grand Chamber) | | | Judgments (final-after referral to Grand Chamber) | | | Judgments (friendly settlements) | | | Judgments (striking out) | | |
|---------------------------------------|---------------------------------------|------------|------------|---|----------|----------|----------------------------------|------------|------------|--------------------------|----------|-----------|
| | 2000 | 2001 | 2002 | 2000 | 2001 | 2002 | 2000 | 2001 | 2002 | 2000 | 2001 | 2002 |
| Liechtenstein | - | - | - | - | - | - | - | - | - | - | - | - |
| Lithuania | 4 | 2 | 5 | - | - | - | 1 | - | - | - | - | - |
| Luxembourg | 1 | 2 | - | - | - | - | - | - | 1 | - | - | - |
| Malta | 1 | - | - | - | - | - | - | - | - | - | - | - |
| Moldova | - | 1 | - | - | - | - | - | - | - | - | - | - |
| Netherlands | 4 | 3 | 9 | - | - | - | 1 | 4 | 1 | 1 | - | - |
| Norway | 1 | 1 | - | - | - | - | - | - | - | - | - | - |
| Poland | 12 | 19 | 22 | - | - | - | 2 | 1 | 3 | 5 | - | - |
| Portugal | 11 | 10 | 14 | - | - | - | 9 | 15 | 18 | - | - | 1 |
| Romania | 3 | - | 26 | - | - | - | - | - | - | - | - | 1 |
| Russia | - | - | 2 | - | - | - | - | - | - | - | - | - |
| San Marino | 2 | - | - | - | - | - | - | - | - | - | - | - |
| Slovakia | 3 | 5 | 4 | - | - | - | 3 | 3 | 3 | - | - | - |
| Slovenia | 2 | 1 | - | - | - | - | - | - | 1 | - | - | - |
| Spain | 3 | 2 | 3 | - | - | - | - | - | - | - | - | - |
| Sweden | - | - | 6 | - | - | - | 1 | 3 | 1 | - | - | - |
| Switzerland | 6 | 7 | 4 | - | - | - | 1 | 1 | - | - | - | - |
| Former Yugoslav Republic of Macedonia | - | 1 | - | - | - | - | - | - | 1 | - | - | - |
| Turkey | 26 | 171 | 56 | - | - | - | 12 | 57 | 45 | 1 | 1 | 4 |
| Ukraine | - | - | 1 | - | - | - | - | 1 | - | - | - | - |
| United Kingdom | 19 | 30 | 34 | - | - | - | 6 | 1 | 6 | 2 | 1 | - |
| Total | 447 | 725 | 665 | - | 1 | 1 | 229 | 151 | 151 | 13 | 6 | 11 |

Evolution of cases – Judgments (continued)

| State | Judgments (just satisfaction) | | | Judgments (preliminary objections) | | | Judgments (interpretation) | | | Judgments (revision) | | |
|------------------------|-------------------------------|------|------|------------------------------------|------|------|----------------------------|------|------|----------------------|------|------|
| | 2000 | 2001 | 2002 | 2000 | 2001 | 2002 | 2000 | 2001 | 2002 | 2000 | 2001 | 2002 |
| Albania | - | - | - | - | - | - | - | - | - | - | - | - |
| Andorra | - | - | - | - | - | - | - | - | - | - | - | - |
| Armenia | | | - | | | - | | | - | | | - |
| Austria | - | - | - | - | - | - | - | - | - | - | - | - |
| Azerbaijan | | | - | | | - | | | - | | | - |
| Belgium | - | - | - | - | - | - | - | - | - | - | - | - |
| Bosnia and Herzegovina | | | - | | | - | | | - | | | - |
| Bulgaria | - | - | - | - | - | - | - | - | - | - | - | - |
| Croatia | - | - | - | - | - | - | - | - | - | - | - | - |
| Cyprus | - | - | - | - | - | - | - | - | - | - | - | - |
| Czech Republic | - | - | - | - | - | - | - | - | - | - | - | - |
| Denmark | - | - | - | - | - | - | - | - | - | - | - | - |
| Estonia | - | - | - | - | - | - | - | - | - | - | - | - |
| Finland | - | - | - | - | - | - | - | - | - | - | - | - |
| France | - | - | - | - | - | - | - | - | - | - | - | - |
| Georgia | - | - | - | - | - | - | - | - | - | - | - | - |
| Germany | - | - | - | - | - | - | - | - | - | - | - | - |
| Greece | 2 | - | 5 | - | - | - | - | - | - | - | - | - |
| Hungary | - | - | - | - | - | - | - | - | - | - | - | - |
| Iceland | - | - | - | - | - | - | - | - | - | - | - | - |
| Ireland | - | - | - | - | - | - | - | - | - | - | - | - |
| Italy | - | - | 1 | - | - | - | - | - | - | - | 3 | 8 |
| Latvia | - | - | - | - | - | - | - | - | - | - | - | - |

Evolution of cases – Judgments (continued)

| State | Judgments (just satisfaction) | | | Judgments (preliminary objections) | | | Judgments (interpretation) | | | <i>Judgments (revision)</i> | | |
|---------------------------------------|-------------------------------|----------|----------|------------------------------------|------|------|----------------------------|----------|------|-----------------------------|------|----------|
| | 2000 | 2001 | 2002 | 2000 | 2001 | 2002 | 2000 | 2001 | 2002 | 2000 | 2001 | 2002 |
| Liechtenstein | - | - | - | - | - | - | - | - | - | - | - | - |
| Lithuania | - | - | - | - | - | - | - | - | - | - | - | - |
| Luxembourg | - | - | - | - | - | - | - | - | - | - | - | - |
| Malta | - | - | - | - | - | - | - | - | - | - | - | - |
| Moldova | - | - | - | - | - | - | - | - | - | - | - | - |
| Netherlands | - | - | 1 | - | - | - | - | - | - | - | - | - |
| Norway | - | - | - | - | - | - | - | - | - | - | - | - |
| Poland | - | - | 1 | - | - | - | - | - | - | - | - | - |
| Portugal | - | 1 | - | - | - | - | - | - | - | - | - | - |
| Romania | - | 1 | - | - | - | - | - | - | - | - | - | - |
| Russia | - | - | - | - | - | - | - | - | - | - | - | - |
| San Marino | - | - | - | - | - | - | - | - | - | - | - | - |
| Slovakia | - | - | - | - | - | - | - | - | - | - | - | - |
| Slovenia | - | - | - | - | - | - | - | - | - | - | - | - |
| Spain | 1 | - | - | - | - | - | - | - | - | - | - | - |
| Sweden | - | - | - | - | - | - | - | - | - | - | - | - |
| Switzerland | - | - | - | - | - | - | - | - | - | - | - | - |
| Former Yugoslav Republic of Macedonia | - | - | - | - | - | - | - | - | - | - | - | - |
| Turkey | - | - | - | - | - | - | - | - | - | - | - | - |
| Ukraine | - | - | - | - | - | - | - | - | - | - | - | - |
| United Kingdom | 2 | 1 | - | - | - | - | - | 1 | - | - | - | - |
| Total | 5 | 3 | 8 | - | - | - | - | 1 | - | - | - | 3 |

Judgments 2002

| State concerned | Cases which gave rise to a finding of | | Cases which gave rise to no finding on the merits | | Just satisfaction | Revision | Total |
|---------------------------------------|---------------------------------------|--------------|---|--------------|-------------------|----------|------------|
| | at least one violation | no violation | Friendly settlement | Striking out | | | |
| Albania | - | - | - | - | - | - | - |
| Andorra | - | - | - | - | - | - | - |
| Armenia | - | - | - | - | - | - | - |
| Austria | 14 | 1 | 5 | - | - | - | 20 |
| Azerbaijan | - | - | - | - | - | - | - |
| Belgium | 12 | 1 | - | 1 | - | - | 14 |
| Bosnia & Herzegovina | - | - | - | - | - | - | - |
| Bulgaria | 2 | - | 1 | - | - | - | 3 |
| Croatia | 6 | - | 3 | - | - | - | 9 |
| Cyprus | 5 | - | 1 | - | - | - | 6 |
| Czech Republic | 4 | - | - | - | - | - | 4 |
| Denmark | 1 | - | 1 | - | - | - | 2 |
| Estonia | 1 | - | - | - | - | - | 1 |
| Finland | 5 | - | - | - | - | - | 5 |
| France | 61 | 6 | 6 | 2 | - | - | 75 |
| Georgia | - | - | - | - | - | - | - |
| Germany | 6 | 2 | - | 1 | - | - | 9 |
| Greece | 16 | 1 | 3 | - | 5 | - | 25 |
| Hungary | 1 | - | 2 | - | - | - | 3 |
| Iceland | - | - | - | - | - | - | - |
| Ireland | 1 | - | - | - | - | - | 1 |
| Italy | 325 | 6 | 49 | 2 | 1 | 8 | 391 |
| Latvia | 2 | - | - | - | - | - | 2 |
| Liechtenstein | - | - | - | - | - | - | - |
| Lithuania | 4 | 1 | - | - | - | - | 5 |
| Luxembourg | - | - | 1 | - | - | - | 1 |
| Former Yugoslav Republic of Macedonia | - | - | 1 | - | - | - | 1 |
| Malta | - | - | - | - | - | - | - |
| Moldova | - | - | - | - | - | - | - |
| Netherlands | 6 | 3 | 1 | - | 1 | - | 11 |
| Norway | - | - | - | - | - | - | - |
| Poland | 20 | 2 | 3 | - | 1 | - | 26 |
| Portugal | 14 | - | 18 | 1 | - | - | 33 |
| Romania | 26 | - | - | 1 | - | - | 27 |
| Russia | 2 | - | - | - | - | - | 2 |
| San Marino | - | - | - | - | - | - | - |
| Slovakia | 4 | - | 3 | - | - | - | 7 |
| Slovenia | - | - | 1 | - | - | - | 1 |
| Spain | 1 | 2 | - | - | - | - | 3 |
| Sweden | 4 | 2 | 1 | - | - | - | 7 |
| Switzerland | 2 | 2 | - | - | - | - | 4 |
| Turkey | 54 | 2 | 45 | 4 | - | - | 105 |
| Ukraine | 1 | - | - | - | - | - | 1 |
| United Kingdom | 30 | 4 | 6 | - | - | - | 40 |
| Total | 630 | 35 | 151 | 12 | 8 | 8 | 844 |